

Spokane County, Decision 6720 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON STATE COUNCIL OF COUNTY	)	CASE 10309-C-93-607
AND CITY EMPLOYEES, LOCAL 1553	)	
	)	DECISION 6720 - PECB
for clarification of existing	)	
bargaining unit of employees of	)	ORDER CLARIFYING
	)	BARGAINING UNIT
SPOKANE COUNTY	)	
	)	
<hr/> In the matter of the petition of:	)	
	)	
SPOKANE PROSECUTOR'S PARALEGAL	)	CASE 10429-E-93-1718
ASSOCIATION	)	
	)	
involving certain employees of:	)	DECISION 6721 - PECB
	)	
SPOKANE COUNTY	)	ORDER OF DISMISSAL
	)	
	)	

John F. Cole, Assistant Director for Staff Services, appeared on behalf of Washington State Council of County and City Employees, Local 1553.

Robert B. Binger, Deputy Prosecuting Attorney, appeared on behalf of Spokane County.

Susan Tyler-Babkirk, appeared on behalf of the Spokane County Prosecutor's Paralegal Association.

On March 8, 1993, Washington State Council of County and City Employees, Local 1553 (WSCCCE) filed a petition for clarification of an existing bargaining unit with the Commission under Chapter 391-35 WAC, seeking accretion of employees working for Spokane County (employer) in two "paralegal" classifications to an existing bargaining unit of office-clerical and support employees. Case 10309-C-93-607.

On April 22, 1993, the Spokane County Prosecutor's Paralegal Association (SCPPA) filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of the paralegals at issue in the case initiated by the WSCCCE. Case 10429-E-93-1718.

Hearing Officer Mark S. Downing conducted a pre-hearing conference, and the record in this matter includes a statement of results issued on April 29, 1994. On that same date, the WSCCCE moved for intervention in the case initiated by the SCPPA. That motion was conditionally granted on May 11, 1994.

The cases were consolidated for further processing, and Hearing Officer Kathleen O. Erskine held a hearing on April 25 and 26, 1995, May 17 and 18, 1995, and July 24 and 25, 1995.<sup>1</sup> The parties filed briefs. The processing of these cases was suspended in April of 1996, after the employer and the individual then holding office as its elected prosecuting attorney sought a writ of prohibition, challenging the Commission's jurisdiction on various grounds.<sup>2</sup>

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<sup>1</sup> On April 25, 1996, the parties stipulated that, due to changed circumstances, Lynn L. Griffiths was no longer to be excluded as a confidential employee or supervisor.

<sup>2</sup> Although that litigation arose out of a separate unit of deputy prosecuting attorneys, acceptance of either a "prosecuting attorney is excluded from the definition of public employer" argument or a "prosecuting attorney is a separate employer" argument advanced in that litigation could have had an impact on these cases: A change of employer status would have contraindicated any comingling of Office of Prosecuting Attorney employees with other employees of Spokane County. Arguments about the status of the prosecuting attorney as a public employer were in addition to arguments that deputy prosecuting attorneys were excluded, on various grounds, from the coverage of Chapter 41.56 RCW.

The Supreme Court sent the case to a superior court, which ruled that the deputy prosecuting attorneys were excluded from bargaining rights but did not rule on the "employer status" claims that were of concern in these cases.<sup>3</sup> The Supreme Court accepted direct review, and affirmed that the deputy prosecuting attorneys were excluded from the coverage of Chapter 41.56 RCW by RCW 41.56.030(2)(b), but it also did not rule on the employer status claims that were of concern in these cases. Spokane County (Sweetser) v. PERC, 136 Wn.2d 664 (October 22, 1998).

The processing of these cases was resumed when other cases held in abeyance due to the writ of prohibition litigation were cleared.<sup>4</sup> On February 5, 1999, all parties were afforded an opportunity to file supplemental briefs. The employer has not advanced argument in these proceedings that the prosecuting attorney is excluded from the definition of "public employer", or that prosecuting attorney

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<sup>3</sup> The WSCCCE had been certified as exclusive bargaining representative of certain deputy prosecuting attorneys employed by Spokane County in Case 9774-E-92-1607, without objection that they were excluded from the definition of "public employee". However, disputes in 1993 and 1994, while Donald Brockett was the elected prosecuting attorney of Spokane County, led to the filing of several unfair labor practice complaints concerning that bargaining unit. James Sweetser took office as prosecuting attorney in January of 1995, and additional disputes in 1995 and early 1996 led to the filing of additional cases involving that bargaining unit. In January of 1996, Spokane County and Sweetser petitioned the Supreme Court of the State of Washington for a writ of prohibition against the Commission.

<sup>4</sup> Steven Tucker took office as prosecuting attorney in January of 1999. He joined with the WSCCCE in a withdrawal of all of the complaints and petitions involving the deputy prosecuting attorneys which were filed by both parties during the Brockett and Sweetser administrations. Notice is taken, for example, of the Commission's docket records for Case 11092-U-94-2584.

is a separate employer, for purposes of Chapter 41.56 RCW. On February 19, 1999, Maria J. Washington entered an appearance as the current spokesperson for the SCPPA, and affirmed the ongoing interest of that organization in the proceedings.

The Executive Director concludes that the separate unit sought by the SCPPA is not an appropriate bargaining unit, and that the paralegals at issue are properly accreted to the existing bargaining unit represented by the WSCCCE.

#### BACKGROUND

Spokane County has one of the largest populations among counties in the state of Washington. At the time of the hearing in these matters, the employer had collective bargaining relationships with organizations representing 11 bargaining units.

The WSCCCE is a state-wide labor organization affiliated with the American Federation of State, County, and Municipal Employees, AFL-CIO. WSCCCE, Local 1553, has represented Spokane County employees since approximately 1956.

The recognition clause of the collective bargaining agreement between the employer and WSCCCE describes a bargaining unit touching the Offices of: Assessor, Auditor, Clerk, Prosecuting Attorney, and Treasurer; and in Departments of: Animal Control, Building and Safety, Courthouse Buildings and Grounds, District Court, Emergency Communications, Parks and Recreation, Planning, Printing and Duplicating, Purchasing, and System Services. There were more than 400 employees in that bargaining unit.

At various times prior to the onset of these proceedings, the employer began hiring "paralegals" in the office of prosecuting attorney, to assist its deputy prosecuting attorneys. The employer's refusal to include the new positions in the existing bargaining unit represented by the WSCCCE led to the filing of the petition in Case 10309-C-93-607. That petition indicated there were 12 paralegals at issue when it was filed in March of 1993.

The SCPPA was formed in April of 1993, as an independent organization, apparently in response to the WSCCCE effort to have the paralegals included in the existing bargaining unit. The petition filed by the SCPPA indicated there were 9 paralegals.

#### POSITIONS OF THE PARTIES

The WSCCCE asserts that it is both reasonable and appropriate to accrete the paralegal classifications into the bargaining unit it represents. The WSCCCE claims that the disputed classifications are an outgrowth of office-clerical and support functions which have historically been provided in the Office of Prosecuting Attorney by members of its bargaining unit. It contends that paralegals are integrated into the employer's production processes, and share numerous characteristics with the employees in the existing bargaining unit, including commonalities of work hours, supervision, working conditions, vacation schedules, sick leave, internal department policies, rules and employment standards, levels of education and experience, and wage scale. The WSCCCE argues that it represents classifications with a variety of job tasks common on a county-wide basis, and that the existing unit encompasses employees with a wide range of education and skills. It argues that the paralegal classifications share sufficient community of

interest with other bargaining unit classifications to support their inclusion in that unit, and that to do otherwise would lead to unnecessary fragmentation of the bargaining unit structure at Spokane County.

The SCPPA contends a separate bargaining unit limited to the paralegal classifications is an appropriate unit for the purposes of collective bargaining. It argues that the community of interest among the paralegals is sufficient to support a separate bargaining unit, and that the paralegals should be allowed to choose their own exclusive bargaining representative.

The employer does not oppose either the accretion proposed by the WSCCCE or the separate bargaining unit proposed by the SCPPA. The employer took the position that the WSCCCE and SCPPA were each competently represented at the hearing in this matter, and that the Commission should resolve the controversy.

## DISCUSSION

### General Unit Determination Principles

The Legislature has delegated authority to the Public Employment Relations Commission to determine the appropriate unit(s) 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. . . .**

[Emphasis by **bold** supplied.]

The Commission has described the purpose of the unit determination function as being:

[T]o 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).

The Commission has found units consisting of "all employees of the employer" to be appropriate, as in Winslow, but it has also affirmed the propriety of dividing an employer's workforce into two or more separate bargaining units:

Units smaller than employer-wide may also be appropriate, especially in larger work forces. The employees in a separate department or division may share a community of interest separate and apart from other employees of the employer, based upon their commonality of function, duties, skills and supervision. Consequently, **departmental (vertical) units have sometimes been found appropriate** when sought by a petitioning union. [Footnote

omitted.] Alternately, employees of a separate occupational type may share a community of interest based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, **occupational (horizontal) bargaining units have also been found appropriate**, on occasion, when sought by a petitioning union. ...

City of Centralia, Decision 3495-A (PECB, 1990) [emphasis by **bold** supplied].

The starting point for analysis in a representation case under Chapter 391-25 WAC is the unit description sought by the petitioning union; the starting point for analysis in a unit clarification case under Chapter 391-35 WAC is the existing bargaining unit.

There have been cases in which bargaining unit configurations sought by petitioning unions in representation cases have been rejected as inappropriate. Examples include where a petitioned-for bargaining unit is structured entirely along lines of "extent of organization" or "desires of the employees", as in Bremerton School District, Decision 527 (PECB, 1978), or where a petitioned-for unit is structured according to an obsolete departmental structure, as in King County, Decision 5910-A (PECB, 1997). Rejection of a proposed unit structure is particularly appropriate where it would have the effect of stranding excluded employees in units too small for them to implement their statutory bargaining rights.<sup>5</sup>

The right of employees to a voice in the selection of their representative, under RCW 41.56.040, is generally implemented by elections or cross-checks under RCW 41.56.060 and 41.56.070. RCW 41.56.080 provides, however, that status as exclusive bargaining

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<sup>5</sup> See, Port of Seattle, Decision 890 (PECB, 1980); City of Vancouver, Decision 3160 (PECB, 1989); Forks Community Hospital, Decision 4187 (PECB, 1992).



representatives is dependent upon having majority support within a bargaining unit. An oft-cited Commission decision includes:

Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed.

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

The Commission's Richland decision continued, however, with:

... both accretions and exclusions can be accomplished through unit clarification in appropriate circumstances.

Appropriate situations are where application of the unit determination criteria in RCW 41.56.060 establishes that employees affected by changed circumstances can only be appropriately placed in one existing bargaining unit, and cannot stand alone as a separate unit or logically be accreted to any other existing bargaining unit. King County, Decision 5820 (PECB, 1997). Consistent with being an exception to the general rule, the party proposing an accretion has a burden of proof. Kiona-Benton School District, Decision 3180 (PECB, 1989).

#### Application of Standards

The WSCCCE seeks accretion of the paralegals to a broadly-based bargaining unit which is "horizontal" in the sense of cutting across departmental lines and constituting an occupational grouping of employees performing office-clerical and support functions. The

Commission's docket records reflect that the employer has separate bargaining relationships with bargaining units aptly described as departmental or "vertical", for other groups such as "law enforcement officers",<sup>6</sup> "corrections officers",<sup>7</sup> and operations and maintenance employees in its road crew.<sup>8</sup>

The SCPA characterizes its proposed unit as occupationally-based, citing the duties and skills of the paralegals, rather than putting its focus on the employer's departmental structure. However, the unit sought by the SCPA is also "vertical" in the sense of being comprised solely of the employees in two closely-related classifications ("paralegal 1" and "paralegal 2") within a single department of Spokane County.

Duties, Skills and Working Conditions -

The first Spokane County "paralegal" position was created in 1989. It was assigned to the civil division of the Office of Prosecuting Attorney, and was excluded from the WSCCCE bargaining unit on the basis of having supervisory status. Such an exclusion was arguably justified, or even required, by City of Richland, supra.

Additional paralegal positions were created beginning in 1991, and were assigned to various units within the Office of Prosecuting

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<sup>6</sup> Notice is taken of the Commission's docket records for Case 13463-I-97-290, an interest arbitration under RCW 41.56.430 et seq. for a unit of law enforcement officers.

<sup>7</sup> Notice is taken of the Commission's docket records for Case 10801-C-93-645, a unit clarification involving a bargaining unit of corrections officers who are eligible for interest arbitration under RCW 41.56.430 et seq.

<sup>8</sup> Notice is taken of the Commission's docket records for Case 11559-U-95-2705, an unfair labor practice involving a bargaining unit of road crew employees.

Attorney. Those were the positions initially at issue in these proceedings.

The Job Descriptions for the disputed positions, along with those for other non-attorney positions in the Office of Prosecuting Attorney, are created and maintained under the direction of the employer's human resources director, Gary Carlsen. He testified that his office is responsible for the job descriptions for most positions within the employer's workforce, including bargaining unit positions.

The employer's job description for the "paralegal 1" classification states (with emphasis by **bold** supplied):

DEFINITION: Responsible for **initial interview of all clients held in custody obtaining background information**, possible bond or personal recognizance release information and information regarding the arrest and charge; **create and draft release orders, probation modification orders and other sensitive and confidential legal documents** under the supervision of an attorney; operate **word processing** and **input information in computer data base**; and **assist attorneys in trial preparation**.

CLASSIFICATION STANDARDS

**Person holding this position must exercise discretion, maintain confidentiality, display a professional attitude** and deal effectively with potentially difficult clients and sensitive subjects. A basic understanding of the criminal justice system is essential along with an understanding of individuals constitutional rights. **Though word processing/computer skills are utilized, this is not a secretarial type position** but requires an ability to maintain attorney files, court and interview schedules and case preparation with minimal supervision from attorney staff.

EXAMPLES OF DUTIES

**Create and draft court orders and other various legal documents** under the supervision of attorney staff.

Conduct initial interview with clients in custody completing background information sheet and criminal case interview sheet.

**Assemble and organize attorney files.**

Update information in the **computer data base.**

**Verify by phone** possible personal recognizance information.

**Present for signature agreed orders and conform and distribute copies.**

**Record and track court calendar dates and deadlines.**

Assist in pre-trial and train preparation, including **organizing exhibits, scheduling witnesses etc.**

## MINIMUM REQUIREMENTS

TRAINING AND EXPERIENCE: Successful **completion of a paralegal course and/or one year's experience as a clerk or paralegal** with a criminal justice agency.

LICENSE: Washington State driver's license.

SELECTION FACTORS

Knowledge of the criminal justice system.

Ability to communicate with clients with limited social, emotional and intellectual functioning.

**Ability to skillfully communicate orally and in writing.**

**Ability to operate standard office machines, word processing equipment and computer data base programs.**

Ability to function in a calm, efficient and courteous manner under frequent interruptions, requests and emergencies.

Ability to exercise careful judgment, diplomacy and tact and perform all tasks with confidentiality.

The job description for the higher-paid "paralegal 2" classification adds to the examples of duties: "Research case law and assist with trial brief ..."; "Review pre-trial motions and requests for discovery from defense attorneys, prepare responses ..."; "Prepare instructions for submittal to the court"; "Edit, Shepardize, and proofread briefs and legal memos"; and "Interpret legal documents and explain legal procedures to victims, witnesses, and others". Even that job description retains, however: "Operate word processing and data base systems as required". The higher-paid position requires the same paralegal course as the paralegal 1, but calls for additional experience.

Other non-attorney classifications in the Office of Prosecuting Attorney have titles such as "office assistant", "secretary", and "interviewer". As with the paralegal job series, entry-level positions are designated by a "1" (e.g., "office assistant 1") while higher-paid positions within a job series have higher numbers. There are many similarities to the job descriptions for the paralegals.

The job description for "office assistant 2" includes (emphasis by **bold** supplied):

DEFINITION: Performs clerical or technical support **work requiring some independent judgment**. Duties include performing clerical work requiring application of various work methods and procedures **which may be somewhat complex, some familiarity with laws and regulations** controlling the department and with departmental functions, policies and practices.

CLASSIFICATION STANDARDS

Positions allocated to this classification perform tasks which differ from those performed in a lower level class in that they are more varied, complex or technical; require a longer period in which to become proficient;

contain a greater number of individual steps to complete the work process or cycle; require the person to exercise discretion by making a selection from among a number of available alternatives to correctly complete a sequence. May supervise positions of a lower or the same class for on-the-job training or assistance purposes or may be assigned to some duties of a higher level class for training purposes or act as lead workers to positions of a lower class. Work processes usually require the person to have a working knowledge of department work relationships to effectively perform duties.

EXAMPLES OF DUTIES

**Answers incoming calls;** takes messages as appropriate; directs caller to correct individual. **Provides information and answers questions** within scope of knowledge.

**Reviews and checks paperwork** coming from other divisions or departments **for accuracy and completeness;** corrects or returns work for correction prior to processing.

Resolves errors by **researching causes and/or remedies** which may require **contacting the public, vendors or public and private agencies, groups or individuals.**

Process and/or **enters data or information in computer system.**

Compiles and evaluates necessary data to supply a correct, accurate and finished product.

Types for production and accuracy using typewriter or **word processing** program; **self-composes or edits work of others;** takes dictation and/or transcribes from tapes and answers correspondence; controls inventory and ordering of supplies; prepares vouchers and makes purchases.

**Attends and records hearings;** computes fees and issues relevant forms within statutory or office policy limitations; receives and issues receipts for payments for licenses, permits, services, etc. **Processes tickets and citations.**

Operates, maintains and makes minor repairs or adjustments and sets up equipment for certain functions; i.e., election and other kinds of office equipment.

Sets type for forms and publications by determining the proper form application of type using computer software and operating varied typesetting equipment.

Performs other related essential duties as required.

#### MINIMUM REQUIREMENTS

TRAINING AND EXPERIENCE: **High school diploma or equivalent. One year of experience** at a level equivalent to Office Assistant 2 performing related work which would enable the individual to obtain a familiarity with the general intent or function of the department or division, **or substituting coursework or training in office practices, secretarial science or other related area for up to six months of the experience.**

Certain positions may require a skills and/or typing test.

#### SELECTION FACTORS

Knowledge of administrative support functions including the operation of standard office machines and equipment including word processing programs and computer terminals.

Knowledge of basic English composition, spelling, grammar and other support skills as required by the position.

Some knowledge of the operations, functions and terminology common to the work ....

**Ability to communicate effectively both orally and in writing.**

Ability to develop and maintain effective work relationships with co-workers, supervisors, officials and the general public.

**Ability to work independently with little or no direct supervision. ...**

Ability to work with speed and accuracy in a courteous manner when dealing with the public.

Ability to handle routine mathematical calculations quickly and accurately.

The job description for the high-paid "office assistant 4" classification is even closer to the paralegal job descriptions:

DEFINITION: Performs clerical or technical support **work requiring independent judgment.** Duties include performing clerical and technical support work requiring application of various **work methods and procedures which may be relatively complex,** some **familiarity with laws and regulations** controlling the department with the departmental functions, policies and practices.

CLASSIFICATION STANDARDS

Positions allocated to this classification perform administrative **support tasks that are varied, complex or technical and require the person to exercise discretion to correctly complete the work.** May supervise positions of a lower or the same class for training or assistance purposes or may be assigned to some duties of a higher class for training purposes or act as lead workers to positions of a lower class. **Work processes require the person to have a working knowledge of department or inter-department functions, policies, practices and methods to effectively perform duties.**

EXAMPLES OF DUTIES

**Answers incoming calls;** takes messages as appropriate; directs caller to correct individual. **Receives and resolves or refers citizen complaints** to appropriate authorities.

**Types legal documents,** letters, narrative and statistical reports, minutes, agendas, contracts, bids, etc., using typewriter or **word processing** program. **Proofreads and corrects drafts for grammar, punctuation, spelling, and format.** Takes dictation and/or transcribes from tapes and answers correspondence.

**Compiles data based on research techniques and on statistical compilations** which require an understanding of department programs, policies



and procedures. **Drafts financial, statistical, narrative, and/or other reports as requested.**

**Follows up on actions of a court, committee, board, etc., to ensure that decisions are implemented, documents are prepared and appropriate parties notified.**

**Resolves errors by research[ing] causes and/or remedies which may require contacting the public, vendors or public and private agencies, groups or individuals.**

Processes and/or **enters data or information in computer system;** computes fees and issues relevant forms within statutory or office policy limitations; receives and issues receipts for payments for licenses, permits, services, etc.

Performs payroll duties such as time and wage computation and leave accrual and usage; prepares personnel action forms; orders departmental and office supplies; prepares vouchers and makes purchases.

Operates the Purchasing stockroom including ordering, restocking inventory, bookkeeping, billing and balancing of stockbook.

**Determines status of surety and cash bonds and refunds or exonerates as needed; verifies that bond companies are following District Court policy. Resolves booking errors with the jail prior to court hearing; prepares files for new bookings.**

**Prepares legal mailings/certifications** as required by state and local laws; prepares letters and supporting documents for Board of County Commissioners' agenda items; arranges for meetings, conferences and hearings.

Assists Risk Manager with **processing of liability claims against the county; coordinates with attorneys, citizens, and businesses in completing claims; maintains record keeping and reporting systems for cases, claims, etc.**

Provides clerical support for county-wide training programs; schedules training classes, designs training brochures, prepares handouts,

evaluation forms and attendance sheets; maintains participant and course records on computer system.

Performs other related essential duties as required.

#### MINIMUM REQUIREMENTS

**TRAINING AND EXPERIENCE: High school diploma or equivalent. One year of experience at a level equivalent to Office Assistant 3 performing related work which would enable the individual to obtain a familiarity with the general intent or function of the department or division, or substituting coursework or training in office practices, secretarial science or other related area for up to six months of the experience.**

Certain positions may require a skills and/or typing test.

#### SELECTION FACTORS

Considerable knowledge of administrative support functions including the operation of standard office machines and equipment including word processing programs and computer terminals.

Knowledge of basic English composition, spelling, grammar and other support skills as required by the position.

Knowledge of the operations, functions and terminology common to the department and the work applied for.

Ability to develop and maintain effective work relationships with co-workers, supervisors, officials and the general public.

**Ability to maintain complex records and files and to prepare technical, legal, or statistical reports.**

**Ability to communicate effectively both orally and in writing.**

**Ability to work independently with little or no direct supervision and to understand and carry out complex oral and written instructions.**

Ability to work with speed and accuracy in a courteous manner when dealing with the public.

Ability to handle mathematical calculations quickly and accurately.

[Emphasis by **bold** supplied.]

The job description for the high-level "secretary 2" classification contains many similarities to those of the paralegals:

**DEFINITION:** Performs secretarial and clerical duties which **require specialized knowledge of complex office and/or department functions and an active participation in the duties and responsibilities of the supervisor.**

CLASSIFICATION STANDARDS

Positions of this class **frequently employ discretion by exercising independent judgment in making unreviewed decisions on important matters.** Positions may be responsible for directing the actions of others within established policy limits and in many instances adjust complaints of many levels of employees and the public. These positions differ from those at the Secretary 1 level by their **greater complexity and scope of duties and responsibilities.**

EXAMPLES OF DUTIES

Receives work from various sources and reviews or processes it for administrative use. **Organizes, prioritizes and coordinates production** into a usable form for management's analysis, review or release.

**Directs and controls administrative work flow by scheduling, assisting, directing and evaluating the work of others as needed.** Trains and evaluates new staff as needed; interprets and enforces office policy established by the administrator.

Acts as an intermediary between the superior and the public or other clients **providing information or policy interpretation regarding a wide variety of sensitive issues requiring**

**the highest degree of tact, judgment and confidentiality.**

**Responds to public inquiries** in a courteous manner; answers inquiries in person and in written correspondence or may **interview persons regarding problems or complaints.**

**Designs, implements and maintains record keeping and reporting systems;** assists superiors in directing personnel and administering policy, office work flow and general department policy on an intra or inter department level.

Designs, types, formats and prints a variety of complex written or dictated material, including legal documents, opinions, contracts, letters, reports, manuals and confidential items utilizing **word processing** equipment or typewriters; **edits for grammar, spelling, punctuation and format;** may make **suggestions for improved content, format or deletions.** **Independently prepares correspondence and recurring reports for supervisor's signature.**

Catalogs and files computer disks or tapes for future use; updates existing records to accommodate changes in material on file.

Performs secretarial, clerical and related incidental or specialized duties; **schedules appointments, hearings, meetings and travel arrangements;** orders supplies; prepares vouchers and makes purchases.

Maintains personnel and payroll records; attends meetings or hearings and compiles notes; prepares minutes and/or takes an active role in discussions as needed.

**Assists in formulating, preparing and monitoring department or special budgets.**

Performs other related essential duties as assigned.

#### MINIMUM REQUIREMENTS

TRAINING AND EXPERIENCE: **High school diploma or equivalent. Three years of stenographic or secretarial experience, one year of which must have been at a level equivalent to that of**

**Office Assistant 4 or Secretary 1; or substituting coursework or training in office practices, secretarial science or other related area for up to two years of the experience.**

SELECTION FACTORS

Knowledge of the overall operations of and purposes served by the department and of the functions and terminology common to the work applied for.

Knowledge of administrative support functions including the operation of standard office machines and equipment.

Ability to develop and **maintain effective working relationships with** subordinates, supervisor or **professionals working in close contact with this position.**

**Ability to deal effectively with the public and/or subordinates or other departments in reconciling or determining credibility of problems and/or complaints.**

Ability to prepare accurate and complete transcriptions, as needed.

Ability to type with speed and accuracy and use word processing and dictation equipment as required by the position.

**Ability to supervise, schedule, train, and effectively evaluate performance of subordinates.**

[Emphasis by **bold** supplied.]

While the job descriptions for other support positions in the Office of Prosecuting Attorney reflect increasing complexity in the scope and nature of the duties as one moves up the scale to high-level positions, some items are universally applicable among those positions and the paralegals. There is no clear line of demarcation between the paralegals and the other classes.

Registration is not required in the employer's job descriptions, but several witnesses testified regarding the need for a paralegal to register with the Washington State Bar Association as a "legal assistant". There are no educational requirements or certifications necessary to obtain an initial registration, nor are there any continuing education requirements to maintain registration. An applicant for registration need only sign an affidavit certifying that:

... I am **trained by experience and/or special education** to carry on investigative and information gathering tasks, use independent judgment and deal with clients in a professional and ethical manner ...

[Emphasis by **bold** supplied.]

There is no examination or other test of knowledge or skills to pass as a pre-condition to this registration.<sup>9</sup>

Supervision of an Attorney is required. An applicant for registration must be sponsored by an attorney, who is responsible for all of the paralegal's actions. The SCPA asserts that paralegals are given much discretion in performing their jobs, and that they must rely on their educational backgrounds and experience to accomplish tasks, but it is clear that the status and rights of a paralegal still fall far short of the status and rights of an attorney.<sup>10</sup> Even where registration entitles a paralegal to present orders to a court ex parte, that clearly does not entitle a paralegal to

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<sup>9</sup> A \$25.00 processing fee for registration as a paralegal is paid by the employer.

<sup>10</sup> Those whose office walls are decorated with certificates evidencing their admission to the bar need not wonder why they spent three academic years in law school and miserable time studying for and taking one or more bar examinations.

argue any contested matter before a court. The employer makes no claim here that paralegals are deputies "appointed" under RCW 36.27.040, which formed a basis for the Supreme Court decision in Sweetser, supra.

Status as a "Professional" is neither controlling nor established in this case. Our Legislature did not include a definition of "professional employee" in Chapter 41.56 RCW. The definition found in Section 2(12) of the National Labor Relations Act (NLRA) is:

- (12) The term 'professional employee' means -
  - (a) any employee engaged in work
    - (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
    - (ii) involving the consistent exercise of discretion and judgment in its performance;
    - (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
    - (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
  - (b) any employee, who
    - (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and
    - (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

While the paralegals unquestionably perform a high-level support function, it is clear that they lack the "prolonged course of

specialized intellectual instruction and study in an institution of higher learning" required for professional status under Section 2(12)(a)(iv.) of the NLRA, and that they are not putting in time as interns on their way to professional status under Section 2(12)(b)(ii) of the NLRA. In Olympia School District, Decision 799 (PECB, 1980), an attempt to have a high-level support position covered by the separate collective bargaining law for professional educators was rejected on the basis of the actual job duties of the position, and the position was allocated to the bargaining unit encompassing all of the employer's other support positions. The situation of the paralegals is comparable.

Work Locations for the paralegals are in the general vicinity of the courthouse and county administration buildings, and are shared with members of the WSCCCE bargaining unit.

Working Conditions for the paralegals are shared with members of the WSCCCE bargaining unit, at least with regard to hiring processes, office policies and procedures, hours of work,<sup>11</sup> and benefits.

Supervision of both the paralegals and the members of the WSCCCE bargaining unit is clearly vested in the deputy prosecuting attorneys. The SCPPA makes a veiled claim that the paralegals supervise the WSCCCE-represented employees, but the evidence does not support an exclusion under Richland, supra. The fact that paralegals give work to the other classifications does not rise above a "lead worker" role under Commission precedent. With the stipulation that the one paralegal initially disputed is not a

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<sup>11</sup> Some of the paralegals take work home or put in work time outside of the normal office hours. The fact that they have not received overtime pay may only reflect that they have not had union representation up to this time.



supervisor, there is no evidence that paralegals hire, evaluate, discipline, discharge, promote or reward other employees.

Use of Independent Judgment is not established. Attorneys and other staff members within each division of the Office of Prosecuting Attorney (i.e., civil, criminal, or family law), work as teams, but with different responsibilities. The SCPPA argues that other non-attorneys within the office do not exercise independent judgment and discretion in the performance of their job functions, but the evidence does not support that claim. Sandra Johnston, a deputy prosecuting attorney in the family law division, testified regarding the working team in her office that:

Every person in our office exercises independent judgment at one time or another within the parameters of their job descriptions.

Johnston further testified that everybody in the office exercises discretion in their work, but that all work produced in the office is done so at the direction of an attorney, who must review and approve the work product prior to its use. She further stated:

I'm the one that's responsible ultimately for the case. I'm the one that will lose their license. So I will say that discretion is limited.

While situations encountered by the paralegals may be more varied (or less routine) than those of other support personnel, that does not establish that the paralegals are independent practitioners.

Career Progression has occurred between classifications historically represented by the WSCCCE and the paralegal classifications, and that history weighs heavily against the creation of a separate

bargaining unit. For example, Arie Tobler, who was a "paralegal 2" at the time of the hearing in these cases, was hired as an "office assistant 2" in 1987, and then moved up through the "office assistant 3", "secretary 1", and "secretary 2" classifications prior to her reclassification as a paralegal.<sup>12</sup> Similarly, Bonnie Acorn was promoted from "office assistant 3" to "paralegal 1". The employer's human resources director testified that a person working in the "secretary 2" classification with appropriate experience would meet the minimum qualifications for "paralegal 1", and that appropriate work experience and/or the completion of classes in "basic legal procedures" would satisfy the minimum qualifications for the "paralegal 2" classification.

Nearly as important as getting ahead by promotion is the safety net for employees when cutbacks occur. The employer's human resources director also testified that a paralegal who had previously worked in a classification covered by the WSCCCE bargaining unit has a contractual right to exercise bumping rights back into the lower classification, if layoffs were to occur. No such bumping rights can be presumed for employees in separate bargaining units.

Fragmentation is opposed by the WSCCCE on the basis of numerous Commission precedents that have dealt with transfers of bargaining unit work to persons outside of the bargaining unit:

The Commission has long identified a close interrelationship between the description of a bargaining unit and the work jurisdiction claims of that bargaining unit:

In a series of decisions over nearly the entire history of this agency, the Commission and its staff have

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<sup>12</sup> Tobler acquired "certification" as a paralegal by taking classes at Spokane Community College.

dealt with difficult problems relating to work jurisdiction claims closely tied to the descriptions of appropriate bargaining units. The first of those cases, South Kitsap School District, Decision 472 (PECB, 1978), established the principle that an employer must give notice and provide opportunity for collective bargaining before transferring work historically performed within one bargaining unit to employees outside of that bargaining unit.<sup>15/</sup> Hence, an employer and all unions representing its employees need to pay close attention to the work jurisdiction borderlines between bargaining units.

In a subsequent case, South Kitsap School District, Decision 1541 (PECB, 1983), a bargaining unit structure which bifurcated that employer's office-clerical workforce was found inappropriate, due to conflicting work jurisdiction claims which had arisen (and were likely to arise on an ongoing basis) in such an environment. Other unit configurations rejected on the basis of historical or potential fragmentation of work jurisdiction include City of Seattle, Decision 781 (PECB, 1979) and Skagit County, Decision 3828 (PECB, 1991), where separate units of part-time employees were

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<sup>15/</sup> The situation in South Kitsap has come to be called "skimming" of unit work. The interests and legal principles in such a situation are fundamentally the same as when bargaining unit work is "contracted out" to employees of another employer. See, also, Fibreboard Paper Products, 379 U.S. 203 (1964).

found inappropriate because of conflicts with bargaining units of full-time employees performing similar work.

Castle Rock School District, Decision 4722-B (EDUC, 1994).

The Commission thus rejected an argument that would have bifurcated a particular body of work, out of concern for creating a potential for future work jurisdiction disputes.

Port of Seattle, Decision 6181 (PORT, 1998).

Although the time for the WSCCCE to file an unfair labor practice complaint about any "skimming" that may have occurred in 1989 or 1991 has long since passed, that does not compel disregard of the WSCCCE argument that paralegals perform some work historically performed by employees in its bargaining unit:

The Commission must be sensitive to the fact that its certifications create bargaining relationships that may outlast the present incumbents of bargaining unit positions and the present officials of the public employer. One very practical reason for concern about having sensible bargaining unit structures and intelligible unit descriptions is that they establish the work jurisdiction claims of an exclusive bargaining representative: An employer must then give notice and provide opportunity for bargaining concerning any subsequent "contracting out" or "skimming" of bargaining unit work. ... Fragmentation of bargaining units undoubtedly creates a potential for work jurisdiction disputes.

City of Blaine, Decision 6619 (PECB, 1999).

Given the clear commonalities among the job descriptions for the paralegals and the support employees already represented by the

WSCCCE, creation of a separate unit of paralegals would create a clear potential for ongoing work jurisdiction disputes.

The variety of functions encompassed in the WSCCCE unit supports the WSCCCE argument that it already represents employees who have educational requirements, certification requirements and/or wage scales both greater than and less than those applicable to the paralegal positions at issue in these cases. Against that background, it is difficult to explain the logic of a loophole omitting two non-professional classifications.

#### History of Bargaining

The paralegals have neither a history of separate representation which would support the creation of a separate bargaining unit, nor a history of intentional exclusion which would prohibit their accretion to the WSCCCE bargaining unit. It is clear that the paralegal positions were first created long after the bargaining relationship between the employer and the WSCCCE came into existence. Although the employer began adding paralegal positions in 1991, this record establishes the WSCCCE did not become aware of their existence until shortly before its June 18, 1992 letter asking the employer for voluntary recognition as to the paralegals.

The WSCCCE and the employer discussed the inclusion of the paralegals in the bargaining unit during their negotiations for their 1993-1994 collective bargaining agreement. The employer again refused to grant voluntary recognition, and the WSCCCE met the requirements of WAC 391-35-020(2) by filing its unit clarification petition prior to the conclusion of those negotiations.

Extent of Organization

This aspect of the statutory unit determination criteria compares the group at issue with the employer's overall workforce. A representation petition was dismissed in Bremerton School District, Decision 527 (PECB, 1978), upon a conclusion that a proposed unit which cut across supervisory lines, cut across lines of generic employee types, was not limited to skilled craftsmen, and did not include all employees performing skilled or similar work. Many of the same objections exist in this case.

Commission precedents indicating a policy against unnecessary fragmentation of workforces include: City of Auburn, Decision 4880-A (PECB, 1995), where two "technician" positions were accreted to an existing bargaining unit, rather than risk creation of another (fragmentary) bargaining unit; Forks Community Hospital, Decision 4187 (PECB, 1992), where a proposed clerical/service/maintenance/technical unit was found inappropriate on the basis that it would have stranded other "technical" positions outside the unit; Skagit County, Decision 3828 (PECB, 1991), where an agreed exclusion of certain employees from a unit was deemed null and void, based on a conclusion that it created a work jurisdiction conflict; City of Vancouver, Decision 3160 (PECB, 1989), where a proposed unit was found inappropriate because of stranding a group of employees too small to ever implement their statutory bargaining rights; and Port of Seattle, Decision 890 (PECB, 1980), where an artificial division of the employer's office-clerical workforce into two or more units was rejected.

In this case, the WSCCCE has represented the support staff in the Spokane County Office of Prosecuting Attorney since approximately

1956.<sup>13</sup> The paralegals clearly provide support functions in that office, so that a separate unit limited to paralegals would cut across, and unduly fragment, the support functions in that office.

#### Desires of Employees

The Legislature did not prioritize the unit determination criteria set forth in RCW 41.56.060, and it certainly did not specify that the "desires of employees" should predominate over other criteria. Bremerton School District, supra. Where an "inappropriate" conclusion is reached under any of the statutory unit determination criteria, the proposed unit must be rejected as inappropriate. Thurston County, Decision 2574 (PECB, 1986). Additionally, while issues concerning the "duties, skills and working conditions" are presented in most or all unit determination cases, there are no "history of bargaining", "extent of organization" or "desires of employees" issues in many of the cases decided by the Commission.

Where application of the other unit determination criteria results in a conclusion that two or more unit configurations could be appropriate, the Commission assesses the "desires of employees" by means of a secret-ballot unit determination election. See, WAC 391-25-530(1). That procedure gives all affected employees equal opportunity to express their views, and does so in a manner which avoids the disclosure of individuals' views on a matter that is often closely related to their selection of an exclusive bargaining representative. There is no occasion to conduct a unit determination election offering employees an opportunity to choose a unit configuration where, as here, that configuration is inappropriate

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<sup>13</sup> The longevity of the bargaining relationship does not, in and of itself, establish the propriety of the existing bargaining unit, but it does indicate stability and operates against the creation of a separate unit.

under other components of the statutory unit determination criteria.<sup>14</sup> Clark County, Decision 290-A (PECB, 1977).

#### FINDINGS OF FACT

1. Spokane County is a "public employer" within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees (WSCCCE), Local 1553, a "bargaining representative" within the meaning of RCW 41.56.030(3), has been the exclusive bargaining representative of certain employees of Spokane County since approximately 1956.
3. The bargaining relationship between Spokane County and Local 1553 involves a multi-department "courthouse" bargaining unit encompassing a wide variety of office-clerical and related functions, including employees performing support functions in the office of prosecuting attorney.
4. In 1989, Spokane County created a "paralegal" position with supervisory responsibilities which arguably warranted its exclusion from the bargaining unit described in paragraph 3 of these findings of fact.
5. In 1991, Spokane County created non-supervisory paralegal positions, and assigned them to various work teams within the

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<sup>14</sup> There is also no occasion to conduct a unit determination election in a case that is truly appropriate for processing under Chapter 391-35 WAC, because that process is not available where a question concerning representation exists.



office of prosecuting attorney. The record does not support a finding or inference that Spokane County gave Local 1553 concurrent notice of either the creation of those positions or their exclusion from the bargaining unit described in paragraph 3 of these Findings of Fact.

6. Approximately 30 days prior to June 1, 1992, Local 1553 became aware of the existence of the non-supervisory paralegal positions described in paragraph 5 of these Findings of Fact.
7. By a letter to the employer under date of June 18, 1992, Local 1553 made a timely request for voluntary recognition as exclusive bargaining representative of the paralegal positions described in paragraph 5 of these Findings of Fact within the bargaining unit described in paragraph 3 of these Findings of Fact. The employer refused to grant voluntary recognition.
8. The parties discussed the bargaining unit status of the paralegal positions, in connection with their negotiations for a successor contract. Prior to the conclusion of those negotiations, Local 1553 filed the unit clarification petition to initiate this proceeding under Chapter 391-35 WAC.
9. The Spokane Prosecutor's Paralegal Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), was formed during or about 1993, after the events described in paragraphs 5 through 8 of these Findings of Fact. It has filed a representation petition under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of a separate unit limited to paralegals working in the office of prosecuting attorney in Spokane County.

10. The duties performed in the office of prosecuting attorney by employees described in paragraphs 3 and 5 of these Findings of Fact are typical of their occupational types, and reflect substantial commonalities with increasing complexity in the scope and nature of the duties as one moves up the scale to higher-level positions. There is no clear line of demarcation between the paralegals and the other classes.
11. Within the office of prosecuting attorney, employees described in paragraphs 3 and 5 of these Findings of Fact are assigned to the same work units under the supervision of attorneys who are responsible for all work product, and are subject to the same hiring processes, office policies and procedures, hours of work, and benefits.
12. There is no evidence that the paralegals described in paragraph 5 of these Findings of Fact (or, following the stipulation of the parties, the paralegal described in paragraph 4 of these Findings of Fact) have authority, on behalf of Spokane County, to hire, evaluate, discipline, discharge, promote, or reward employees in the bargaining unit described in paragraph 3 of these Findings of Fact.
13. The paralegals share a community of interest with the employees holding other employees performing office-clerical and support functions in the office of prosecuting attorney.
14. The paralegals have no history of collective bargaining, or of exclusion by agreement or conduct from the bargaining unit described in paragraph 3 of these Findings of Fact.
15. Creation of a separate bargaining unit of paralegals would unduly fragment the workforce performing support functions in

the office of prosecuting attorney, and would subject the employer to an ongoing potential for conflicting work jurisdiction claims between such a bargaining unit and the bargaining unit represented by Local 1553 as described in paragraph 3 of these Findings of Fact.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The separate bargaining unit of paralegals employed in the office of prosecuting attorney, as proposed in Case 10429-E-93-1718, is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and no question concerning representation currently exists under Chapter 391-25 WAC for such a bargaining unit.
3. The paralegals employed in the office of prosecuting attorney share a community of interest with, and are properly accreted under RCW 41.56.060 to, the bargaining unit described in paragraph 3 of the foregoing Findings of Fact

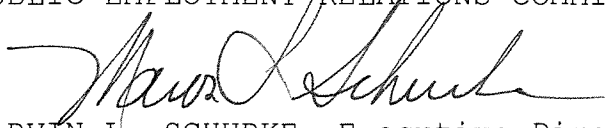
#### ORDER

1. Case 10309-C-93-607; Decision 6720 - PECB: The bargaining unit represented by Washington State Council of County and City Employees, Local 1553, is hereby clarified to include all non-supervisory paralegal positions in the office of prosecuting attorney.

2. 10429-E-93-1718; Decision 6721 - PECB: The petition for investigation of a question concerning representation is DISMISSED.

Issued at Olympia, Washington, on the 30<sup>th</sup> day of June, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.