

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
| |) | |
| WASHINGTON STATE COUNCIL OF |) | |
| COUNTY AND CITY EMPLOYEES, for |) | CASE 16210-C-02-1041 |
| its LOCALS 1619-MP AND 1619-CS |) | |
| |) | |
| For clarification of an existing |) | DECISION 7880 - PECB |
| bargaining unit of employees of: |) | |
| |) | ORDER CLARIFYING |
| CLALLAM COUNTY |) | BARGAINING UNIT |
| |) | |
| |) | |

John Cole, Staff Representative, for the union.

Bullard Smith Jurnstedt Harnish, by *C. Akin Blitz*,
Attorney at Law, for the employer.

On February 4, 2002, the Washington State Council of County and City Employees filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking a ruling concerning the appropriate bargaining unit placement for a "chief corrections deputy" employed by Clallam County. A hearing was held on June 6, 2002, before Hearing Officer Kenneth J. Latsch. The parties did not file post-hearing briefs.

Based on the evidence and arguments advanced by the parties at the hearing, the Executive Director rules that the disputed position is properly included in the bargaining unit of supervisory employees represented by the Local 1619-MP.

BACKGROUND

Clallam County (employer) provides the usual variety of governmental services, including operation of a county jail through a Corrections Division within the Clallam County Sheriff's Office. The Washington State Council of County and City Employees (union) represents at least two bargaining units of Clallam County employees. One of those units, which is represented by Local 1619-CS, consists of sergeants within the county jail operation. The other unit, which is represented by Local 1619-MP, is a county-wide unit of mid-level supervisors.

The Clallam County Sheriff's Office underwent a reorganization in 2001. One feature of that reorganization was the creation of a "chief corrections deputy" position as an appointed position outside the civil service system maintained by the employer under Chapter 41.14 RCW.

Margaret Farmer was appointed as chief corrections deputy in September 2001. She had previously held a sergeant position within the bargaining unit represented by Local 1619-CS. Thereafter, a dispute arose concerning the appropriate unit placement of the chief corrections deputy position.

POSITIONS OF THE PARTIES

The union asks the Commission to rule on whether the disputed position should remain in the unit represented by Local 1619-CS or move to the unit represented by Local 1619-MP.

The employer agrees that the position can be in a bargaining unit, but contends it belongs in the unit represented by Local 1619-MP.

DISCUSSIONApplicable Legal Standards

The Commission has jurisdiction in this matter under RCW 41.56.060, which provides (emphasis added):

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 purpose of unit determination is to group together employees who have sufficient similarities (community of interests) to indicate that they will be able to bargain collectively with their employer. Particular concern is applied to avoid stranding individual employees by unit configurations that preclude the exercise of their statutory collective bargaining rights. *City of Blaine*, Decision 6619 (PECB, 1999).

The appropriate unit placement of supervisors has been the subject of a long line of Commission and court decisions that are codified in WAC 391-35-340,¹ as follows:

¹ See *City of Richland*, Decision 279-A (PECB, 1978), *aff'd* 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

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

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

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

A potential problem arises in this case, where both the bargaining unit of sergeants represented by Local 1619-CS and the bargaining unit of mid-level supervisors represented by Local 1619-MP appear to be separate units of supervisors of the type endorsed by WAC 391-35-340(2). Under the rule and precedents, "supervisors of supervisors" are not automatically precluded from being in the same unit with subordinates who are themselves supervisors. *City of Kennewick*, Decision 4422 (PECB, 1993).

The decision in this case is simplified, where the parties agree that the disputed position belongs in one or the other of the existing bargaining units.² Further, in the circumstances of the recent reorganization, "duties, skills and working conditions" is the only applicable component among the statutory unit determination criteria.

² Thus, this case does not involve a risk of stranding of the disputed individual in a "one person" unit, contrary to WAC 391-35-330.

Application of Standards

Under the Sheriff's Office organizational chart for 2001, the chief corrections deputy is in charge of the corrections division. The job description for the chief corrections deputy position does not require the person filling the position to have experience as a corrections officer or sergeant, but only experience in corrections management. The chief corrections deputy reports to one of two undersheriffs, and does not report directly to the sheriff. The sergeants in the corrections division are supervised by an undersheriff, not the chief corrections deputy. The sergeants oversee the line staff in the corrections division.

The job description for chief corrections deputy position was admitted in evidence in this proceeding. It provides, in pertinent part (emphasis added):

NATURE OF WORK

Plan, organize, and direct daily operations of the Sheriff's Department related to the Corrections Division and the functions of inmate security and welfare. *Major duties encompass operational control* of the Corrections Facility to ensure that the Facility meets all Departmental, State and federal laws, to include case law in regards to corrections. Management duties include operating *fiscal practices* which allow maintenance of a balanced budget, coordinating *revisions of policies and procedures* and daily supervision of a staff. The position answers directly to the Undersheriff specifically assigned. Serves as the assigned Undersheriff's or Sheriff's representative on various committees, boards and organizations relating to the Division and profession, as assigned. This is a *limited commission position*. The duties and requirements include all those specifically described in the commission.

The union has not alleged that the chief corrections deputy job description is a sham, or that Farmer is performing her duties according to some different instructions from the sheriff or undersheriff. That said, the chief deputy job description jointly submitted by the parties at the hearing stands as the definition of the position.

The employer also provided the job description for the juvenile and family services managers in detention and community programs. Those positions are included in Local 1619-MP. The detention manager job description provides, in pertinent part (emphasis added):

SUMMARY

To plan, organize, direct and control technical and administrative activities in the detention unit at the Juvenile Services Center; to provide technical and professional advice to other departments, municipalities, and agencies; to assure the safety, security, control, discipline and well-being of juveniles in custody; to maintain professional discipline in the division; to assure that all employees are properly trained; to perform all assigned activities in the receipt, booking, custody and care of juveniles under jurisdiction of the Court in accordance with established policies and procedures; to perform all activities of other juvenile and family services classifications as needed; and to perform management functions designated by the County as "Regular Supervisory Responsibilities."

The "summary" paragraph contained in the job description for the community programs manager position similarly states:

To plan, organize, direct and control all activities of community programs in Juvenile

Services in accordance with the statutes of the State of Washington including responsibility and personal accountability for all operations of the unit which includes intake, special supervision, coordination of volunteers, seminars and workshops, and child welfare activities; to *provide technical and professional advice* to other departments, municipalities, and agencies; to assure the effective and efficient *utilization of personnel, funds, materials, facilities and time*; to accomplish short-term and long-range planning; to implement and *maintain sound organizational practices, control costs*, and otherwise direct and control all unit operations to assure optimum services to the County; to perform all activities and other juvenile and family services classifications as needed; and to *perform management functions* designated by the County as "Regular Supervisory Responsibilities."

In contrast to all of those job descriptions, the job description for the corrections sergeants describes more hands-on management of inmates, providing in pertinent part (emphasis added):

NATURE OF WORK

Employee in this classification is a working supervisor. In addition to Corrections responsibilities, employee provides *supervision of other Corrections Officers on a daily basis*. Employee assists in training of newly appointed and less experienced personnel. Employee may rotate shifts and have varying days off and is *expected to perform the functions and duties of all shifts in all required areas*.

Employees work independently under the general supervision of the Corrections Undersheriff and are *expected to handle a variety of potentially hostile and dangerous situations* in a calm, competent manner. Daily job duties are performed according to Washington State Law and Department policies and procedures as

approved by the Sheriff. Employees are required to exercise discretion and judgment and to analyze situations quickly and objectively, to recognize actual and potential danger and to determine proper courses of action. Unusual problems and situations are referred to the Corrections Undersheriff.

Work is reviewed by the Corrections Undersheriff through observation and evaluation of demonstrated ability to handle a variety of supervisory and work situations.

Employees receive limited commissions to act in behalf of the Sheriff and carry firearms in the performance of their duties. *Qualification with firearms is required for continued employment.*

Although the chief correction deputy has a limited commission, the disputed position is not required to carry a firearm or maintain qualification for firearms. The present incumbent of the disputed position came from a sergeant position, and she continues to both wear a uniform and carry a firearm, but the evidence supports a conclusion that her experience and current practices go beyond what is required by the employer. See *Olympia School District*, Decision 799 (PECB, 1980) where an individual who was overqualified for an "aide" position and undertook to perform some duties of a "teacher" without direction from the employer to do so was left in the bargaining unit with other "aide" positions.

The sole issue at hand is whether the chief corrections deputy has a greater community of interest with the corrections sergeants or the county-wide unit of supervisory employees. As envisioned by the employer, the chief corrections deputy position is clearly to be more like the manager positions in juvenile and family services. Like those managers of functions, the chief corrections deputy is expected to "plan, organize, and direct" at a mid-management level. The position is relatively new, having been in place only since

2001. Although Farmer described her job as actively involved with the daily operations of the jail and frequent interaction with at least the corrections sergeants, she admitted under cross-examination that the job could be performed by someone who lacked the physical requirements for a corrections officer or sergeant position. Transcript at 55. This points out a discrepancy between Farmer's understanding of the job and the job description. Although she seems to want to function more like a "corrections lieutenant" retaining hands-on involvement in the jail, the sheriff has envisioned the position as primarily an office job that could be filled by someone possessed only of "book knowledge" and management experience in corrections operations.³ The resolution of those contradictory views for the future is beyond the scope of this proceeding, in which the parties and the disputed position are taken as they presently exist.

The employer provided testimony that the chief deputy position is comparable to other management positions within the Local 1619-MP bargaining unit, specifically the juvenile and family services managers for detention and community programs. Even the president of Local 1619-CS testified that the chief deputy position is a combination of supervisory and management executive levels, seeing it as more like a mid-management level position. Transcript at 26.

On the record made here, the weight of evidence supports a conclusion that the chief corrections deputy has more in common with the managers the in bargaining unit represented by Local 1619-MP than with the corrections sergeants represented by Local 1619-

³ Thus, some significance is to be drawn from the fact that, as confirmed by the job description for the corrections sergeants, the chief corrections deputy is not their supervisor.

CS. It is thus appropriate to allocate the chief corrections deputy to the bargaining unit represented by Local 1619-MP.

FINDINGS OF FACT

1. Clallam County is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local 1619-CS and 1619-MP are bargaining representatives within the meaning of RCW 41.56.030(3).
3. Local 1619-CS is the exclusive bargaining representative of an existing bargaining unit limited to corrections sergeants employed within the Clallam County Sheriff's Office; Local 1619-MP is the exclusive bargaining representative of an existing county-wide bargaining unit of mid-level supervisors employed by Clallam County.
4. The chief corrections deputy position was created by the employer in 2001, as a position responsible for management of finances and functions in its Corrections Division.
5. The present incumbent of the chief corrections deputy position was promoted from a corrections sergeant position. She has continued to wear a uniform and carry a firearm even though neither those qualifications nor those practices have been required by the employer.
6. The employer and union agree that the chief corrections deputy belongs in one of the two existing bargaining units.

7. Under the job description and expectations prescribed for the position by the employer, the chief corrections deputy position is similar to, and has a community of interest with, managers the in bargaining unit represented by Local 1619-MP.

CONCLUSIONS OF LAW

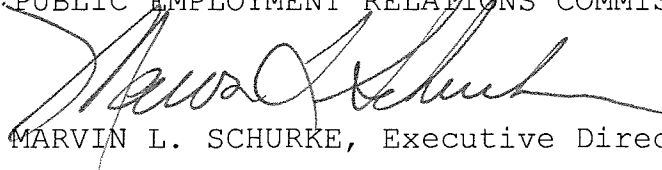
1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.
2. As presently constituted, the chief corrections deputy position is properly allocated under RCW 41.56.060 to the bargaining unit of mid-management supervisors represented by Local 1619-MP.

ORDER

The chief corrections deputy position shall be included in the bargaining unit represented by Local 1619-MP.

ISSUED at Olympia, Washington, on the 17th day of October, 2002.

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.