

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
| |) | |
| CITY OF KIRKLAND |) | CASE 18111-C-04-1132 |
| |) | |
| For clarification of an existing |) | DECISION 8896 - PECB |
| bargaining unit represented by |) | |
| |) | |
| KIRKLAND POLICE OFFICERS' GUILD |) | |
| _____ |) | |
| In the matter of the petition of: |) | |
| |) | CASE 18293-C-04-1176 |
| KIRKLAND POLICE OFFICERS' GUILD |) | |
| |) | DECISION 8897 - PECB |
| For clarification of an existing |) | |
| bargaining unit of employees of |) | CONSOLIDATED ORDER |
| |) | CLARIFYING BARGAINING |
| CITY OF KIRKLAND |) | UNITS |
| _____ |) | |

William R. Evans, Assistant City Attorney, for the employer.

Cline & Associates, by Christopher J. Casillas, Attorney at Law, for the union.

On January 2, 2004, the City of Kirkland (employer) filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit of police support personnel represented by the Kirkland Police Officers' Guild (union). On March 8, 2004, the union filed a petition with the Commission, seeking a clarification of an existing bargaining unit of law enforcement officers represented by the union. At the request of the union, and without objection from the employer, the proceedings were consolidated. Hearing Officer Robin A. Romeo held a hearing on July 28, 2004. Both parties filed post-hearing briefs. Authority to decide the "eligibility" issues framed in

these cases was delegated by the Executive Director to the Hearing Officer under WAC 391-35-190(2).

ISSUES

1. Should the communication technician supervisor be excluded from the police support bargaining unit, as a supervisor?
2. Should the correction sergeant be included in the commissioned law enforcement officers bargaining unit?

Based on the evidence and arguments presented, the Hearing Officer rules that the bargaining unit status of the disputed positions should not be changed.

ANALYSIS

The determination and modification of bargaining units is a function delegated to the Commission by the legislature:

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 exercised its unit determination authority to maintain a separation of supervisors from their subordinates, and

has adopted a rule requiring exclusion of supervisors from bargaining units containing their subordinates:

WAC 391-35-340 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.

WAC 391-35-340 thus codifies Commission and judicial precedents dating back to at least *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977); and *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

In the absence of a test within Chapter 41.56 RCW, Commission precedents adopt the test set forth in RCW 41.59.020(4)(d). A distinction has been drawn between supervisors and employees who are merely "leadworkers" exercising authority that is not of a sufficient preponderance to warrant their separation from the rank-and-file employees they lead. Discretionary authority in administrative matters or having the ability to direct employees in daily job assignments may not rise to the level of possessing independent authority to act or effectively recommend personnel actions. See *Granite Falls School District*, Decision 7719-A (PECB, 2003); *City of Gig Harbor*, Decision 4020-A (PECB, 1992); *City of Aberdeen*, Decision 4174 (PECB, 1992).

Issue 1: Is the Disputed Communications Employee a Supervisor?

The communications center operated by this employer provides 24 hour / 7 day emergency dispatch service for police and fire

services. A total of 16 employees are assigned to day, afternoon, and evening shifts, including: 13 employees with "communications technician" titles, 2 employees with "communications technician lead" titles, and the disputed employee with a "communication technician supervisor" title. Kandy Roseth has held the disputed position since 1996. She reports to Lieutenant Rex Caldwell, a commissioned law enforcement officer responsible for support services within the Police Department.

Roseth's job description states that she is responsible for the operation of the communications center, including: scheduling employees, assigning work and overseeing workloads, training, evaluation, resolving workplace problems, and participating in hiring. Roseth works on the day shift; the employees with leadworker titles are assigned to the afternoon and night shifts.

Roseth performs dispatcher duties during her work shifts, and she has historically been included in the bargaining unit. Testimony established that her duties include:

Hiring: Applicants for employment are interviewed by a panel which may or may not include Roseth. Even when Roseth is a member of a panel, recommendations made by all panel members are forwarded up through the chain of command to the chief of police. The ultimate hiring decision is made by the city manager. Roseth did not know whether her recommendations would be followed.

Scheduling: Roseth establishes a work schedule once a year, based on seniority. She approves leave requests, with the approval of her supervisor. The employees with the leadworker titles can also approve leave requests.

Evaluations: Roseth drafts performance evaluations, but sends them to her supervisor for input. The evaluations are given to the

employees only after the supervisor has provided his input, and Roseth then obtains the employee's signature.

Grievances: Employees can come to Roseth to resolve workplace problems at an informal level, but she has no authority to resolve written grievances on behalf of the employer.

Discipline: Roseth can only issue oral reprimands to employees. If an incident warrants greater discipline, Roseth must write it up and forward it to her supervisor with a recommendation. Discipline is ultimately at the discretion of the police chief.

Promotion: On one occasion, Roseth provided recommendations on all applicants for promotion to one of the leadworker positions. The testimony suggests, however, that the promotion decision was actually made at a higher level than Roseth.

Training: Roseth arranges for training of dispatchers, but her supervisor also receives and approves training requests that come to him directly from employees.

Transfer, Layoff and Recall: No evidence was presented that any of these situations had occurred during Roseth's tenure in her present job, or that she would make recommendations on any such matters.

This case has many similarities to cases where employees working under various titles have been found to be leadworkers. In *Grant County*, Decision 4501 (PECB, 1993), an employee working under a title that included the word "supervisor" was not shown to have independent authority to make meaningful changes in the employment relationship.¹ The employee at issue in *Grant County*, Decision

¹ He was the first level of response for grievances, but never adjusted any; he had a minor role in the hiring process; he had no input into any decision concerning layoff, recall, promotion or transfer.

4501, was found to be a leadworker, sharing similar duties and working conditions with his co-workers. Similarly, a "supervisor" claim was denied in *Puyallup School District*, Decision 8225 (PECB, 2003), as to an individual who had "co-manager" in her title.² In *City of Tacoma*, Decision 7967 (PECB, 2003), recommendations made by police sergeants in a para-military environment used a predetermined rating system and criteria based on objective standards, and did not rise to the level of supervisory status.³

Similar to the decisions cited above, Roseth is merely a leadworker. Although she has a different title, she essentially functions as the leadworker on the day shift. She does not make effective recommendations on hiring, discipline or discharge. Her actions concerning leave requests and performance evaluations are reviewed by her supervisor. She cannot adjust grievances. The evidence does not establish a potential for conflicts of interest that is sufficient to remove her from the bargaining unit.

The evidence does not support the existence of the recent change of circumstances required by WAC 391-35-020. The employer's argument that an increase in the number of employees working under Roseth changed her status is unpersuasive because it is the degree of authority exercised (rather than the number of employees super-

² She did not make effective recommendations on hiring, had limited authority to assign overtime work, shared evaluation responsibilities with other bargaining unit employees, had no authority to discharge subordinates, and had no authority concerning layoff and recall matters regulated by the collective bargaining agreement.

³ The collective bargaining agreement had standardized compensation, hours and working conditions; input on hiring was limited to participating on three-member panels; promotions were controlled by civil service rules, discipline was limited to issuing written warnings, and processing of leave requests was limited to forwarding paperwork without any exercise of discretion.

vised) that is a basis for the exclusion. Roseth's opinion about whether she should be excluded from the bargaining unit is irrelevant. On this record, it is appropriate to leave the position in the bargaining unit where it has been for several years.

Issue 2: Is the exclusion of the correction sergeant appropriate?

The jail operated by this employer provides 24 hour / 7 day processing for persons arrested on various charges, including: booking/release, fingerprinting, personal needs (such as medical and showering), custody, and transporting prisoners. Seven employees are assigned to these functions, including commissioned law enforcement officers and the disputed employee with a "corrections sergeant" title. Robert Balkema has held the disputed position since 2002. He also reports to Lieutenant Caldwell.

Balkema has historically been excluded from the bargaining unit. The testimony established that his duties include:

Hiring: Balkema participates in an interview process similar to that described above for the dispatchers, and one employee who he recommended was hired.

Scheduling: Balkema prepares the work schedule for the jail and evidence room, and approves leave requests. His actions are reviewed by his supervisor, and leaves can be approved by another sergeant or the lieutenant in his absence.

Evaluations: Balkema issues evaluations which are reviewed by the lieutenant who makes grammatical changes. Any substantive changes made by the lieutenant are signed by him.

Grievances: Balkema can try to resolve issues informally, and he would make a recommendation on any grievance that is pursued beyond Step 1. He expects his recommendation would be followed.

Discipline: Balkema has imposed oral and written reprimands, and would make a recommendation on any more serious penalty. He expects his recommendation would be followed.

Promotions: None have occurred, but Balkema expects he would be included in the process.

Transfers and lay-off: None have occurred but Balkema and his supervisor expect that Balkema's recommendation would be followed.

This case has many similarities to cases where supervisors have been excluded from bargaining units: In *Granite Falls School District*, Decision 7719-A, the Commission affirmed the Executive Director's decision to exclude an information systems supervisor who exercised actual supervisory authority and performed a preponderance of supervisory duties.⁴ In *City of Aberdeen*, Decision 4174, the chief operator of a dam was found to have sufficient independent authority to create a potential for conflicts of interest.⁵ In *City of Gig Harbor*, Decision 4020-A, both a public works supervisor who reported to the department head and oversaw the work of seven employees,⁶ and a treatment plant

⁴ He scheduled employees, approved leaves, assigned work, evaluated employees, effectively recommended candidates for hire, disciplined employees for offenses such as tardiness, recommended discharge, and processed grievances under the grievance procedure.

⁵ He scheduled employees, approved leaves, and had authority to issue warnings or suspensions. The evidence was unclear regarding hiring, unclear regarding his role in processing grievances and had no authority to fire employees but neither did other excluded employees.

⁶ He prepared performance evaluations that would be reviewed by the director; he made work assignments and participated in hiring interviews and made recommendations that were followed; he did not have independent authority to discipline or discharge employees.

supervisor who oversaw two plant operators,⁷ were excluded from the bargaining unit containing their subordinates.

Similar to the cases cited above, Balkema possesses a sufficient level of supervisory authority to warrant his exclusion from the bargaining unit. He effectively recommends hiring and has issued written reprimands. He issues performance evaluations that are reviewed mainly for grammatical errors by his supervisor. He and his supervisor expect that his recommendations on disciplinary penalties, promotion, transfer and lay-off would be followed.

The evidence does not support the existence of the recent change of circumstances required by WAC 391-35-020. Nor is there a danger that if excluded from the law enforcement bargaining unit this position would be left in a one-person-unit without any option for representation. See WAC 391-35-330. On the record, it is appropriate to leave this position out of the law enforcement bargaining unit as has been done for several years.

FINDINGS OF FACT

1. The City of Kirkland, a municipal corporation of the state of Washington, is an employer as defined by RCW 41.56.020. The employer operates both a communication center and a jail within its Police Department.
2. The Kirkland Police Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of separate bargaining units of non-supervisory

⁷ He prepared their evaluations, scheduled leave, did not have independent authority to discipline or discharge employees, participated in hiring interviews and effectively recommended the successful candidate.

support staff employees within the employer's Police Department and non-supervisory commissioned law enforcement officers within the employer's Police Department.

3. The City of Kirkland filed a petition seeking clarification of the bargaining unit position of communication technician supervisor as a supervisor.
4. The Kirkland Police Guild filed a petition seeking to include the correction sergeant in the bargaining unit of commissioned employees.
5. The employee working under the title of communication technician supervisor does not effectively recommend the hiring, discipline or discharge of employees. The performance evaluations that she prepares are substantively reviewed by her supervisor before they are presented to the employees. Her authority to approve leave requests is shared by employees that are acknowledged to be non-supervisors, and is subject to review by her supervisor. She has no authority to resolve written grievances on behalf of the employer.
6. The correction sergeant effectively recommends hiring, transfer and discipline of non-supervisory commissioned law enforcement officers assigned to work in the jail. He issues performance evaluations that are only reviewed by his supervisor for grammatical errors. He approves leave and makes work assignments.

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 communication technician supervisor is not a supervisor within the meaning of WAC 391-35-340, and is properly, under RCW 41.56.060, within the bargaining unit of support staff employees in the Kirkland Police Department.

3. The correction sergeant is a supervisor within the meaning of WAC 391-35-340, and is properly excluded from the bargaining unit of non-supervisory commissioned law enforcement employees in the Kirkland Police Department.

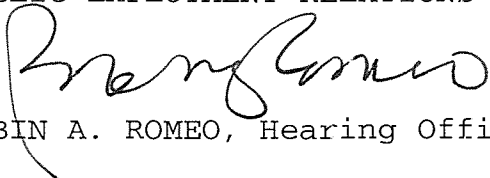
ORDER

1. The communications "supervisor" position shall continue to be included in the police department support staff bargaining unit.

2. The correction sergeant position shall continue to be excluded from the commissioned employees' bargaining unit.

Issued at Olympia, Washington, this 28th day of March, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


ROBIN A. ROMEO, Hearing Officer

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