

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the Petition of )	
SPOKANE POLICE LIEUTENANTS AND )	CASE NO. 1295-E-77-255
CAPTAINS ASSOCIATION )	
involving certain employees of )	DECISION NO. 514-PECB
CITY OF SPOKANE )	<u>DIRECTION OF CROSS CHECK</u>
_____ )	

APPEARANCES:

FOR PETITIONER: RICHARD R. OLBERDING, President

FOR EMPLOYER: ROBERT PROUTY, Employee Relations Specialist

On December 22, 1977, the Spokane Police Lieutenants and Captains Association filed a petition seeking certification as the representative of all police lieutenants and captains employed by the city of Spokane. A formal hearing was held on March 16, 1978 before George G. Miller, Hearing Officer. Post-hearing briefs were submitted by the parties on April 28, 1978. On or about May 10, 1978, the parties advised the Hearing Officer that response briefs would not be submitted.

POSITION OF THE PARTIES

The city contends that the police captains and lieutenants are command level administrators of the police department in directing the activities of other police officers and should be denied bargaining unit status.

The association contends the Spokane police lieutenants and captains are public employees and, as such, are entitled to be represented by a bargaining representative for the purposes of collective bargaining. Further, a bargaining unit composed of all lieutenants and captains is an appropriate bargaining unit and the association should be certified as the exclusive bargaining representative.

STATUTORY AUTHORITY

RCW 41.56.030(2) provides:

"(2) 'Public employee' means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified

term of office by the executive head or body of the public employer or (c) whose duties as a deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer."

Jurisdiction in this matter is derived from RCW 41.56.060:

"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 desires of the public employees . . ."

#### DISCUSSION

The city of Spokane presently employs four (4) police captains and fifteen (15) police lieutenants. Four of the lieutenants report directly to the assistant chief of police. They are plans and research; community relations; training; and secretary of police. All other lieutenants and the captains report either to the deputy chief, uniform, or to the deputy chief, investigation.

The current job description of Spokane police captain (SPN:917) lists NATURE OF WORK as:

"Performs responsible command level work in directing the activities of a major unit of the Police Department. Duties are varied and require independent action in devising new methods and procedures within the limits of department policy and local law. Carelessness or lack of judgment in the performance of duty could cause serious embarrassment to the City or danger to the citizenry. Outside contacts require a high degree of tact, judgment and technical knowledge. Duties are sedentary in nature, performed under occasional hazardous conditions, and require normal attention to prevent errors.

Supervision:

General objectives are established and employee selects the method to be used unless clarification of policy is involved. Commands an operational division."

The police lieutenant job description (SPN:917) states:

"Performs responsible supervisory police work in command of an assigned shift or in charge of an administrative police activity. Duties involve considerable

knowledge of the department and require analyzing facts to determine proper action within the limits of standard procedure. Carelessness or lack of judgment in the performance of duty could cause serious embarrassment to the City or danger to the citizenry. Public contacts by the employee require a high degree of tact, judgment and technical ability. Duties are light in nature, performed under occasional hazardous conditions, and require normal attention to prevent errors. Required to work on a shift basis and may work other than a normal work week.

Supervision:

General objectives are established and employee selects the method to be used unless clarification of policy or law is involved. Commands an assigned shift or supervises an administrative section."

It is, by now, well established that supervisors are employees within the meaning of the Public Employees Collective Bargaining Act, RCW 41.56. See: City of Tacoma, Decision 95-A (PECB, 1977); accord: Seattle METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Both Tacoma and METRO involved separate units of supervisors such as that involved here. The duties, skills and working conditions of the police lieutenants and captains in Spokane are similar among themselves and are different from other groups of employees of the city of Spokane. The lieutenants and captains are primarily office workers, as opposed to field workers. Their pay levels are relatively similar, depending on individual length of service. Their pay and benefits are somewhat different than those of their subordinate police sergeants and patrolmen, who are represented separately by the Spokane Police Guild.

The City's opposition to the creation of the petitioned-for bargaining unit is centered on the language of RCW 41.56.030(2), which excludes certain "confidential" employees. Only one of the employees involved, the lieutenant holding the position of "secretary of police", occupies a position which, by title, suggests "confidential" status. The Supreme Court treated the confidential exclusion narrowly in its METRO decision, as follows:

"Unless the positions fall within one of these categories (deputy, administrative assistant or secretary), the persons holding them are not excluded from the definition of 'public employee' under the Act. Furthermore, even if they fit one or more of the categories named in the statute, the persons holding them are nevertheless public employees, if their duties do not necessarily imply a confidential relationship with the director of Metro Transit." (METRO, 88 Wn.2d 925, emphasis added).

Testimony adduced at the hearing showed that while there may have been isolated instances where the duties of the secretary of police implied a confidential relationship to the chief of police, in general no such relationship exists. See City of Buckley, Decision No. 287-A (PECB 1977).

As noted by the employer in its brief, there has been a mixed history of inclusion, exclusion and previous attempts at separate representation, so that there is no determinative history of bargaining in this unit. The petitioned-for bargaining unit appears to be the only remaining potential bargaining unit of law enforcement employees, as defined by RCW 41.56.030(6), given the existing representation of the subordinates by the Spokane Police Guild and the implied recognition of both parties that officers holding ranks above captain are to be excluded from even a supervisory unit. The desires of the employees have been indicated by a substantial majority showing of interest in favor of the petitioner.

#### FINDINGS OF FACT

1. The city of Spokane is a municipal corporation of the state of Washington, located in Spokane county.

2. Spokane Police Lieutenants and Captains Association, a bargaining representative, claims to represent a majority of the employees in a bargaining unit composed of all Spokane police department lieutenants and captains; and filed a showing of interest in support of its petition herein which indicates that it has the support of a substantial majority of the employees in the petitioned-for bargaining unit.

3. The police lieutenants and captains perform similar duties utilizing similar skills and share common interests and working conditions in their relationship with the public employer.

4. No determinative history of collective bargaining exists involving the petitioner, and the extent of organization among the public employees of the employer is such that the petitioned-for bargaining unit will not lead to undue fragmentation.

5. The nature of the duties of the secretary of police do not necessarily imply a confidential relationship to the chief of police.

#### CONCLUSIONS OF LAW

1. Spokane police lieutenants and captains are public employees within the meaning of RCW 41.56.030(2).

2. A unit composed of all Spokane police department lieutenants and captains is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

3. A question concerning representation has arisen in the appropriate bargaining unit described in paragraph 2 of these conclusions of law; and such question concerning representation can appropriately be resolved under RCW 41.56.060 and WAC 391-21-125 by a cross-check of records.

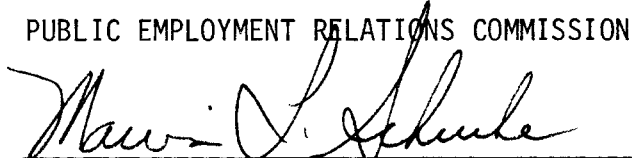
NOW, THEREFORE, it is

DIRECTED

A cross-check of records shall be conducted under the direction of the Public Employment Relations Commission by comparison of authorization cards filed in support of the petition filed herein against the employment records of the city of Spokane, to determine whether a majority of the employees in the bargaining unit described as: All Spokane police department lieutenants and captains, have designated Spokane Police Lieutenants and Captains Association as their exclusive bargaining representative.

DATED at Olympia, Washington, this 19<sup>th</sup> day of October, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE  
Executive Director