

STATE OF WASHINGTON  
BEFORE THE PUBLIC RELATIONS COMMISSION

In the matter of the joint	)	
petition of:	)	
PASCO POLICE OFFICERS ASSOCIATION	)	CASE NO. 6453-C-86-332
and	)	
CITY OF PASCO	)	
For clarification of an existing	)	
bargaining unit	)	
_____	)	DECISION 2636 - PECB
In the matter of the petition of:	)	
PASCO POLICE OFFICERS ASSOCIATION	)	CASE NO. 6651-E-86-1167
Involving certain employees of:	)	
CITY OF PASCO	)	ORDER DETERMINING
_____	)	ELIGIBILITY DISPUTE

The Law Offices of Will Aitchison, by Jeffrey C. Mapes and Peter A. Ravella, attorneys at law, appeared for the union.

Greg Rubstello, City Attorney, appeared for the employer.

On June 23, 1986, the City of Pasco and the Pasco Police Officers Association filed a joint petition with the Public Employment Relations Commission seeking clarification of an existing bargaining unit. Docketed as Case No. 6453-C-86-332, the petition sought separation of a mixed bargaining unit of uniformed and non-uniformed employees into two units. A hearing was held at Pasco, Washington, on October 27, 1986, before J. Martin Smith, Hearing Officer.

On November 17, 1986, the union filed a petition under Chapter 391-25 WAC for investigation of a question concerning representation. Docketed separately as Case No. 6651-E-86-1167, that proceeding involved a "non-uniformed" employee bargaining unit contemplated by the petition in Case No. 6453-C-86-332. The parties filed an election agreement in Case No. 6651-E-86-1167 which lists employees at issue in the unit clarification case as eligible voters subject to challenge.<sup>1</sup> An election was scheduled for May 21, 1987.

#### BACKGROUND

The City of Pasco, situated on the north bank of the Columbia River in Franklin County, Washington, is at the northeast flank of the "Tri-Cities" area. It provides a full range of municipal services for its 18,000 citizens. The city's fire department and police department maintain offices in a building adjoining the city hall in downtown Pasco.

There are approximately 28 commissioned police officers and nine non-commissioned employees in the police department. For

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1 The issues contested in the representation proceeding have been limited to a claim by the city that the Pasco Police Officers Association should not be permitted to represent both the "uniformed" and "non-uniformed" bargaining units. The election agreement filed by the parties was accompanied by a stipulation which purported to limit the internal affairs of the union. In a letter dated March 30, 1987, the Executive Director notified the parties that their election agreement could not be accepted if so conditioned, and directed the employer to show cause why its "disqualification of bargaining representative" claim should not be dismissed in light of the Supreme Court's denial, in \_\_\_ Wn. \_\_\_ (1987), of petitions for certiorari involving reversal of the Commission decision in City of Richland, Decision 1519-A (PECB, 1983). The employer subsequently dropped its claim.

many years, the Pasco Police Officers Association has represented all of the employees of the police department in a single, mixed bargaining unit. Labor relations within the department is the responsibility of the Chief of Police, Don Francis, and two captains, in coordination with the city manager and the city personnel director.

The parties were nearing the end of a two-year agreement set to expire December 31, 1986 when, during negotiations in late 1985, it was agreed that the composition of the bargaining unit needed to be changed. In an amendment to their collective bargaining agreement, the parties stipulated that the mixed unit consisting of both "uniformed personnel" (within the meaning of RCW 41.56.030(6)) and non-uniformed personnel should be divided into two separate bargaining units. The parties disagreed, however, about the bargaining unit status of employees holding titles of "evidence technician" (Charlotte Supplee) and "police services manager" (Terri Krossin). The parties agreed to join in filing a unit clarification petition with the Public Employment Relations Commission. The parties stipulated in their joint petition that two distinct units were appropriate, as follows:

**UNIFORMED EMPLOYEES BARGAINING UNIT:** This unit is proposed to consist of the position classification of Sergeant, Corporal, and Police Officer. There are currently 28 commissioned officers within these position classifications.

**NON-UNIFORMED EMPLOYEES BARGAINING UNIT:** This proposed unit will consist of the position classifications of Community Service Officer, Police Service Specialist, and Crime Prevention Officer. There are currently 9 employees in these position classifications.

In their joint petition in Case No. 6453-C-86-332, the parties also stated:

The city takes no position at this time as to representation of the proposed "non-uniformed" (unsworn) employee bargaining unit except that it objects to joint representation of both units by the Association.

At the hearing in that unit clarification case, the city continued its opposition to the representation of the non-uniformed employees by the association.

#### DISCUSSION

##### Jurisdiction

The Public Employment Relations Commission determines appropriate bargaining units and resolves questions concerning representation under the authority of RCW 41.56.050 through 41.56.080. RCW 41.56.090 provides:

The Commission shall promulgate, revise or rescind such rules and regulations as it may deem necessary or appropriate to administer the provisions of this chapter in conformity with the intent and purpose of this chapter and consistent with the best standards of labor-management relations.

Acting pursuant to that authority, the Commission has adopted administrative rules in Chapter 391-25 WAC for the processing of representation cases and rules in Chapter 391-35 WAC for the processing of unit clarification cases. WAC 391-35-010 limits the processing of unit clarification cases:

PETITION FOR CLARIFICATION OF AN EXISTING BARGAINING UNIT--WHO MAY FILE-- In the absence of a question concerning representation, a petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative or their agents, or by the parties jointly. [emphasis supplied]

Thus, Commission policy and precedent has been to decline to process a unit clarification petition where a representation petition is pending involving the same bargaining unit (as in King County Fire District No. 43, Decision 2663 (PECB, 1987)) or to consolidate simultaneous representation and unit clarification proceedings, as in Ben-Franklin Transit, Decision 2357 (PECB, 1985).

In the situation at hand, Case No. 6453-C-86-332 was jointly filed by the parties as a unit clarification case. Previous cases involving separation of mixed units, such as City of Yakima, Decision 837 (PECB, 1980) and Benton County, Decision 2221 (PECB, 1985), had been resolved without raising a question concerning representation in either the "uniformed" or the "non-uniformed" unit, and the joint petition did not clearly raise a question concerning representation in either unit. Even at the outset of the hearing in Case No. 6453-C-86-332, neither party was raising a question concerning representation. During the course of that hearing, the parties stipulated that the pre-existing bargaining unit should be divided into separate "uniformed" and "non-uniformed" units, each of which would be appropriate under RCW 41.56.060 for the purposes of collective bargaining. The issues were limited to whether the "evidence technician" should be allocated to either the "uniformed" or "non-uniformed" unit, and whether the "police services manager" is a supervisor who is properly excluded from both of the bargaining units. There was no reason to withhold processing of the unit clarification case.

Some three weeks after the hearing in the unit clarification case was closed, the incumbent exclusive bargaining representative filed a representation petition in the "non-uniformed" unit which it already represented. The documents of record in Case No. 6651-E-86-1167 make reference to the instant case.

Had a question concerning representation been pending at the time of the hearing in the unit clarification case, processing of that matter could have been suspended and the issues concerning Krossin and Supplee could have been reserved for a post-election determination in the representation case. Issues concerning "timeliness" or "existence of a question concerning representation" which might arise in a unit clarification case do not arise in a representation case, where the entire scope of the bargaining unit and all eligibility questions are open to scrutiny.

The procedure followed in this case has been unusual due to the sequence of events. Looking at the clearly related case files as a whole, however, it is concluded that the issues concerning the status of Krossen and Supplee still exist, and that they should be determined on the basis of the record made in Case No. 6453-C-86-332.

#### Police Services Manager

Six employees in a "police service specialist" classification carry out clerical and administrative functions within the police department. They handle non-emergency telephone calls, make personal contacts with the public at the police department counter, and may also assist citizens with discussion of their problems with particular police officers. They also make data entry of police records, criminal records, arrest records and the like on computer terminals.

The position of "police services manager" is now held by Terri L. Krossin. She has worked for the department for five and one-half years, with one and one-half years in her current position. Her duties include those of the police services specialists, as set forth above. In addition, she directs entry of "criminal contact" information necessary for reporting to the F.B.I. and state agencies interested in local crime statistics,<sup>2</sup> is responsible for segregating and billing charges for a copy machine shared by two city departments, and monitors the Franklin County bill for lodging city prisoners held at the county jail facility. Currently, the police services manager is not included in any bargaining unit.

The union contends that Krossin is merely a lead worker who is a conduit of supervisory messages and who exercises, at best, sporadic and irregular supervisory authority. The union argues that the position ought to be included in the bargaining unit of non-uniformed employees.

The city argues that the police services manager exercises independent judgment on numerous personnel matters, and ought to be excluded as a supervisor from the bargaining unit which contains her rank-and-file subordinates. Additionally, the city argues that this employee is a "confidential" employee under RCW 41.56.030(2).<sup>3</sup>

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<sup>2</sup> Temporarily at least, Krossin has been handling all of the criminal records data entry.

<sup>3</sup> The city argued that the inclusion or exclusion of the police services manager in the non-uniformed unit was not appropriately before the Commission in the unit clarification case (and would have to be dealt with in a representation case). For reasons already indicated under the "jurisdiction" heading above, that argument is found to be without merit here.

Washington's Supreme Court noted in Metro vs. Department of Labor and Industries, 88 Wn.2d 925 (1976) that the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, differs importantly from the National Labor Relations Act (NLRA), when dealing with supervisors:

[T]he concern it displays is not with the relationship between the employee and other employees, but with the relationship between the employer and the head of the bargaining unit or other official described in the Act. [emphasis added]

88 Wn.2d 925 at 929.

In following that observation, the Public Employment Relations Commission ruled in City of Richland, Decision 279-A (PECB, 1978) that:

Where a potential exists for conflicts of interest within the bargaining unit, or within the labor organization certified as exclusive bargaining representative, supervisors will be excluded from the bargaining unit which contains their subordinates. . . .

The indicia of supervisory status found in Section 2(11) of the NLRA need not be re-analyzed here in great detail. The impact of an employee's actual authority to hire, discharge, transfer, discipline, lay-off or otherwise direct the work of other employees, or to adjust their grievances, is well known to the Public Employment Relations Commission and its staff. Hence, the decisions of the Commission have emphasized the potential for conflicts of interest which might arise where supervisors and their subordinates are left in the same unit for purposes of collective bargaining. City of Richland, supra, aff. 29 Wn.App 599 (Division III, 1981), Decision 1519, (PECB, 1983); Spokane International Airport, Decision 2000 (PECB, 1984).



Conflicts may exist where persons termed "working foreman" by one or both of the parties may actually possess supervisory powers such as those outlined in Section 2(11) of the NLRA, or the power to make effective recommendations on any of these types of action. Accordingly, it was held in City of Mukilteo, Decision 2202-A, (PECB, 1986), that a "foreman" was a supervisor notwithstanding the fact that he had not exercised his clear authority to evaluate employees. That particular foreman participated in hiring decisions and was paid a wage higher than the subordinate employees. Similarly, although supervision of only one subordinate raises suspicion as to the need for a supervisor, as in City of Royal City, Decision 2490 (PECB, 1986), the actual authority to discipline and exert control over even a small workforce of employees may still create legitimate conflicts of interest, damaging to both management and the labor organization. See, also, Inchelium School District, Decision 2395-B (PECB, 1987).

There is no evidence of record that Terri Krossin has the power to suspend, discharge employees or transfer employees from one job classification to another. There is no recent history of lay-offs or recall of laid off employees in the Pasco Police Department. There is ample evidence, however, as to the other authorities mentioned above. Krossin has full authority to call back employees who have completed their scheduled shifts, or to call out employees on their scheduled days off. All of Krossin's subordinates are on-call and may be required to work four extra hours in situations where last-minute illness or other reasons for absence present a staffing shortage. Krossin has full authority to alter the shifts of work of the police services specialists. Such duties inevitably involve the approval and assignment of overtime, even though the administrative captain and police chief retain some control over the financial impact of overtime use. Krossin is also responsible

for scheduling the vacations of the police services specialist employees, subject to review by the chief and the administrative captain. While Krossin performs some work similar to that of her subordinates, the police services specialists appear to perform the bulk of the recordkeeping and clerical functions of the police department. Krossin receives a higher rate of pay than the other employees, owing principally to her supervisory duties, and she does not qualify for overtime pay. Krossin spends two-thirds of her time in non-production work of the department, including attending management and supervisor meetings for purposes of policy and training. Krossin has responsibility for overseeing the work of her subordinates, and is a supervisor within the meaning of Commission precedent.

Terri Krossin does more than merely pass along the commands of her superiors. It was determined that shift supervisors of a "9-1-1" dispatch center were excludable in City of Tacoma, Decision 84-A (PECB, 1977) and Thurston County Communications, Decision 1064 (PECB, 1980). The position at Pasco involves similar duties with respect to the supervision of six support employees within the police department. It is clear from the record that the chief of police and his immediate subordinates have little daily contact with the actual job duties of the police services specialists. Oversight of matters such as data entry, FBI reports and the like are left to the independent judgement of Terri Krossin.

Both parties cite the decisions in City of Kent, Decision 1857 (PECB, 1984) and Mason County, Decision 1649 (PECB, 1983). In Mason County, four road department supervisors were paid rates higher than the bargaining unit employees, had authority to assign work, approve leaves of absence and to take immediate discipline against employees, and authorized overtime for their work crews. The Public Employment Relations Commission found

them to be supervisors. In City of Kent, several supervisory positions in the maintenance department were at issue. All five of those employees interviewed applicants and made recommendations on hiring, assigned work, disciplined employees and recommended promotions. These employees were found to be supervisors. A comparison of the facts of those stronger cases arising out of a "blue collar" work environment does not diminish the conclusion that Terri Krossin is a supervisor in her work environment as police services manager at Pasco.

#### The Evidence Technician

The "evidence technician" position was held prior to 1980 by a patrol officer and/or sergeant. In 1980, the task was assigned to Charlotte Supplee who had been employed in the Pasco Police Department since 1970. Supplee is a member of the LEOFF-I retirement system and completed the police academy program in 1971. Immediately prior to her taking over the function, she was employed as a clerk-dispatcher.

The evidence technician is assigned the task of collecting evidence at crime scenes, as well as cataloging and storing such evidence so as to maintain its admissability in court for criminal proceedings. Supplee works under the direction of the police chief. Most of her work day is spent with detectives and investigating officers.

During the course of her work, Supplee wears a police officer's uniform, including a badge. She does not carry a weapon while on duty and, except for one occasion, has never had to effect or assist in making an arrest of a suspect. Supplee typically works with the patrol officers and asks questions of citizens with knowledge of the crime scene. She is often called-out while off-duty and, on occasion, uses police vehicles to travel

to crime scenes. The investigating officer usually needs to have evidence handled and transported to the department's evidence vaults or, in some cases, to crime laboratories. In that vein, Supplee records the crime scene photographically and, if necessary, takes custody of weapons, glass fragments, narcotics and paraphernalia, fingerprints and the like. Where deaths have occurred, Supplee has been called upon to take human tissue samples such as hair, fingernails and skin. These tasks are accomplished at funeral homes or at autopsies performed by Franklin County. Her testimony is then used in court to establish "chain of custody" of the critical evidence or to relate her observations at autopsies. Supplee has attended several training seminars in addition to the police academy, including rape investigation, death investigation and narcotics investigation. This training was requested and paid for by the City of Pasco. Supplee has been called upon to search female inmates and informants.

The association argues that the evidence technician has duties which include exclusively and uniquely law enforcement work of an investigatory nature, and that Supplee ought, therefore, to be included within the bargaining unit of uniformed personnel.

The city's position is that the evidence technician should be assigned to the non-uniformed employee unit, based on the fact that she does not carry a weapon, perform the full duties of a police officer or have what the city terms "a valid commission". There is no claim that Supplee is excludable as a "supervisor" or "confidential" employee.

The criteria for unit determination are set forth in RCW 41.56.060. Here, the appropriate yardstick to apply is a consideration of the duties, skills and working conditions of

the employee. From review of the record, it is concluded that the evidence technician belongs in the uniformed personnel bargaining unit. Observed from a different perspective, it would be highly inappropriate to place the evidence technician in the bargaining unit consisting of non-uniformed employees.

If the police service specialists labor to document the results of Pasco's police protection effort, the evidence technician works to create the substance of the department's duty, which is to investigate crime and to apprehend those responsible. The evidence technician and the police service specialist work at opposite ends of a team effort. It is not critical that Supplee stay in constant contact with the police service specialists, but it is very important that she stay in contact with and work in daily cooperation with the police officers who make the investigative effort. This position has been held in the past by employees who were or would be clearly within the uniformed personnel bargaining unit. The city has not shown any facts suggesting an intent to down-grade or otherwise diminish the importance of the position from that of a police position. The ongoing series of training sessions which the department has provided for Supplee suggests that the evidence technician remains a critical link in the investigative chain of law enforcement.

Even superficially, the city has indicated an intent to have Supplee to be perceived as a law enforcement officer. She wears a uniform, drives a patrol car, and works in the field alongside members of the uniformed personnel bargaining unit. Further, although Supplee generally does not get involved in patrol, arrests and the handling of prisoners, she has occasionally encountered the risks attendant to police work, and

it is reasonable to presume that she may again encounter such situations in the future.

Another factor drawing this position into a community of interest with the police officers is the ongoing duty of the evidence technician to testify in court with respect to evidence and the chain of its custody. Supplee shares this responsibility with the police officers who make the arrests. The police services specialists in the non-uniformed bargaining unit are not called upon to testify in court.

For whatever reason, the city at one time chose to provide Supplee the benefits of the Law Enforcement Officers and Fire Fighters (LEOFF) Retirement System established by Chapter 41.26 RCW. That decision provides Supplee a significantly different set of benefits than are available to employees in the non-uniformed employee bargaining unit. While retirement system coverage is not directly a factor in unit determination, the fact of such coverage lends support in this case to a conclusion that there is a community of interest between the evidence technician and the police officers.

#### FINDINGS OF FACT

1. The City of Pasco is a municipal corporation and political subdivision of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).
2. The Pasco Police Officers Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the recognized exclusive bargaining representative of employees in the police department of the City of Pasco,

currently including all sworn police officers up to and including the rank of sergeant; the evidence technician; the community service officers and police service specialists, excluding the police chief and supervisors.

3. The City of Pasco and the Pasco Police Officers Association have been parties to a series of collective bargaining agreements covering the bargaining unit described in paragraph 2 of these Findings of Fact, including an agreement executed December, 1985 for a period of January 1, 1986 through December 31, 1986.
4. The parties agreed to divide the bargaining unit described in paragraph 2 of these findings of fact into two separate bargaining units reflecting the definition of "uniformed personnel" contained in RCW 41.56.030(6) and Commission precedent decided thereunder.
5. The police services manager exercises supervisory authority over six police service specialists. The manager has independent authority to initiate discipline and to determine penalties, schedules shifts, hours, requests for leave and makes initial approval of overtime hours. The police services manager is responsible for calling-out employees and for directing her subordinates in the day-to-day function of the recordkeeping function of the department.
6. The evidence technician wears a uniform, drives a police vehicle and is charged with responsibility for gathering evidence of crimes investigated by the police department. She is required to file and document evidence at crime scenes and to testify precisely as to how such evidence was acquired. The evidence technician's clerical and

secretarial duties within the department are negligible and merely secondary to her evidence functions. The city has chosen to provide the evidence technician training of a type normally given to police officers, and has chosen to provide the incumbent employee coverage under the Law Enforcement and Fire Fighters Retirement System applicable to the police officers.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapters 391-25 and 391-35 WAC.

2. A bargaining unit consisting of:

all full-time and regular part-time law enforcement personnel of the City of Pasco, excluding the Chief of Police, supervisors and confidential employees and all other employees of the employer

is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

3. A bargaining unit consisting of:

all full-time and regular part-time non-uniformed employees of the Police Department of the City of Pasco, excluding the Chief of Police, uniformed personnel within the meaning of RCW 41.56.030(6), supervisors and confidential employees

is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.



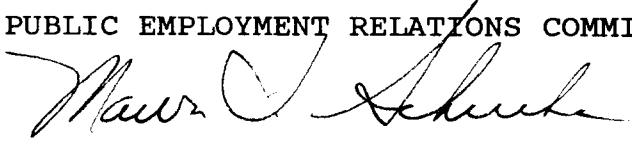
4. The police services manager is a supervisory employee who is properly excluded under RCW 41.56.060 from the bargaining unit described in paragraph 4 of these Conclusions of Law.
5. The evidence technician has a community of interest with the employees in, and is properly included in, the bargaining unit described in paragraph 2 of these Conclusions of Law.

ORDER

1. The police services manager is excluded from both of the bargaining units involved in these proceedings, and is not an eligible voter in the representation election in Case No. 6651-E-86-1167.
2. The evidence technician is included in the uniformed personnel bargaining unit described in these proceedings, and is not an eligible voter in the representation election in Case No. 6651-E-86-1167.

DATED at Olympia, Washington this 28th day of May, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing objections with the Commission pursuant to WAC 391-25-590.