

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
PROSSER POLICE ASSOCIATION	)	CASE NO. 7511-E-88-1289
	)	
Involving certain employees of:	)	DECISION 3157 - PECB
	)	
CITY OF PROSSER	)	DIRECTION OF ELECTION
	)	
	)	
	)	

---

L. S. Hamilton, Representative, appeared on behalf of the Prosser Police Association.

Dwight A. Halstead, City Attorney, appeared on behalf of the City of Prosser.

On August 8, 1988, the Prosser Police Association (union) filed a petition with the Public Employment Relations Commission, seeking certification as the exclusive bargaining representative of communications and radio dispatchers employed by the City of Prosser (employer). A pre-hearing conference was held on August 31, 1988, at Prosser, Washington, at which time an issue was framed for hearing. A hearing was conducted on September 21, 1988, in Prosser, before Hearing Officer Walter M. Stuteville. The parties filed post-hearing briefs.

BACKGROUND

The City of Prosser, the county seat of Benton County, is located in the south-central part of the state of Washington. The population of the city is approximately 4,000. Basically an agricultural community, Prosser has become known recently as

a center for wine production. The city is a noncharter code city, with the mayor as the statutory employer of all city employees.

The Prosser Police Department employs eight commissioned police officers. Their supervisor is Chief of Police Melvin Walker who, by statute, may be authorized to appoint and remove subordinates.<sup>1</sup> Walker also supervises an Animal Control Officer and the four communications and radio dispatch employees who are the subject of this petition.

The petitioner union has been the exclusive bargaining representative of the "commissioned" police officers in Prosser since 1978, and has negotiated several collective bargaining agreements with the employer since that time. The six police officers covered by the current agreement are also covered by the city's civil service system and the state of Washington's Law Enforcement and Firefighters Retirement system.<sup>2</sup>

Prior to 1984, the employer contracted-out for dispatch services. In November of 1984, the employer created four dispatcher positions in a communications and dispatch department under the chief of police. When creating the dispatcher positions, the city council passed Ordinance 2.32.016, stating:

Communication and dispatcher department established. A communication and dispatcher department is established as a division of the police department. The communication and dispatcher department will be headquartered in the police department section of City Hall. They will handle all radio communications, emergency telephone work, attending the counter and clerical duties

---

1 RCW 35A.12.090.

2 Chapter 41.26 RCW.

in the police department, and during off hours all city telephone communications. The communication and dispatcher department will be under the direct supervision of the chief of police.

(Ord. 1297 Sec 2, 1984).

In 1987, the city council modified that ordinance, deleting the phrase: "[A]s a division of the police department" from the first sentence, but not changing the actual exercise of authority by the chief of police over the dispatchers.

The petitioned-for dispatchers work in the office of the Prosser Police Department, which is physically a part of the city hall. Their duties revolve around receiving incoming telephone and radio communications, and dispatching appropriate police and fire responses.<sup>3</sup> Additional duties include: Typing, taking payments, and maintaining time sheets for the police department personnel. The dispatchers are not under the employer's civil service system, and they are covered, along with all other non-commissioned city employees, by the state's Public Employees Retirement System.<sup>4</sup>

The petitioned-for "civilian" dispatchers are regularly scheduled to cover 20 shifts per week, while one of the city's "commissioned" police officers from the existing bargaining unit is regularly assigned to work a full shift on Sundays as a dispatcher. With the approval of Mayor Wayne Hogue, Chief Walker hired and supervises the dispatchers.

---

3 The dispatchers take off-hours calls for the city's water and sewer department, and the city has, in addition, contracted to provide dispatch services through the department for local veterinarians.

4 Chapter 41.40 RCW.

POSITIONS OF THE PARTIES

The petitioner claims that the dispatchers should be added to the existing unit of commissioned officers. It cites the commonality of immediate supervision -- vested in the chief of police -- and the interrelationship of job responsibilities between the officers and the dispatchers as evidence of a shared community of interest.

The employer argues that the commissioned police officers and civilian dispatchers should be in separate bargaining units.<sup>5</sup> It cites the differences of job responsibilities, differences of civil service coverage, and differences of retirement plan coverage as distinctions significant to the establishment of two separate bargaining units.

---

<sup>5</sup> On August 18, 1988, after the petition was filed to commence the instant representation proceedings, the Prosser City Council passed the following resolution:

A RESOLUTION REGARDING THE POLICY OF THE CITY OF PROSSER AS TO BARGAINING UNITS IN COLLECTIVE BARGAINING UNDER CHAPTER 41.56 REVISED CODE OF WASHINGTON

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, AS FOLLOWS:

Section 1. The City of Prosser adopts as a policy in collective bargaining under chapter 41.56 Revised Code of Washington, that any City employees who are not full paid employees of the City Police Department shall not be combined in a bargaining unit with full paid employees of the City Police Department, as defined in RCW 41.12.220.

PASSED by the City Council and APPROVED by the mayor this 15 day of August, 1988.

DISCUSSIONUnit Determination Criteria

The Public Employees' Collective Bargaining Act specifies the criteria that the Commission must use in determining what units are appropriate for 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 employer and this bargaining representative; the extent of organization among the public employees; and the desire of the public employees. ...

An additional distinction between groups of employees that is not enumerated in RCW 41.56.060, but has been important in police bargaining units since 1973, is the presence or absence of access to interest arbitration. Only bargaining impasses involving "uniformed personnel" (as that term is defined in RCW 41.56.030(7)), are to be resolved through interest arbitration pursuant to RCW 41.56.430, et seq., so it becomes inappropriate to have a "mixed" bargaining unit consisting of both "civilian" and "uniformed" employees. Thurston County Fire District No. 9, Decision 461 (PECB, 1978); King County Fire District No. 39, Decision 2638 (PECB, 1987). It follows that it is necessary to sever an existing bargaining unit, City of Yakima, Decision 837 (PECB, 1980), or to determine that a proposed bargaining unit is inappropriate, where a part of the unit is within the

definition of "uniformed personnel". City of Pasco, Decision 2636, 2636-B (PECB, 1987). In the instant case, however, none of the city's law enforcement personnel qualify as "uniformed personnel" under RCW 41.56.030(7):

... (a) law enforcement officers as defined in RCW 41.56.030 as now or hereafter amended, of cities with a population of fifteen thousand or more ...

Prosser's population of 4,000 falls far below that standard, so the "uniformed personnel" precedents are inapplicable here.

It has long been firmly established that unit determination is a function delegated by the Legislature to the Commission, and is not a subject for collective bargaining or for unilateral action by either labor or management. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.App 599 (Division III, 1981), rev. den. 96 Wn.2d 1004 (1981).<sup>6</sup> The ordinances and the resolution passed by the Prosser City Council in relation to the composition of the police bargaining unit must be considered against the background of that statute and precedent.

The employer has evidently determined that it would be in its best interests to keep its commissioned officers and dispatchers in separate bargaining units, and it has attempted to influence or pre-empt such a result by passing a resolution on the subject after the jurisdiction of the Commission was invoked by the union's filing of a representation petition. The employer's actions in that regard can have no force or

---

<sup>6</sup> Indeed, had the Legislature not prescribed criteria and delegated authority in such matters to the Commission, public sector collective bargaining in this state could easily become a patchwork quilt of bargaining units designed by employers and unions with their own transitory interests in mind.

effect on the Commission's determination, under the statute, of what is the appropriate bargaining unit for the dispatchers.<sup>7</sup>

Accretion Unavailable

Had the union moved to do so promptly after the addition of the dispatcher positions to the police department workforce in 1984, it is at least arguable that the newly created positions could have been accreted to the pre-existing bargaining unit. An accretion deprives the employees in the affected group of the opportunity to vote separately on representation, and so will be ordered only when specific conditions are met. Ben Franklin Transit, Decision 2357-A (PECB, 1986); Kitsap Transit Authority, Decision 3104 (PECB, 1989).

In this case, the employer apparently concedes the propriety of the existing unit of "commissioned" law enforcement officers. It can be inferred from a number of recent decisions arising out of other law enforcement agencies subject to Chapter 41.56 RCW that a department-wide (vertical) unit in the police department might also be found appropriate. Okanogan County, Decision 2800 (PECB, 1987); Grays Harbor County, Decision 3067 (PECB, 1988). See, also, certifications of "mixed" units in City of Shelton, Decision 2844 (PECB, 1988); City of Omak, Decision 2700 (PECB, 1987); City of Toppenish, Decision 2628 (PECB, 1987); Pend Oreille County, Decision 2645 (PECB, 1987); City of Montesano, Decision 2138 (PECB, 1985); and City of Centralia, Decision 1534 (PECB, 1983).

---

<sup>7</sup> It can be observed, additionally, that the ordinances first placing the dispatchers within the police department and then deleting that designation would have had no impact on this issue in any event. The Commission has never determined that bargaining unit boundaries and employer-created department structure must be congruent.

In the absence of a prompt move by the union to have the petitioned-for positions absorbed into the existing bargaining unit, a "history of bargaining" (or lack thereof) has developed affecting this unit determination. With the passage of time, the union's attempt to absorb the petitioned-for positions raises a question concerning representation. See, City of Anacortes, Decision 452 (PECB, 1978); Wenatchee School District, Decision 1197 (PECB, 1981); City of Dayton, Decision 1432 (PECB, 1982). Accretion is thus not available here.

#### The Petitioned-For Bargaining Unit

The union could have petitioned for a single vertical unit in the police department. See, Tumwater School District, Decision 1388 (PECB, 1982), where an organization which had historically represented employees in a fragmented unit structure was able to consolidate the units it represented in representation proceedings. Upon a finding that such a single unit was appropriate, the union would have been on the ballot for a representation election in such a unit. Its status as exclusive bargaining representative of the historical unit would have been at risk, but the end product may have been worth the risk. The union did not do so. In fact, the union's petition in this case makes reference only to a unit of:

Communications and Radio Dispatchers  
employed full time by the City of Prosser.

The petition indicates, on its face, that the union was seeking only a unit of "4" employees. Initially, there was no reference to their assignment to the unit of "commissioned" employees already in existence. A representation case must be processed within the bounds of the petition and the showing of interest which is supplied in support of that petition. To the extent that the union subsequently realized the benefit of



having a single, department-wide bargaining unit and raised that possibility at the pre-hearing conference and at hearing in this matter, its efforts are outside the scope of these proceedings.

From the outset of these proceedings, the employer has opposed any commingling of the dispatchers and "commissioned" officers in a single bargaining unit, but appears to have conceded the propriety of a separate bargaining unit of dispatch personnel. The petitioned-for dispatchers are clearly public employees within the coverage of Chapter 41.56 RCW. Neither the employer nor the Commission has authority to interfere with the choice of exclusive bargaining representative to be made by the employees in such a separate unit. IAFF v. PERC, 45 Wn.App 686 (Division III, 1986), rev. den. 107 Wn.2d 1030 (1987), reversing City of Richland, Decision 1519-A (PECB, 1983). An election will be directed in such a separate unit.

The problems encountered and procedures to be followed in the merger of bargaining units were thoroughly discussed in Mount Vernon School District, Decision 1629 (PECB, 1983). Should the union obtain certification for the separate dispatcher unit, and should it desire to seek merger of the two units at some time in the future, it would have to pursue that as a separate transaction in accordance with the Mount Vernon case.

#### FINDINGS OF FACT

1. The City of Prosser is a public employer within the meaning of RCW 41.56.030(1).
2. The Prosser Police Association, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a

timely and properly supported petition for the investigation of a question concerning representation involving a bargaining unit of non-commissioned dispatchers of the police department of the City of Prosser.

3. Since approximately 1978, the Prosser Police Association has been recognized as the exclusive bargaining representative of all non-supervisory commissioned law enforcement officers employed in the police department of the City of Prosser.
4. The City of Prosser has a population of approximately 4,000, so that its commissioned law enforcement officers do not qualify as "uniformed personnel" within the meaning of RCW 41.56.030(7).
5. The City of Prosser has had employees in the petitioned-for non-commissioned dispatcher positions since 1984. There was evidently no timely effort to have those employees included in the existing bargaining unit of police department personnel, and the history of the petitioned-for positions is that they have not been represented for the purposes of collective bargaining.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. A bargaining unit composed of all full-time and regular part-time communications and dispatcher employees of the City of Prosser Police Department, excluding elected

officials, officials appointed for a fixed term, the chief of police, confidential employees, commissioned law enforcement officers, and all other employees of the City of Prosser, is an appropriate unit for the purposes of collective bargaining pursuant to RCW 41.56.060.

3. A question concerning representation currently exists under RCW 41.56.050, 41.56.060 and 41.56.070 in these proceedings, in the appropriate bargaining unit described in paragraph 2 of these conclusions of law.

DIRECTION OF ELECTION

An election, by secret ballot, shall be conducted under the direction of the Public Employment Relations Commission in the bargaining unit described in paragraph 2 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees desire to be represented for the purposes of collective bargaining by the Prosser Police Association.

Issued at Olympia, Washington, the 14th day of March, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

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