

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT 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)	
<hr/>		DECISION 2636-B - 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)	DECISION OF COMMISSION
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The Law Offices of Will Aitchison, by
Jeffrey C. Mapes and Peter A. Ravella,
Attorneys at Law, appeared for the union.

Greg A. Rubstello, City Attorney, appeared
for the employer.

Executive Director Marvin L. Schurke issued an Order Determining Eligibility Dispute on May 28, 1987. The City of Pasco filed a timely petition for partial review.

The proceedings in Case No. 6453-C-86-332 were commenced on June 23, 1986, when the City of Pasco and the Pasco Police Officers Association (union) jointly filed a unit clarification petition with the Public Employment Relations Commission,

seeking rulings on the supervisory status of one employee and the unit placement of another employee following the separation of a "mixed" bargaining unit of uniformed and non-uniformed employees into two units.¹ Case No. 6651-E-86-1167 was filed by the union on November 17, 1986, after the close of the hearing in Case No. 6453-C-86-332, to resolve a question concerning representation in the "non-uniformed" employee bargaining unit. An election has been held and an interim certification has been issued. The Executive Director's ruling excluded the police services manager from the bargaining units as a supervisor. The Executive Director placed the evidence technician in the (uniformed) law enforcement officer bargaining unit, based on a finding that the position shared a sufficient community of interest with other uniformed employees to be included as part of an appropriate bargaining unit.

The city's petition for review and supporting brief, which relate only to the evidence technician, raise two issues:

1. Does the evidence technician position fit the statutory definition of "uniformed personnel" so as to permit inclusion of the position in the bargaining unit of law enforcement officers?

2. If so, does the evidence technician position actually share a sufficient community of interest with other law

¹ The starting premise for the petition, and for the issues discussed below, is that the Commission has repeatedly held that bargaining units of "uniformed personnel" who qualify for interest arbitration under RCW 41.56.430 et seq. are not to include employees who do not qualify for interest arbitration. E.g., City of Yakima, Decision 837 (PECB, 1980); Cowlitz County, Decision 2067 (PECB, 1984); Benton County, Decision 2221 (PECB, 1985). The parties to the instant case stipulated the need to split up the historical "mixed" unit.

enforcement officers to warrant inclusion in the same bargaining unit?

The union has not filed a brief in response to the petition for review.

Charlotte Supplee holds the position at issue in this case. Ms. Supplee has been employed by the Pasco Police Department since at least 1970. Prior to January 1, 1980, Ms. Supplee held the position of "clerk-dispatcher" and performed, among other things, police matron duties. Ms. Supplee was a plaintiff in a lawsuit which was ultimately resolved by the Supreme Court of Washington, Beggs v. Pasco, 93 Wn.2d 682 (1980). In that case, which will be discussed at length later in this opinion, the Court held that Ms. Supplee, in her position as "clerk-dispatcher," was entitled to coverage under the Law Enforcement Officers and Fire Fighters Retirement System (LEOFF), Chapter 41.26 RCW. On January 1, 1980, Ms. Supplee transferred to her current position of evidence technician, and received a pay raise. Her new position primarily requires her to collect, handle and analyze evidence pertaining to crimes. She wears a police uniform and accompanies other police officers. She occasionally performs searches of female suspects. She does not make arrests. She holds a commission card from her previous Pasco Police Department position of "clerk-dispatcher," but has not been issued a new commission card for her current position.

Statutory Definitions and their Application

The threshold issue in this case is whether the evidence technician position fits within the statutory definition of "uniformed personnel" contained in RCW 41.56.030(6):

"Uniformed personnel" means (a) law enforcement officers as defined in RCW 41.26.030 as now or hereafter amended, ...

Thus, this provision of the Public Employees Collective Bargaining Act requires us to utilize the definition of "law enforcement officer" found in RCW 41.26.030, which reads:

(3) "Law enforcement officer means any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, city police officer, or town marshall or deputy marshall, with the following qualifications: . . .

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers; . . .
(emphasis supplied)

The city submits that an evidence technician is not a "law enforcement officer", because the position is not "expressly provided for and designated by . . . ordinance"² nor is it a "commissioned" position.

² Pasco Municipal Code section 2.20.010 states:

PERSONNEL. The police department of the city shall consist of the regular full-time personnel appointed to the offices, positions or ranks hereinafter set forth, chief, captain, lieutenant, sergeant, patrolman. (Ord. 1431, Sec. 1, 1970).

The code does not mention "evidence technicians."

The Supreme Court previously ruled, in Beggs v. Pasco, supra, on the city's argument with respect to ordinance designation. The city's ordinance did not mention the "clerk-dispatcher" position at the time of the Beggs decision. Nevertheless, the Court specifically held that, although the Pasco Municipal Code did not directly designate the positions then held by Ms. Supplee and other plaintiffs, it did so indirectly by giving its civil service commission appropriate designating authority. It reasoned, 93 Wn.2d at 686:

The Pasco Civil Service Commission had the power to and did specifically designate the positions and titles to the positions held by plaintiffs. This is sufficient; the statutory requirement was met.

Although this portion of the statutory language interpreted by the Court remains the same, Ms. Supplee's position within the police department has been changed. To satisfy the Beggs analysis, the position now held by Ms. Supplee must be either directly designated by ordinance (which it is not) or must be designated by the city civil service commission. Based on the following analysis, we conclude that the evidence technician position is designated by Pasco civil service.

RCW 41.12.050 states (emphasis added):

41.12.050 Persons included--Competitive examinations--Transfers, discharges, and reinstatements. The classified civil service and provisions of this chapter shall include all full paid employees of the police department of each city, town or municipality coming within its purview, including the chief of that department. All appointments to and promotions in said department shall be made solely on merit, efficiency and fitness, which shall be ascertained by open competitive examination and impartial investigation. No person

shall be reinstated in or transferred, suspended or discharged from any such place, position or employment contrary to the provisions of this chapter. [1937 c 13 Sec. 4; RRS Sec. 9558a-4.]

Exhibit 10, which was excerpted from the Pasco Civil Service Commission Rules and Regulations, set forth "class specifications" for eight positions within the police department, including the position of "evidence technician." This document demonstrates the position is a classified civil service position. Exhibit 10, along with the language of RCW 41.12-.050, leads us to conclude that the evidence technician position is designated by civil service, and thus, according to Beggs, satisfies the ordinance designation requirement of RCW 41.26.030.

The LEOFF statute also requires a law enforcement officer to be "commissioned." This requirement was not addressed in Beggs because it was not applicable at that time. There is no statutory definition of "commission." Blacks Law Dictionary, (West, Fifth Edition, 1979), p. 246, defines the term as:

. . . a warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts or to exercise jurisdiction, or to perform the duties and exercise the authority of an office, (as in the case of an officer in the army or navy.)

The testimony at hearing was that each commissioned officer in the city's police department is issued a commission card evidencing his or her authority to carry out official police functions. On being questioned about this, Ms. Supplee testified, under cross-examination, as follows (Tr. 33 - 35):

Q. Has Chief Francis -- Has he given you a commission card?

A. No.

Q. Do you have a commission card?

A. Yes, I do.

Q. Do you have that with you?

A. Yes.

(after producing the card)

[The card] . . . says that Charlotte Supplee is a duly commissioned officer of the Pasco Police Department holding the rank of clerk-dispatcher, witness my hand this 29th day of November '78, signed by Mike VanDiver.

. . . .

Q. But you are no longer a clerk-dispatcher; is that correct?

A. No, I am not.

Q. Since you have held the job of evidence technician have you received a similar card?

A. No. I was told to keep my mouth shut and not worry about it.

Q. My question was this: Have you received a commission card as evidence technician?

A. No.

Under redirect examination, (Tr. 39), Ms. Supplee testified:

Q. Has any city official, police department officials included, ever requested your commission card back?

A. No.

Q. To your knowledge, did any city official know that you had or possessed a commission card?

A. Well, Chief VanDiver would have had to and I am sure that my supervisor would have had to have known that.

Q. When did Chief VanDiver leave Pasco or was no longer chief at Pasco?

A. I believe it was November of 1982.

Q. And you were the evidence technician at that time?

A. Yes.

Ms. Supplee also testified that in 1979 she was administered the Oath of Office for police officers which, according to another witness, a prior police chief believed was essential to being a "commissioned" officer.

The present police chief, Donald Francis, testified (at Tr. 135) that he believed a "commissioned" officer to be: "a police officer that is sworn to enforce the laws in the community where he is hired and has met the requirements of the criminal justice training commission by having completed an accredited academy." Ms. Supplee testified that she had been both sworn and attended the police academy.

Testimony was given that commission cards were not reissued or revoked at regular intervals, nor were they reissued when an officer took a different position. Rather, according to one officer, it was the practice of each police chief who was hired to issue new commission cards. Chief Francis testified that he did not issue Ms. Supplee a new commission card, did not know that she still had her old one, and planned on retrieving her old card from her. We note, however, that although Chief Francis did issue new commission cards, he did

not do so until 1986, although he became chief of police in 1983. We also note that Ms. Supplee was omitted from the new list of commission card distributees at a time when this dispute was fomenting.

Given this evidence, we question how seriously the city takes the matter of commission cards when it does not retrieve allegedly out-of-date cards and has no clear system for the reissuance of new cards. We conclude that Ms. Supplee, having been issued a commission card that was never revoked, having attended the police academy, and having been sworn to enforce the laws, meets the "commission" requirement of the statute.³

We conclude, as the result of the above analysis, that the position at issue meets the disputed requirements for "uniformed personnel" under RCW 41.26.030, which is incorporated by reference under RCW 41.56.030(6).

Estoppel

Even if we were not able to reach the conclusion that Ms. Supplee is a "law enforcement officer" in her current evidence technician position, we are troubled, as was the Supreme Court in Beggs, that the city is attempting, on one hand, to require the position in question to perform police duties, but limit, on the other, that person's employment rights by procedural action within its own control: the designation of the position by ordinance and the issuance of a commission. In other words, it would remove the position from the uniformed personnel classification by the simple expedient of not issuing a new

³ In light of our additional holding that the city is estopped from denying Ms. Supplee law enforcement office status, the city cannot change our conclusion by simply revoking or retrieving her old commission card.

commission card and not actually listing the position by ordinance. The Court in Beggs found the city estopped from doing the latter, and were the Court to address the commission card question, we believe, after carefully studying the Begg's rationale, the Court also would estop the city from claiming the position is not commissioned.

Although a different job title/position is at issue in this case than in Beggs, the facts are remarkably similar. In Beggs, the Court invoked estoppel because the positions at issue included police matron duties; the Court believed a "police matron" is a "law enforcement officer." In the instant case, Ms. Supplee continues to perform police matron duties. The testimony of Ms. Supplee, again under cross-examination, was (at Tr. 31):

Q. And back at that time [of the earlier litigation] you still occupied this clerk dispatcher position; is that correct?

A. Yes.

Q. And it's true that there was evidence presented before that judge and he so found that you did such things as search female prisoners; is that correct?

A. Yes.

Q. And that you assisted in the process of arresting and taking into custody female prisoners; is that correct?

A. Yes.

Q. But you don't do those kinds of things any more, do you?

A. Sure do.

Q. You search female prisoners?

A. Yes, I do.

Ms. Supplee further explained she does not search female prisoners on a regular basis, and the last time she did so was about two years ago.

Other facts in evidence suggest a proper classification as "law enforcement."

- The person holding the position prior to Ms. Supplee was a police sergeant (i.e., a commissioned officer).
- Ms. Supplee has attended the police academy
- Ms. Supplee wears a uniform
- Ms. Supplee wears a badge similar in appearance, but smaller than other officers.
- Ms. Supplee is perceived by the public as a police officer
- Her duties require specialized skills and training
- She was promoted from a position which the Supreme Court held fell within the "law enforcement officer" category.
- She works primarily with police officers in the course of her work day.

There are some dissimilarities with the typical law enforcement position. Supplee does not make arrests, but neither did she do so in her former "clerk-dispatcher" position. She does not carry a weapon, but did not do so previously either. Although these are important characteristics of law enforcement

officers, the Court in Beggs nevertheless was willing to invoke an estoppel based on other police duties performed.

The facts in this case make an "estoppel" conclusion seem even more compelling. Ms. Supplee's present position apparently requires greater skills and training than previously, and should be considered a promotion. Many of her prior duties were clerical in nature. They no longer are. While her present position was previously held by a police sergeant, we doubt that a police sergeant ever held or performed the duties of the position of clerk-dispatcher.

Under the circumstances of this case, we conclude, as did the Court in Beggs, that the city is estopped from now asserting that Ms. Supplee is no longer a law enforcement officer. The prerequisites for estoppel cited in that case (action inconsistent with a claim later asserted, reliance and injury) are met here. Were we to rule otherwise, Ms. Supplee not only would be removed from the bargaining unit of uniformed personnel, but the ruling could also set the stage for her removal from the LEOFF I system, which she fought so hard to obtain. As in Beggs, the principles of estoppel are invoked to prevent a "manifest injustice."

Community of Interest

The next issue to be considered in this case is whether the Executive Director erred by finding that the evidence technician position shares sufficient community of interest with other "uniformed" law enforcement personnel, so as to be properly included in the same bargaining unit with the city's police officers. We have less difficulty with this case as a "community of interest" determination.

In determining an appropriate bargaining unit or allocating a position to a bargaining unit, the Executive Director and this Commission are required to consider the criteria set forth in RCW 41.56.060. The purpose of the inquiry is to group together those employees who have sufficient similarities (community of interest) as to indicate that they will be able to bargain collectively with their employer. The inquiry need not result in identification of the "most" appropriate bargaining unit. Highline School District, Decision 2686-A (PECB, 1987). Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require setting aside a unit determination. Conversely, it is not necessary to conclude that other unit configurations are "inappropriate," although such determinations can occur and can be helpful to the analysis when they do occur.

The city's challenge to the Executive Director's decision in this case focuses primarily on the propriety of including the disputed evidence technician position in the non-uniformed bargaining unit. While we might be persuaded that the inclusion of the evidence technician position in the unit of non-uniformed personnel could also be appropriate, we are not persuaded that the unit designation made by the Executive Director was inappropriate. There is evidence to indicate a similarity of duties, skills and working conditions, and so a community of interest, between the evidence technician and the city's other law enforcement officers.

ORDER

1. The findings of fact, conclusions of law and order of the Executive Director concerning the bargaining unit status of the evidence technician position are affirmed and

adopted as the findings of fact, conclusions of law and order of the Commission.

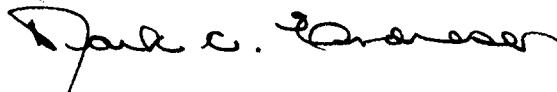
2. Case No. 6651-E-86-1167 is remanded to the Executive Director for issuance of the appropriate final certification.

DATED at Olympia, Washington this 11th day of December, 1987.

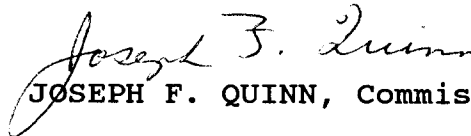
PUBLIC EMPLOYMENT RELATIONS COMMISSION



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