STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SNOHOMISH COUNTY DEPUTY SHERIFF'S ASSOCIATION	)	CASE NO. 7067-E-87-1219
	)	
	)	DECISION 3012 - PECB
Involving certain employees of:	)	
	)	
SNOHOMISH COUNTY	)	DIRECTION OF ELECTION
	)	
	)	

Perkins Coie, Thomas E. Platt, Attorney at Law, appeared on behalf of the employer.

Law firm of Aitchison and Moore, by Peter A. Ravella, Attorney at Law, appeared on behalf of the petitioner.

Davies, Roberts and Reid, by Bruce E. Heller, Attorney at Law, appeared on behalf of the incumbent intervenor, Teamsters Local 763, at hearing. Finley Young, Attorney at Law, filed the brief.

On October 12, 1987, the Snohomish County Deputy Sheriff's Association filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as the exclusive bargaining representative of certain employees of Snohomish County. A pre-hearing conference was held on November 30, 1987, at which time Teamsters Union Local No. 763 was granted intervention in the proceedings based on its status as the incumbent exclusive bargaining representative of the petitioned-for employees. Issues were framed at the pre-hearing conference as to whether

the petitioner was a "bargaining representative" qualified for certification under the statute, and as to whether lieutenants should be excluded from the bargaining unit as supervisors. A hearing, confined in scope to the petitioner's status,[1] was held on January 7, 1988, at Everett, Washington, before William A. Lang, Hearing Officer.[2]

BACKGROUND

The Snohomish County Deputy Sheriff's Association was established on April 28, 1964, when its founders adopted the organization's Constitution and By-laws. There is some testimony that the association represented the interests of its members in wages and working conditions before the county commissioners prior to 1972, although those efforts were apparently informal and did not result in a written collective bargaining agreement. The association later hired an attorney to gain certification of the association, in 1972, as the exclusive bargaining representative.[3]

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1 The determination on the eligibility issue was deferred until the question of petitioner's status was resolved.

2 These proceedings were "blocked" pursuant to WAC 391-25-370 for a period of time while unfair labor practice charges filed by Local 763 against the county were pending before the Commission. Processing of this case was resumed when those charges were withdrawn based on a settlement between the parties.

3 Notice is taken of docket records transferred to the Commission by the Washington State Department of Labor and Industries, pursuant to RCW 41.58.801, which indicate that the association was certified as exclusive bargaining representative on February 15, 1972, in Case No. 0-1113.

The association continued to retain an attorney to represent the association in formal negotiations with the county. Those negotiations eventually resulted in a written collective bargaining agreement.[4] The association then continued to act as exclusive bargaining representative of the petitioned-for employees[5] until October 29, 1975, when Teamsters Union Local 763 was certified as exclusive bargaining representative pursuant to a secret ballot election.[6]

Teamsters Local 763 has continuously been the exclusive bargaining representative of the petitioned-for employees from 1975 up to the present time.[7] The latest collective bargaining agreement between Local 763 and the county bore a December 31, 1987 expiration date.

The beginnings of the current effort to supplant Teamsters Local 763 as exclusive bargaining representative had its beginnings in October, 1986, at a general meeting of the

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4 The same Department of Labor and Industries records show that the association and the county entered into mediation on the date the association was certified (Case No. 0-1123). That case was closed on May 16, 1972, when agreement was reached.

5 The Department of Labor and Industries records also indicate that the association filed unfair labor practice charges against the county on September 15, 1972, alleging a refusal to bargain in good faith (Case No. 0-1235). Those charges were withdrawn on September 29, 1972. On April 15, 1975, the association filed with L&I for assistance concerning "grievances" against the county (Case No. 0-1930). That matter was withdrawn on May 22, 1975.

6 Department of Labor and Industries, Case No. 0-2048.

7 Notice is taken of the docket records of the Public Employment Relations Commission, which indicate that approximately eight employees were subsequently added to the unit through cross-checks in 1978 and 1979 in PERC Case Nos. 1677-E-78-317 and 2408-E-79-441.

association, when a "Bargaining Research Committee" was established to investigate whether the association should again involve itself in collective bargaining. Minutes of the first meeting of that committee, held on November 3, 1986, indicate a priority was placed on obtaining information from the Commission on "exactly how to De-Certify with Teamsters". Various members of the committee were assigned tasks in an effort to explore the options available. The options considered at this meeting were "doing it yourself bargaining", a separate bargaining guild, affiliation with another union, or a private contract with a labor attorney.

On November 19, 1986, at the next meeting of the Bargaining Research Committee, the members reported back on their assigned tasks. The committee discussed the Commission's representation case procedures, as well as information from Will Aitchison[8] and the bargaining experiences of other unions.

On June 9, 1987, the Bargaining Research Committee recommended to the executive board of the association that the membership be polled to ascertain whether there was majority interest in changing the current collective bargaining representation. If so, the committee urged that the association itself seek certification as exclusive bargaining representative. A "straw vote" of the association members conducted thereafter showed strong interest in removal of Local 763.

In September, 1987, the members of the association's executive board met with Aitchison to discuss having the association

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8 Will Aitchison is Senior Partner of Aitchison and Moore, a Portland, Oregon, law firm which represents employees and conducts seminars in Washington. The record indicates the firm is appearing pro bono as the representative of the petitioner in these proceedings.

supplant Teamsters Local 763. Although it appears that Aitchison may have initially expressed a desire not to be involved in the "decertification", he assisted the association's officers with drafting a resolution which was approved at a special meeting of the association's executive board at 7:30 a.m. on September 24, 1987. The resolution declared that the executive board had determined that

> ... the purposes and objectives of the Association include furthering the interests of its members through acting as the collective bargaining representative for active members of the Association, and negotiating and administering a collective bargaining agreement between Snohomish County and the Association.

Later in the day on September 24, 1987, the chairman of the Bargaining Research Committee, Brad Pince, distributed individual petitions to employees. A cover memorandum stated that the petition is "not a vote for decertification, but just asking that a vote take place."

On October 12, 1987, Pince filed the petition with the Commission to commence these proceedings. The petition described the bargaining unit as: "all full time, fully commissioned law enforcement officers of the Snohomish County Sheriff's Office" excluding various named ranks, including "Captain". The bargaining unit covered 124 employees. The showing of interest filed in support of the petition specifically indicated support for designation of the Snohomish County Deputy Sheriff's Association as exclusive bargaining representative.

On October 31, 1987, John Gray, Secretary of the association, posted a memorandum in the courthouse which was addressed to all members of the association and asked for comment on draft

proposals for changes to the association's by-laws "in case that the association becomes the bargaining unit in place of the Teamsters". Among the designated changes were new sections creating grievance and negotiating committees, the members of which were to be elected in the same manner as other association officers. The proposed changes also increased the dues from $7.00 per month to one percent of a journeyman deputy's salary. Finally, the proposed changes altered eligibility for association membership,[9] to limit association membership to "full-time Deputy Sheriff holding the rank of Lieutenant or below ...", and created an "honorary membership" category open to those who were not eligible for regular membership. The proposed change of by-laws stated that honorary members could not attend business meetings of the association.

The by-law changes were adopted, as proposed, on December 31, 1987. Three officers holding the rank of captain resigned from membership in the association on January 7, 1988, the day of the hearing in this matter.[10]

ISSUES AND POSITIONS OF THE PARTIES

The issue framed at the pre-hearing conference is whether the Snohomish County Deputy Sheriff's Association is an organization qualified for certification as exclusive bargaining

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9 Which had theretofore been open to all deputies, regardless of rank.

10 Captain Donald R. Nelson testified that he was one of the early officers of the association, and had served as a bargaining representative for a number of years prior to becoming a captain. Nelson became an honorary member on the day of the hearing of this case, because he had not previously been aware of the by-law changes.

representative of public employees under Chapter 41.56 RCW. The petitioner contends that it meets the requirements of the statute, and that the proceedings should go forward.

Teamsters Local 763 declined to stipulate the point, and argues in post-hearing brief that the procedures followed in the formation of the association were so defective as to prevent the petitioner from meeting the minimum requirements of the statute. Local 763 alleges, further, that the petitioner was dominated by supervisors in its formation.

The county took no position on this issue.

DISCUSSION

The "Labor Organization" Issue

RCW 41.56.030 provides:

> Definitions. As used in this chapter:
> ...
> (3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with their employers.

That statute has been interpreted to require the existence of an organization, separate and apart from the employees themselves, whose purpose is to represent the employees on the matters of "wages, hours and working conditions" which are mandatory subjects of collective bargaining under the statute. It is clear from precedent, however, that no specific degree of organizational formality is required. See, Kitsap County, Decision 2116 (PECB, 1984) where it was observed:

> There is no requirement in Chapter 41.56 or in the rules of the Commission that a labor organization have a constitution or by-laws or any particular level of formality to achieve the statutory definition qualifying it for certification as exclusive bargaining representative of public employees. The Kitsap County Employees Association held a meeting on January 19, 1984 at which it adopted some by-laws. The procedures followed were somewhat informal and subject to apt criticism as being ambiguous and confusing, but they do not nullify the fundamental facts that a group of public employees have taken steps to found an organization for the purposes of seeking certification as the exclusive bargaining representative of public employees for the purpose of collective bargaining under Chapter 41.56.

The minimum satisfactory quantum of evidence may be marked by Southwest Washington Health District, Decision 1304 (PECB, 1981), where employees met to select a spokesperson three months after filing the representation petition. Although the association did not have by-laws, officers or a treasury up to that time, the activity was sufficient to establish the association as a "bargaining representative". The first (and, to this date, only) instance where the trappings of an organization were found to be insufficient was Quillayute Valley School District, Decision 2809-A (PECB, 1988), where the employee "group" was called into existence on the volition of the employer, rather than of employees. The facts and arguments in the instant case must be measured against those precedents.

It is noteworthy, at the outset, that the association actually received certification and served as the exclusive bargaining representative of the petitioned-for employees at an earlier time in its history. Its by-laws adopted in 1964 evidently

were not amended in 1975 or 1976 to delete references to a "collective bargaining" purpose after Local 763 was elected as exclusive bargaining representative. Those facts also require rejection of Local 763's contentions that the association: (1) has never functioned as a bargaining representative, and (2) is similar to the association at issue in Pierce County, Decision 1786 (PECB, 1983). The facts in Pierce County are readily distinguishable because the organization at issue there had never sought to be the exclusive bargaining representative of employees. Rather, it was found to be a "social/-political/charitable organization". The petitioner in the instant case may have limited its affairs to social, political and charitable purposes between 1975 and 1987, but it was clearly a "bargaining representative" before that time and clearly seeks to be one now.

Local 763 asserts that the association still "showed a lack of organizational intent" and confusion over the amendment of its by-laws nearly three months after the filing of the petition. Local 763 points to the absence of a requirement for a quorum for the amendment of the association's by-laws, and to language in Gray's October 31, 1987 memorandum which, it claims, appeared to condition the proposed changes on being certified as exclusive bargaining representative. Therefore, Local 763 declares, the petitioner never made a commitment to collective bargaining. The actions of the officers of the association to implement the resolution through by-law changes do not appear as ambiguous and confusing as Local 763 contends. Whether or not the by-laws can be amended without a quorum is speculative and, in a context where no by-laws are required in the first place, is a matter which the Commission need not decide. Notwithstanding the confusion in the testimony on this point, the memorandum describing the proposed changes, on its face, merely solicits member comment before the by-laws are acted

upon. While that memo does condition the acceptance of the by-laws on being certified as exclusive bargaining representative, as pointed out in Franklin Pierce School District, Decision 78-B (PECB, 1977), the representation case provisions of the statute make a subtle distinction between a "bargaining representative" and a "proposed bargaining representative". In view of the holding in Kitsap County, supra, the amendment of the by-laws after the petition is not crucial, so long as the organization qualifies as a "bargaining representative" at the time of the hearing.

The record in this case is sufficiently clear to establish the fundamental fact that a group of employees have taken concrete steps to be represented by the association. A year prior to filing of the petition, the general membership of the association appointed a committee to investigate alternatives to the employees' existing collective bargaining representation. After conducting some discernable inquiry into what options were available, that committee recommended a polling of the membership to ascertain interest in decertifying the incumbent union. Pursuant to poll results which showed a strong interest, the leadership of the association adopted a resolution declaring its desire to have the organization represent the employees for the purposes of collective bargaining. At this point, the petitioner has done all that is necessary to establish itself as a labor organization or "bargaining representative" under the minimal requirements of the statute.

The "Supervisor Domination" Issue

History suggests that situations of "employer domination" of unions should be taken quite seriously. Employer domination of unions was one of the first evils addressed by Senator Wagner in introducing the bill which was to become the National Labor

Relations Act. Legislative History of the National Labor Relations Act, Volume 1, pages 1 - ff. In its final form, that legislation, in Section 8(a)(2), made it unlawful for an employer:

> ... to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it ...

Like most of Chapter 41.56 RCW, RCW 41.56.140(2) is a paraphrase of its federal counterpart, making it unlawful for an employer:

> ... To control, dominate or interfere with a bargaining representative ...

The taint of employer interference and domination continues to surface in various forms. In Enumclaw School District, Decision 222 (EDUC, 1977), aff. King County Superior Court (1977), the Commission saw an "unlawful assistance" problem with a bargaining proposal calling for the employer to grant full pay to union officials for times when they could be organizing the employees of another employer. State of Washington, Decision 2900 (PECB, 1988), similarly involved a union's effort to retain the benefit of arrangements which constitute prohibited "assistance" in a collective bargaining context. In Renton School District, Decision 1501-A (PECB, 1982) a violation was found where the employer deducted union dues during a representation campaign for an organization in competition with the incumbent union. In Lyle School District, Decision 2736 (PECB, 1987), the employer was criticized for indicating a preference for dealing with local employee officers of a union, rather than with the business agent assigned by the state-wide affiliate. The employer was required to post notice to employees to "clear the air" of a

technical violation in Pierce County, supra, where a labor organization made unauthorized use of the employer's telephone and office facilities for conducting union business. The most flagrant example, to date, seemingly was Quillayute Valley School District, Decision 2809-A (PECB, 1988), where it was concluded that the employer actually called the would-be incumbent organization into being from time to time to conduct "negotiations" in which it set forth all of the procedures and all of the terms to be agreed upon.

In the instant case, Local 763's claim of "employer domination" is based on the fact that employees in the rank of "captain", who are to be excluded from the bargaining unit, held membership in the association up to the date of the hearing in this matter. Local 763 asserts that there was the potential for conflicts of interest, and for employer domination of the association, both in its formation and in its prospective role as a bargaining representative. Citing NLRB v. David Buttrick Co., 361 F.2d 300 (1st Circuit, 1966), Local 763 contends it need not show proof of an actual offense, but only that a significant opportunity for abuse exists. H.P. Hood & Sons, Inc., 182 NLRB 194 (1970), is cited for the proposition that, even if there is a small opportunity for the employer to exploit the situation, if there is a great temptation to do so, unlawful interference will be found. Local 763 claims that the employer and the captains must have, in view of the budgetary constraints upon them, been greatly tempted by the opportunity to supplant an effective union in order to deal with a minimally financed employee association. Local 763 argues that the potential for interference is clear, because the captains were members of the association at the time the Bargaining Research Committee was formed, as well as when the petition was filed and the by-laws were amended.

The federal authority cited by Local 763 is not helpful. Both H.P. Hood and Buttrick dealt with the ability of a Teamster union local to represent employees without a conflict of interest, where the Teamsters' international union had loaned substantial amounts of money to competitor employers. Those decisions concerned fiduciary responsibility, not supervisory influence or control.

The record in this case shows that the captains were indeed members of the association during the period in question. There is no indication, however, that the captains or other high-ranking officers either attended meetings or participated in any other manner in the steps taken towards a renewed interest on the part of the association in collective bargaining or in its effort to supplant Local 763.[11] Therefore, the facts raise only the narrow issue of whether supervisory membership in an organization petitioning for representation automatically disqualifies it under Chapter 41.56 RCW. In its brief, Local 763 acknowledges that the fact that supervisors are members of an employee organization does not automatically disqualify it as a statutory bargaining representative under the federal law. NLRB v. Northshore University Hospital, 724 F.2d 269 (2nd Circuit, 1983) involved the role of nurse supervisors in the activities of a state-wide professional association which also acted as exclusive bargaining representative of nonsupervisory nurses. The Court ruled that there must be a "clear and present danger" of supervisory interference before it would be appropriate to disqualify the organization. The court distinguished the organization from the industrial model labor union as being a multipurpose professional organization,

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[11] In fact, it appears that Captain Nelson, who testified of his early leadership role in the association, was taken by surprise at the changes in its membership standards when learning of them after the by-laws had been amended.

thus requiring inquiry into all relevant circumstances such as structure and actual participation of supervisors in the organization, rather than proof of actual interference. The Snohomish County Deputy Sheriff's Association similarly appears to be multipurpose organization, with charitable, educational, fraternal, and legislative functions as well as its union functions.

More to the point under Chapter 41.56 RCW, where "supervisors" are employees within the meaning and coverage of the statute, is City of Richland, Decision 1519-A (PECB, 1983), reversed 45 Wn.App 686 (Division III, 1986). There is no showing that the captains are anything more than "supervisors". The courts have not supported the existence of authority in the Commission to limit the collective bargaining rights of "supervisors".

The record in this case contains detailed evidence of intense "rank and file" activity in re-converting the association into a bargaining representative. There is no active supervisory involvement of the type found troublesome in Kitsap County, supra. It also appears that the supervisors were purged from the organization prior to the hearing in this matter, which is the critical time for determining whether the organization meets the terms of the statutory definition.

FINDINGS OF FACT

1. Snohomish County is a political subdivision of the State of Washington and a public employer within the meaning of RCW 41.56.030(1).

2. Snohomish County Deputy Sheriff's Association is an organization founded in 1964 by employees of the Sheriff's

Department of Snohomish County. From at least 1972 to 1975, the organization operated as the exclusive bargaining representative of Snohomish County employees. From 1975 to 1987, the organization was operated for purposes not involving collective bargaining.

3. Teamsters Union Local 763, a "bargaining representative" within the meaning of RCW 41.56.030(3), has been the exclusive bargaining representative of non-supervisory employees of the Snohomish County Sheriff's Department since being certified in 1975.

4. Snohomish County and Local 763 were parties to a collective bargaining agreement effective through December 31, 1987.

5. During 1986 and 1987, the leadership of the Snohomish County Deputy Sheriff's Association took steps to reactivate that organization as a labor organization with a purpose of representing employees in their employment relations with employers. At a general meeting in October, 1986, a committee was established to investigate alternatives to the continued representation of employees by Teamsters Union Local 763 for collective bargaining under Chapter 41.56 RCW. The committee conducted an extensive inquiry over the next six months. As a result of the committee's investigation, and in accordance with its recommendations, the association polled its members to ascertain their interest in a change of collective bargaining representation.

6. On September 24, 1987, the executive board of the Snohomish County Deputy Sheriff's Association adopted a resolution, defining the objectives of that organization

to include representing employees in collective bargaining with the county.

7. On October 12, 1987, the Snohomish County Deputy Sheriff's Association filed a representation petition with the Public Employment Relations Commission, initiating these representation proceedings on behalf of the association to seek certification as exclusive bargaining representative of non-supervisory employees of Snohomish County.

8. Teamsters Union Local 763 timely moved for and was granted intervention in these proceedings as the incumbent exclusive bargaining representative of the petitioned-for employees.

9. On October 31, 1987, the secretary of the Snohomish County Deputy Sheriff's Association posted proposed by-law changes in the county courthouse and solicited membership comment on the modifications.

10. On December 31, 1987, the membership of the Snohomish County Deputy Sheriff's Association adopted by-law changes which created grievance and negotiating committees, increased dues, and excluded supervisors from active membership. Provision was made for supervisors to join the association as "Honorary Members", but not attend business meetings of the association.

11. The record is devoid of evidence of involvement by supervisors in the affairs of the Snohomish County Deputy Sheriff's Association during 1986 and 1987, and particularly with respect to the steps taken by that organization to seek certification as the exclusive bargaining representative of employees of Snohomish County.

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. By the actions described in paragraphs 5, 6, 7, 9 and 10 of the foregoing Findings of Facts, the Snohomish County Deputy Sheriff's Association had constituted itself as a bargaining representative within the meaning of RCW 41.56.030(3) by the time of the hearing held in this matter on January 7, 1988.

3. A bargaining unit which includes all non-supervisory employees of the Snohomish County Sheriff's Department who are "uniformed personnel" within the meaning of Chapter 41.56 RCW, excluding elected officials, officials appointed to office for a fixed term of office, supervisors and confidential employees, is an appropriate unit for purposes of collective bargaining within the meaning of RCW 41.56.060.

4. A question concerning representation exists under RCW 41.56.050, et seq., in the bargaining unit described in Paragraph 3 of these Conclusions of Law.

NOW, THEREFORE, it is

DIRECTED

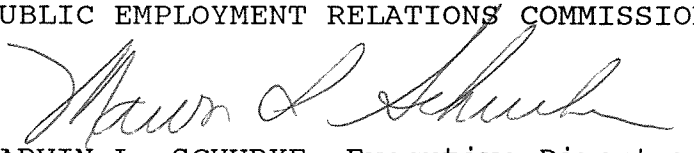
1. An election by secret ballot shall be held under the direction of the Public Employment Relation Commission among all non-supervisory employees of the Snohomish

County Sheriff's Department who are "uniformed personnel" within the meaning of Chapter 41.56 RCW, excluding elected officials, officials appointed to office for a fixed term of office, supervisors and confidential employees, to determine whether such employees desire to be represented for the purpose of collective bargaining by the Snohomish County Deputy Sheriff's Association, by Teamsters Union Local No. 763, or by no representative.

2. Employees in the rank of "lieutenant" shall be entitled to vote by challenged ballot, and the dispute framed by the parties concerning the eligibility of such employees for inclusion in the unit is reserved for determination following a post-election hearing.

DATED at Olympia, Washington, this 30th day of September, 1988.

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.