



Issues framed in the preliminary processing of the petition concerning the inclusion or exclusion of supervisor positions in the bargaining unit were reserved for subsequent determination. The Commission conducted a secret-ballot election, by mail ballot, among the employees employed in the bargaining unit described as:

All full-time and regular part-time employees of Valley Communications Center, excluding supervisors and confidential employees as defined by RCW and PERC precedent.

An interim certification was issued on August 9, 1993, designating the petitioner as exclusive bargaining representative. A hearing on the reserved eligibility issues was held on November 2, 1993, before Hearing Officer Mark S. Downing. Both parties submitted post-hearing briefs to complete the record. Authority to determine the eligibility issues has been delegated by the Executive Director to the Hearing Officer under WAC 391-25-390.

#### BACKGROUND

Valley Communications Center, located in Kent, Washington, provides emergency dispatch services for a number of law enforcement, fire fighting, and emergency medical service providers in King County. The area served includes the cities of Renton, Kent, Auburn, Tukwila, Algona, and Pacific, as well as seven fire districts and King County's paramedic service. An "administrative board" (also known as the board of directors) comprised of the mayors of Renton, Kent, Auburn, and Tukwila controls the budget; an "operations board" is comprised of the police and fire chiefs of the same cities. As the director of communications, Chris Fischer reports directly to those boards.

The parties agreed that the bargaining unit involved in this case includes all of the employer's dispatchers and call receivers.

There are currently five supervisor positions at the center; four are communications supervisors and one is the training/operations supervisor. The issue for decision here is whether those supervisors should be included or excluded from the bargaining unit.

The last collective bargaining agreement between the employer and Teamsters Local 763 covered the period from January 1, 1989 through December 31, 1991. The bargaining unit classifications covered by that agreement were: Call receiver, dispatcher, and supervisor.

Due to significant expansion and growth in the areas and population served, the number of calls processed at the center has substantially increased. The number of employees increased from 36 in 1990 to 53 by 1993, with a plan to further increase the staff to 57 employees in 1994.

As a result of the expansion, the director submitted a "recommendation for reorganization" to the board of directors that became effective with budget approval in 1992. The reorganization eliminated a position that was referred to as both "assistant to the director" and "deputy director", but added an "administrative assistant", a "clerk", a "CAD coordinator", and an "accountant".<sup>2</sup> The reorganization changed the scope of responsibilities and duties required of the supervisors, and the elimination of the deputy director position placed the supervisors in a direct reporting relationship to the director.

#### POSITIONS OF THE PARTIES

The employer contends that it is a conflict of interest to the collective bargaining process to have the supervisors in the same

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<sup>2</sup> There is no dispute that the positions added in the reorganization are not in the bargaining unit which includes the dispatchers and call receivers.

bargaining unit as their subordinates (i.e., the dispatchers and call receivers). It argues that for both groups to share the same bargaining unit would compromise the supervisors' carrying out of their duties, in contravention to public policy and Commission precedent.

The union argues that the supervisors share a sufficient community of interest in the duties, skills, and working conditions of the call receivers and dispatchers to warrant inclusion in the same bargaining unit. It maintains the recent reorganization is not a sufficient basis to warrant a change in the historic composition of the bargaining unit.

#### DISCUSSION

The determination and modification of bargaining units is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060 provides:

**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 employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. ...

Early in its history, the Commission noted that the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, differs from the National Labor Relations Act (NLRA), with respect to the status of supervisors. City of Tacoma, Decision 95-A (PECB, 1977).

The Supreme Court of the State of Washington adopted that view in Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). In approving a separate unit of supervisors in that case, the court noted that the NLRA is concerned with the authority that a supervisor exercises over other employees, and the possible conflict of interest with management. The court saw the Public Employees' Collective Bargaining Act, on the other hand, as being concerned with the relationship between employees and the head of the bargaining unit or other officials described in the act.

The Commission revisited the conflicts of interest subject in City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), where it concluded that an inherent potential for conflict exists from having supervisors and their subordinates in the same bargaining unit. Since that decision, supervisors have been routinely excluded from the bargaining units which contain their subordinates.

Chapter 41.56 RCW does not contain a definition of "supervisor". In making bargaining unit determinations under Richland, supra, the Commission has considered the types of management authority cited in the definition of "supervisor" found in RCW 41.59.020(4)(d), which states:

[S]upervisor ... means any employee having authority, **in the interest of an employer**, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment....

[Emphasis by **bold** supplied.]

Supervisory status is determined by the possession and/or exercise of authority over subordinate employees. In deciding questions of alleged supervisory status, it is necessary to determine whether the disputed positions possess true supervisory authority, *i.e.*, the authority to act or to effectively recommend action, on behalf of the employer. Thurston County, Decision 1064 (PECB, 1980).

The titles and characterizations used by parties for positions are not controlling. In City of Sunnyside, Decision 1178 (PECB, 1981), shift sergeants were excluded from a law enforcement officer bargaining unit as supervisors, where they were found to have "duties and responsibilities that include training, supervising, and evaluating employees, including the authority to discipline employees and adjust employee grievances". Lead workers have been defined by the Commission as "one who has authority to direct subordinates in their daily job assignments, without possessing authority to make meaningful changes in the employment relationship." City of Aberdeen, Decision 4174 (PECB, 1992).

#### Duties, Skills and Working Conditions

The position description for communications supervisor, originated in 1983 and revised in 1989, includes the following:

1.0 NATURE OF WORK:

Employee works in conjunction with the Director in the field of public safety communications. This is supervisory and professional work under the direction of the Director.

2.0 EXAMPLES OF WORK:

Responsible for the supervision of dispatchers, call receivers, part-time and temporary employees on an assigned shift.

Submits work schedules to the Director reflecting overtime, vacations, holidays and training.

Submits employee evaluations as assigned by the Director.

Responsible for monitoring dispatchers, call receivers, part-time and temporary employees' potential problem areas (i.e., continuing problems on the radio, personality conflicts, tardiness) and to recommend appropriate action to the Director.

Responsible for ensuring that proper action is taken in the event of equipment failure.

Responsible for staffing the oncoming shift in the event of illness or staffing shortage and has the authority to implement mandatory overtime as dictated in the SOP.

Directly responsible for researching and handling complaints regarding employees assigned to their shift in the form of a written reply and discussion with the employee and recommending disciplinary action if necessary.

Provides training for new dispatch personnel assigned to the shift and evaluates new employees' ability to perform in a competent manner.

Provides in-service training to assigned personnel as needed.

Responsible for all related duties of a dispatcher and for any duties that may be delegated to that dispatcher from the Director or Assistant to the Director within the realm of ability.

To serve as relief dispatcher on designated shift.

3.0 REPORTING RELATIONSHIPS:

Reports to the Director.

4.0 REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

Knowledge of:

Principles of supervision and all policies and procedures involved in supervising a shift of employees at an emergency communications center.

The "training/operations supervisor" position replaced a "training supervisor" position with the reorganization of 1992, and is filled on a rotating basis from the pool of communications supervisors.<sup>3</sup> The person holding that position is responsible for training entry-level employees, assisting the director in the daily operational management of the center, and representing the employer at monthly meetings attended by the operations or command representatives from each of the police departments served by the employer.<sup>4</sup>

Testimony and evidence in this case indicates that the communications supervisors acted more as lead workers than as supervisors prior to the organizational changes implemented in 1992. It is clear from Richland, supra, that a change of unit status may be appropriate after a change of circumstances, however. It is also clear that an employer is not precluded from reorganization of its management structure for the sake of efficiency. City of Seattle, Decision 689-A (PECB, 1979).

The reorganization described in this record increased the scope of responsibilities of the dispatch supervisors, even though their position description was not revised to reflect those changes. The removal of the deputy director position was a critical change that enhanced the direct reporting relationship between the director and the supervisors. The testimony of Director Fischer was that this change was a significant reason for the increased scope of the dispatch supervisors' responsibilities.

The supervisors counsel individual employees if performance problems arise, and have the authority to give verbal reprimands, written reprimands, or emergency suspensions, or to effectively

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<sup>3</sup> The rotations are for a two-year period.

<sup>4</sup> Discussions at those meetings cover operational issues that need either modification or resolution.



recommend these and other forms of discipline. The employer has a long-standing progressive discipline policy that calls for:

Any disciplinary action involving dismissal, demotion, or suspension shall be initiated only after recommendation of the immediate Supervisor, and the approval of the Director has been obtained.

The testimony and evidence presented at the hearing confirms that, since 1992, the supervisors have independently administered verbal warnings, written reprimands, and an emergency suspension.

The supervisors are responsible for preparing annual performance evaluations for the employees under their supervision. More frequent evaluations are prepared for probationary employees. The evaluations are presented and discussed with the employees by the supervisor. The director testified that her input in the evaluation process is generally limited to ensuring that proper supporting documentation is in place, and that she relies almost exclusively on the recommendations of the supervisors regarding evaluations, and that she rarely makes substantive changes.

The supervisors make independent decisions regarding sick leave and shift deviation requests (i.e., holiday, vacation, overtime, and compensatory time).

The supervisors are now expected to address and resolve grievances on their own level, independent of the director. The collective bargaining agreement between the employer and the former exclusive bargaining representative provided for the supervisors to adjust grievances at the first level, but testimony of the incumbents in the supervisor positions and of the director was that no formal grievances were filed under that contract. The absence of any history is not conclusive, however, inasmuch as that contract predated the reorganization on which the employer now relies.

Director Fischer testified that the employer's hiring process has evolved over the years. Currently, applicants are interviewed by a panel that includes both rank-and-file employees and supervisors. Each member of the interview panel completes forms on which the candidate is ranked in several general areas that address their suitability for employment. Each interviewer also marks whether the applicant "should be hired". These completed interview forms are reviewed by the director, who makes final hiring decisions. By virtue of the process that has developed over time, the recommendations of the supervisors are theoretically given the same weight as the recommendations of others on the interview team. Unlike some of the other areas of the supervisors' responsibilities, the locus of authority for hiring rests solely with the director.

The supervisors have the same general working hours as the bargaining unit members on their teams, and act in the capacity of dispatchers when needed. While the supervisors are ultimately responsible for their team members during their shifts, and are the highest-ranking employee on duty at least 60% of the time in this around-the-clock operation, their responsibilities since 1992 have expanded to also include functions that extend beyond daily shifts, including a greater role in recommending changes and modifications in policies and procedures of the center. They are expected to attend bi-weekly meetings with the director, to discuss policy matters and staff-related issues, and they have been included in a retreat with the director to review a number of budget, operation, and organizational issues. Call receivers and dispatchers in the bargaining unit are not involved in such meetings. The most that may occur is that a senior dispatcher may be the acting supervisor for a shift in the absence of the regular supervisor.

The union has characterized many of the functions described here as "ministerial", rather than supervisory. It claims that the center's standard operating procedures and policy guidelines, and the ultimate authority of the director to independently review

actions or recommendations by supervisors, do not leave room for the supervisors to make truly independent judgments. The director testified, however, that she relies heavily on supervisors' recommendations on disciplinary and discharge actions, as well as issues such as continued training, hires, and addressing complaints and inquiries from internal sources and the public. In a reasonable system of administrative checks and balances, it is logical for the upper-level administrator to ensure that subordinates are using fair and justifiable standards when making personnel decisions. The clarity and precision of the employer's policies and operating procedures, and the general administrative oversight of the organization's personnel functions vested in the director, are neither unusual nor an indication that the disputed individuals lack authority to exercise supervisory functions.

#### Desires of the Employees

Called as a witness by the union, bargaining unit employee Mark Schaffer testified that his discussions with members of the bargaining unit at union meetings and on an informal basis revealed a feeling among the employees that they desired to have the supervisors included in the bargaining unit.<sup>5</sup> Some of the supervisors gave testimony to the same effect. That testimony is not a basis for a ruling here, however.

The "desires of the employees" is one of the unit determination criteria listed in RCW 41.56.060, but testimony under oath is an inherently coercive and inappropriate method for ascertaining the desires of employees. Where the implementation of the other unit determination criteria result in a conclusion that two or more different unit configurations could be appropriate, the affected employees are permitted to express their views in a secret ballot

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<sup>5</sup> Schaffer is a senior dispatcher, and is currently the president of the union.

unit determination election. WAC 391-25-530(1). As noted in Clark County, Decision 290-A (PECB, 1977), however, there is no occasion to conduct any unit determination election on a choice that would be an inappropriate bargaining unit.

### Conclusions

The employer has established, by a preponderance of the evidence, that the supervisors have authority to act in the interest of the employer, or to effectively recommend action, in the areas of discipline, discharge, grievance adjustment, scheduling, transfers, evaluations, training, and the planning processes of the organization. Their continued inclusion in the bargaining unit would present the type of potential for conflicts of interest found inappropriate by the Commission in Richland, supra.

### FINDINGS OF FACT

1. Valley Communications Center, by virtue of participation by the cities of Renton, Kent, Auburn, Tukwila, Algona, Pacific, several public fire districts, and King County's paramedic service, is a public employer within the meaning of RCW 41.56.030(1).
2. Valley Communications Center Employee Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition for investigation of a question concerning representation involving certain employees of Valley Communications Center.
3. The Valley Communications Center Employee Association prevailed in a representation election conducted by the Commission and has previously received interim certification as

exclusive bargaining representative of the employees in an appropriate bargaining unit described as:

All full-time and regular part-time employees of Valley Communications Center, excluding supervisors and confidential employees as defined by RCW and PERC precedent.

The proceedings remained open for resolution of a dispute concerning the eligibility of five individuals for inclusion in that bargaining unit.

4. Prior to the issuance of the interim certification on August 9, 1993, the bargaining unit was represented for purposes of collective bargaining by Teamsters Local 763. The shift supervisors were included in the bargaining unit while it was represented by Local 763. The last collective bargaining agreement between the employer and Local 763 expired on December 31, 1991.
5. In 1992, the employer implemented a reorganization of its management structure that eliminated a deputy director position and changed the scope of responsibilities and duties of the supervisors.
6. The supervisors now directly supervise the call receivers and dispatchers working for the employer. They have authority to act in the interest of the employer, or to effectively recommend, action in the areas of discipline, discharge, grievance adjustment, scheduling, transfers, evaluations, and promotions.
7. The supervisors participate in the employer's planning processes, attend regular meetings with the director to discuss policy matters, budget, operation, and staff-related issues of the employer.

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. The individuals holding the positions of "training/operations supervisor", "shift supervisor", and "relief supervisor" at the Valley Communications Center have duties and authority which present a potential for conflicts of interest warranting their exclusion, under RCW 41.56.060, from the bargaining unit which includes their subordinates.

ORDER

1. The "training/operations supervisor", "shift supervisor", and "relief supervisor" are excluded from the bargaining unit involved in this proceeding.
2. The Interim Certification issued in this matter will stand as the final certification of representative in this case.

ISSUED at Olympia, Washington, this 9th day of June, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Hearing Officer

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-590.