

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON STATE COUNCIL OF) CASE 11276-E-94-1856
COUNTY AND CITY EMPLOYEES)
)
Involving certain employees of:) DECISION 4848-A - PECB
)
THURSTON COUNTY) ORDER DETERMINING
) ELIGIBILITY ISSUES
)
_____)

John Cole, Deputy Director, appeared on behalf of the union.

Cabot Dow, Management Consultant, appeared on behalf of the employer.

On August 11, 1994, the Washington State Council of County and City Employees (WSCCCE) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking to represent a bargaining unit of corrections officers employed by Thurston County. The Thurston County Sheriff's Association was granted intervention in the proceedings, based on its status at that time as the incumbent exclusive bargaining representative of the petitioned-for employees. A telephonic prehearing conference was conducted with the employer and both employee organizations on August 29, 1994, at which no disputed issues were identified.¹ The WSCCCE prevailed in a representation election conducted by mail ballot,² and the WSCCCE was certified as exclusive bargaining representative for a bargaining unit described as:

¹ The case file does not indicate that any discussion of the "master control operators" occurred during the course of that prehearing conference.

² The master control operators were not eligible voters in that representation election.

All full-time and regular part-time corrections officers of corrections bureau of sheriff's department for Thurston County, excluding supervisors, confidentials and all other employees.

The certification was issued on September 29, 1994, and the case was closed as of that date.

This case was reopened on October 27, 1994, in light of two unit clarification petitions which had previously framed an issue concerning the bargaining unit placement of the master control operators.³ In a letter to the parties, the Executive Director noted that any issues concerning the bargaining unit of corrections personnel should have been resolved in the representation proceeding, and that the absence of any resolution concerning the unit placement of the master control operators left open the possibility that an inappropriate unit had been certified.

A hearing was held on January 13 and 24, 1995, before Hearing Officer Martha M. Nicoloff, for the sole purpose of taking evidence regarding the unit placement of the master control operators. Although it was consulted in setting the initial hearing date and

³ The unit clarification petitions had been filed by the Thurston County Sheriff's Association in February of 1994, in response to legislation making interest arbitration available for certain corrections personnel. Chapter 397, Laws of 1993, had taken effect on July 25, 1993.

* Case 10960-C-94-656 had requested separation of the bargaining unit of employees eligible for interest arbitration (including the master control operators) from a historical unit that encompassed corrections and administrative support personnel;

* Case 10961-C-94-657 approached the same issue from a different direction, by seeking removal of the master control operators and corrections personnel from the historical bargaining unit.

Processing of the unit clarification petitions had been delayed because of a backlog of cases pending before the Commission at that time.

was served with notice of hearing, the Thurston County Sheriff's Association informed the Hearing Officer prior to the hearing that it had decided not to participate in the hearing process, and it did not do so. The employer and the WSCCCE filed post-hearing briefs on March 24, 1995.

BACKGROUND

Thurston County has a population of approximately 192,600. Its law enforcement functions are headed by an elected sheriff, Gary Edwards. Undersheriff Neil McClanahan, who is appointed by the sheriff, functions as the executive manager of the department. The department is organized into four bureaus: Operations, services, administrative, and corrections. Chief Deputy Karen Daniels heads the corrections bureau, which is authorized to employ 68.5 positions. Reporting directly to Daniels are supervisors who head the operations and program administration sections of the corrections bureau. The operations function includes corrections officers, reserve officers and court officers. The program administration area includes inmate services, work release (staffed by corrections officers), information systems, food services, contract services (providing medical, mental health, educational, and anger management services to inmates), and the master control operators. At the time of hearing, the employer had 47 corrections officers and 6 master control operators.

The Thurston County jail facility has several inmate housing units which are staffed by corrections officers:

- * "Boyd", "Lincoln", "Nora" - trustees and kitchen workers;
- * "Charlie" - maximum security administrative segregation;
- * "David", "Edward", "John" - general inmate housing;
- * "Frank" - minimum security;
- * "George" - female inmates; and
- * "Henry" - maximum security lockdown disciplinary unit.

An area for intake of prisoners contains three general holding cells, a cell for prisoners yet to be processed, and a special cell for prisoners who are under observation for disciplinary reasons or suicide watch. In addition, the jail facility houses a number of administrative and office areas; kitchen, laundry, classroom, and program areas; and the master control center.⁴

The Corrections Officers

The primary function of corrections officers is to deal directly with the inmate population. They are commissioned personnel who have the power of arrest, and they carry firearms when leaving the jail facility. Most corrections officers wear a uniform to work, although the corrections officers assigned to the work release program normally wear "civilian" clothing on the job. The class specification developed by the Thurston County civil service commission for corrections officer includes:

DEFINITION: Performs work under supervision in the Thurston County Jail that involves booking, custody and release of inmates in accordance with law enforcement rules and regulations.

DISTINGUISHING CHARACTERISTICS: Employees perform inmate care and custody duties while maintaining jail security.

TYPICAL WORK: Receives, searches, books, fingerprints, and photographs incoming prisoners. Issues jail uniforms, records and stores personal effects, and houses inmates by appropriate classification.

Maintains jail security by observation of inmates, pat searches, strip searches, and cell searches. Maintains orderly conduct and discipline. ...

Prepares and delivers prisoners to court, doctors' offices, hospitals, and other loca-

⁴ The Hearing Officer and representatives of the employer and WSCCCE were provided a tour of the facility.

tions. Transfers prisoners to and from jail and court. ...

Monitors video and audio surveillance equipment and other job-related equipment. ...

Responds to and assists with major or minor disturbances, medical crisis situations, escapes, fire, and other natural disasters.
...

The application process for corrections officers includes tests of physical ability. The corrections bureau has developed additional descriptions for its classifications which characterize "essential job functions" for corrections officers as including physical, communication, reading, and analytical requirements. That list notes that corrections officers must be able to perform all of the essential functions of master control operator.

At the outset of their employment, corrections officers are required to attend a four-week corrections officer training program at the Washington State Criminal Justice Training Academy. When they return from the academy, they undergo an on-the-job training program which exposes them to every function of the corrections program before they are assigned to a particular post on one of the three daily shifts. They must re-qualify on a quarterly basis to use firearms, and must also attend annual training which includes such topics as first aid and "hands-on" defensive tactics. Testimony indicated corrections officers are trained in the master control functions by master control operators.

The Master Control Operators

Creation of the master control operator role came about as a result of the construction of a new courthouse complex in 1978. The jail facility in that complex was equipped with some 27 video cameras, as well as audio surveillance devices, which can be monitored from one "master control center". That workstation is staffed 24 hours a day, 7 days a week. If it becomes necessary for assigned

personnel to leave that station, someone must relieve them so that the center is never unstaffed.

A classification titled "technical assistant I" was created in 1981, to staff the monitoring function. That job classification was changed to "technical assistant II" in 1982, and then evolved to become the "master control operator" in 1986. Undersheriff McClanahan testified that this role came about because the employer believed corrections officers could be better utilized dealing directly with the inmate population, "... not sitting monitoring cameras and stuff."

Master control operators are non-commissioned employees who have no powers of arrest. They generally wear civilian clothing when on duty. A job announcement for the master control operator classification includes the following:

MINIMUM QUALIFICATIONS: High School diploma or G.E.D. certificate. Must be a citizen of the United States who can read and write the English language as required by RCW 41.14.100. Must type 35 wpm. ...

Applicants for master control operator positions undergo a polygraph examination, psychological testing, record check, and background check, but there are no physical ability tests.

Training for master control operators is on-the-job, primarily provided by senior operators and focused on the specific duties of their classification. The employer does not require their attendance at the training provided by the state Criminal Justice Training Commission for corrections personnel, although some master control operators have attended the one-week support staff training program offered by that agency. They are required to take much of the same annual training required of corrections officers, with the exception of training in defensive tactics and use of firearms.

The master control operators never carry or use firearms in the course of their duties, and are not trained for or expected to intervene physically in situations involving inmates.

Through the use of the video cameras and audio equipment, the master control operators observe the movement and activities of persons within the jail facility. They control such movement, as well as ingress and egress to the facility, by electronically opening doors from their workstation. Although office staff may allow visitors into non-secured areas of the jail, they must ask the master control operators to open doors which allow access to the secured areas of the facility. Master control operators may ask corrections officers to personally verify the identity of an individual before admitting them, and have authority to deny access to the facility if adequate identification is not provided. The master control operators are responsible for recording and controlling the use of keys for all parts of the facility. While the master control operators are subordinate to the program administrator on the organization chart, testimony indicated they generally answer to shift supervisors who are corrections lieutenants.

The master control operators monitor movement and activities around the perimeter of the jail facility, including inmates working in that area and returning work-release inmates. Janelle Daurelio, a master control operator, testified that she lets work release and inmate workers in and out of the facility all day long, and must make sure that they carry no weapons or tobacco when they return to the facility. She noted,

That's very tricky. I just -- I have to ask questions and I listen to how they answer, and make them lock it in their locker or whatever they need to lock in there before they go downstairs. And if I think that there is something that might not be right, I will alert the officer downstairs.

They may also deny access, if they believe an officer with an inmate in custody has not performed an adequate "patdown" search of the inmate. Daurelio testified:

A I monitor everything. I make sure the officer closes his weapon in a gun locker or in his trunk or whatever. I watch them take the prisoner out of their car, uncuff them, and watch them do a patdown. If the patdown is not proper, in my opinion, I'll ask them to do it again.

Q Have you done that before?

A Oh, yes. ... I can't let anybody in the facility if I don't think that they have had a proper search. ... I would make sure that the officer did a proper patdown. I watch for it if somebody is drunk or disorderly.

In fact, just last week I was watching a female bring another female prisoner in. And I was listening and she was getting very mouthy and I was watching her body language, and I sent another officer out. I wasn't asked, I just -- I am supposed to anticipate, you know, before the fact, that something is going to happen.

Photos of inmates who do not have outside clearance are posted at the master control station, and an operator may alert a corrections officer or a civilian employee when an inmate does not have clearance to leave the facility. Master control operators may stop movement through the facility for a period of time, if circumstances warrant. In conjunction with corrections officers, master control operators conduct regular counts of all inmates leaving and returning to the facility. Listening devices permit master control operators to monitor the passage of inmates moving to court.

The master control operators monitor for fires or other emergencies, and assist in the evacuation of civilians and inmates in such a case. The master control operator is among the last to leave the facility in the event of an evacuation.

In the event of an altercation involving an inmate, the master control operator assesses the situation and alerts corrections officers to the problem. They also write reports concerning any altercations or incidents which they have witnessed. While master control operators do not have supervisory authority to "assign" corrections officers to tasks, they do assess whether more corrections officers are needed or whether particular areas are being left unsecured while officers respond to an altercation in another area. Daurelio testified, further:

Q Let me ask you about calling for correction officers. If there was a scuffle, how many correction officers would come to that scuffle? Do you determine that?

A I could say that we have enough there, or I could say we need one officer to respond to the sallyport, or we need a couple of people, yes. ...

Q When you have officers responding to a confrontation or a scuffle, you indicated that you review the other portions of the facility to see that they are appropriately supervised. ... What does that involve?

A If we have everyone leave the general population area, we don't have security in the back of the facility. We need the facility still to be staffed at all times in order to have a secure area. ... Sometimes during those situations the officers forget, you know, they're responding to an emergency and they forget that they need to stay where they are ... and I would tell them, "You only have one other person back there," or "That would leave no people back there, you need to stay back there."

The class specification for master control operator includes:

DEFINITION: Operates the master control center by performing all security functions in the Thurston County Jail. Performs clerical duties as assigned.

DISTINGUISHING FEATURES: Once trained, performs work under limited supervision. Responsible for traffic flow in the jail of staff, inmates, and visitors, including arrivals and departures, while providing visual and audio support to staff. Must react quickly and appropriately, especially in emergency situations.

TYPICAL DUTIES AND RESPONSIBILITIES: Operates perimeter doors from control console, appropriate with established procedures. Maintains security of jail facility, confirming doors are secure at all times. Limits law enforcement, public, and criminal justice access to the facility. Provides supervision to adjacent areas as the physical plant allows. Provides door security back-up.

Operates audio communications system, including hand-held radio, intercom, and telephone.

Operates video monitoring system through the use of multiple television cameras and monitoring screens. ...

Maintains records or logs of each person entering or leaving the facility; monitor via television cameras the movements of any person entering or leaving the facility; monitor and log the movements of individuals leaving or entering the work release facility by asking appropriate questions and directing them correctly.

Receives and logs information about individuals housed in all cells in the jail and work release facility, assuring accuracy of information and relaying it appropriately at shift-change time.

Assigns keys to all staff in the jail facility and accounts for the return of these keys. ...

Among 20 required duties and abilities listed in the department's "essential job functions" for master control operator are: Visually and verbally accounting for prisoner whereabouts, ensuring adequate patdown searches are conducted, ensuring that no weapons enter the facility, controlling all entries into the facility, and accounting for all keys. That list also notes the need for a master control operator to be able to monitor inmates, officers,

and others for any sign of a threat to the facility, to handle more than one activity at a time, and to act swiftly and calmly when confronted with an emergency.

Corrections officers may fill in for master control operators, but master control operators do not normally fill in for corrections officers.⁵

Other Corrections Bureau Staff

The corrections bureau workforce also includes employees classified as corrections staff assistant (performing administrative and technical support services such as compilation of data, composing correspondence, developing procedures, and computer hardware and software planning); technical specialist II - corrections (serving as office manager, performing office and budget support work); food services specialist (assisting in kitchen and supervising inmates in food service activities); and food services supervisor (supervising the kitchen, including supervising inmates and staff, food preparation, budget and cost controls, and sanitation).

POSITIONS OF THE PARTIES

The union notes that all witnesses called by the employer and union in this proceeding testified that the most important responsibility of the master control operators is ensuring the safety of the facility and all of its inhabitants. It argues that the master control operators have authority and responsibility for controlling movement and monitoring behavior of all persons within the jail facility, and that the master control operators perform all

⁵ Testimony indicated that master control operators have assisted corrections officers in the booking and release of inmates, but only when more than one master control operator was on duty and time permitted.

security functions within the jail. The union asserts that the master control operators perform "custody" and "control" functions, and that they therefore meet the statutory definition of employees for whom interest arbitration is available.

The employer argues that the master control operators do not exercise control and custody over inmates within the meaning of the 1993 legislation. It notes that the master control operators are not subject to the rigorous training program mandated for corrections officers, and that they are not expected to use restraints, handcuffs, or firearms. The employer asserts that the master control operators work primarily in support of corrections officers, by controlling ingress and egress to the jail facility, and by monitoring situations within the jail and the immediate surrounding area, rather than by being in direct contact with inmates. It characterizes the security functions of the master control operators as "monitoring" rather than "custody", and asserts that master control operators do not meet the statutory definition. The employer believes the master control operators should properly remain within the administrative support unit.

DISCUSSION

The Legal Standard

Commission precedent has required that bargaining units of employees eligible for interest arbitration not include employees who lack such eligibility. Thurston County Fire District 9, Decision 461 (PECB, 1978); City of Yakima, Decision 837 (PECB, 1980); Kitsap County, Decisions 1970, 1971, and 1972 (PECB, 1984).

In 1993, the Legislature amended the definition of "uniformed personnel" in Chapter 41.56 RCW to include certain employees of

county correctional facilities.⁶ RCW 41.56.030(7)(c) defines the included employees as follows:

... correctional employees who are uniformed and non-uniformed, commissioned and non-commissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates ...

The legislation provided has set off a round of unit clarification cases to determine the appropriate bargaining unit configurations under the changed circumstances. The question raised here is whether the master control operators qualify as "uniformed personnel" under RCW 41.56.030(7)(c).

As noted in both Pierce County, supra, and Spokane County, Decisions 5019 and 5020 (PECB, 1995), evidence as to the wearing of uniforms or the power of arrest is irrelevant to a decision in this matter, given the terms of the statutory definition of eligible correctional employees. Spokane County broke down the statutory definition into five elements used in the conjunctive, so that all five tests must be met for classifications of personnel to qualify for interest arbitration:

They must be first:

... correctional employees who are uniformed and non-uniformed, commissioned and non-commissioned security personnel

and second:

employed in a jail as defined in RCW 70.48.020,

⁶ The history of that legislation, as well as of the interest arbitration process in Chapter 41.56 RCW, detailed in Pierce County, Decision 4788 (PECB, 1994), is incorporated by reference here.

and third:

by a county with a **population of seventy thousand** or more,

and fourth:

and who are **trained for ... controlling and maintaining custody of inmates**

and fifth:

charged with the **responsibility of controlling and maintaining custody of inmates** in the jail and safeguarding inmates from other inmates.

The master control operators in Thurston County clearly meet the second and third of those criteria, by the simple fact of being employed in the Thurston County corrections facility. The focus of inquiry regarding their unit placement rests on the "security", "training" and "responsibility" aspects of their duties.

"Security" Personnel

With respect to whether the master control operators are "security" personnel, McClanahan testified under cross-examination:

Q [The class specification for master control operator] ... indicates that the master control center operators perform all the security functions of the jail. Is that a true statement?

A With regard to the master control center, yes, it would be. It would be accurate.

Q And what are those security functions in your estimation?

A They monitor the entire operation, who comes in, who leaves. They have cameras that scan the outside perimeter, the inside hallways, the door areas. They monitor the movement of inmates and corrections officers and other people as they come in to the facility, and as to any problems that may exist.

Daniels essentially concurred with that assessment in her testimony under cross-examination:

Q Turning to Exhibit 6 [master control operator class specification] ... to paraphrase it, the master control center and the operators that work in it perform all security functions in the Thurston County jail. Is that a true statement?

A ..., yes.

Q Will you define "security functions" in that framework?

A Master control operators are responsible for the security of the facility. They monitor all our doors, intercoms, cameras -- provide information to staff. They have the protection of, not only inmates, but staff, public, visitors, attorneys ... whoever is in the facility.

Since the employer's own witnesses so testified, it would appear the employer would not seriously dispute that the master control operators also meet the first of the statutory criteria.

Training

In Pierce County, supra, all of the disputed jail employees were required to attend the one-week basic training course offered at the state Criminal Justice Training Academy, but none of those positions (physician's assistant, pharmacist, medical administrative assistant, education services coordinator, and cook) were found to meet the training component of the statutory definition. A clear distinction was drawn between the one-week course and the four-week course required under state law for corrections officers. The cooks at issue in Spokane County, supra, were similarly excluded from the definition of "uniformed personnel", based on the fact that they only attended the one-week academy, went through an in-house training program conducted by the employer, and were not

required to be trained in the application of restraints or self-defense procedures.⁷

In this proceeding, the record indicates that the employer does not require its master control operators to attend the one-week course provided by the state Criminal Justice Training Commission. Instead, it only provides them with in-house training by a senior operator on the master control functions. The master control operators are not trained with respect to restraints, firearms, or self-defense procedures.

While the corrections officers are cross-trained in the master control function, it is clear that the master control personnel are not trained to perform the duties of corrections officers. It cannot be concluded that the master control operators are "trained for" control and custody of the inmate population in the sense required by the statute.

Inmate Custody and Control

McClanahan testified as to his view of the difference between corrections officers and master control operators with respect to the custody and control of inmates:

Well, the corrections officers are -- their job is to deal with, one-on-one, with the population inside the corrections facility and everything involved with that; the care, custody, feeding, medical, transportation, court; everything it involves with having that 24 hour operation in existence.

The master control operators assist the corrections officers by their monitoring of the safety of the corrections officers on

⁷ The record in Spokane County reflected that some of the cooks employed in that jail had voluntarily obtained such training, but it was not a requirement of the cook position.

cameras, and as the corrections officers move people or move through the facility, the master control operators open doors.

And a lot of times they are the eyes and ears of what's going on, but they do not supervise or work with the inmates.

Daniels testified to a continuum of functions:

In terms of the function of master control for security and monitoring, you have monitoring off on one side, you have security, kind of a gray area now, and you have custody on the other side.

So in terms of a continuum, custody is really the essence of supervision of inmates, whether they are maximum security, medium security or minimum security.

Security, in the middle of that, you think of a security officer that is patrolling the mall, or you think maybe of the general public's idea of the security cop, the retired policeman or the person that couldn't pass the application process for police officer.

On the other side you have a monitoring process and that monitoring process is simply observing and monitoring. So it's kind of a continuum.

And the security can be everything very, very close to custody, or very, very close to the monitoring, and depending on how much responsibility that individual is given or delegated, can run the whole realm in between custody and monitoring.

The analysis in Spokane County, supra, is instructive with respect to the status of the master control operators in Thurston County:

Where corrections officers work with the general jail population throughout the facility, the cooks work in a physically separate area and have no occasion to enter the housing areas of the jail.

The cooks only train and supervise inmates that have been pre-selected by corrections

officers, without apparent involvement by the cooks in the selection process.

The cooks perform pat-down searches of inmate workers when they are preparing to return to the housing area of the jail at the end of their shift, but that could be done by corrections officers at the other end of the inmates' elevator ride.

The cooks are not issued handcuffs or leg irons used by the corrections officers.

While cooks escort inmate workers during trips to a warehouse outside of the secured perimeter of the facility, they are unarmed when doing so and the inmates who are permitted to go outside the jail are an even more select group than the overall list of kitchen workers.

While the Thurston County master control operators perform an important security function, it is clear from the record that they are engaged in quite a different level of custody and control than the corrections officers. The master control operators conduct monitor/dispatch functions in a separate enclosed area within the jail. They do not come into physical contact with inmates as a regular part of their job. They alert corrections officers to possible problems, but never undertake the same sort of custody and control role that is required of corrections officers. The master control operators do not meet the requirements to qualify as "corrections personnel" under RCW 41.56.030(7)(c).

FINDINGS OF FACT

1. Thurston County is a political subdivision of the state of Washington with a population in excess of 70,000, and is a public employer under RCW 41.56.020. Among other services, the employer operates the Thurston County Jail, which is a jail as defined in RCW 70.48.020(5).

2. The Washington State Council of County and City Employees (WSCCCE), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of corrections employees of Thurston County who are "uniformed personnel" under RCW 41.56.030(7).
3. Master control operators employed in the Thurston County Jail are responsible for maintaining security of the jail facility through the use of video and audio monitoring equipment. They control ingress to, movement within, and egress from the facility by the use of electronic locking devices on facility doors, as well as by the control of keys to the facility.
4. Master control operators employed in the Thurston County Jail are not required to undergo training provided by the state Criminal Justice Training Commission. They are not trained in the use of firearms, restraints, or self-defense techniques. The training of master control operators is provided in-house, by senior operators, and primarily relates to the monitoring functions of that workstation.
5. Master control operators employed in the Thurston County Jail are not expected or required to be in physical contact with jail inmates in the course of their job duties.

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. Master control operators employed in the Thurston County Jail are not correctional employees trained for or charged with the responsibility for maintaining custody of inmates in the jail

and safeguarding inmates from other inmates, and so are not within the definition of "uniformed personnel" in RCW 41.56-.030(7) as amended by Chapter 379, Laws of 1993.

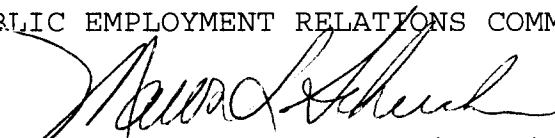
3. The bargaining unit for which the Washington State Council of County and City Employees was certified as exclusive bargaining representative in this proceeding continues to be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

ORDER

The certification of the Washington State Council of County and City Employees as exclusive bargaining representative will stand as originally issued in this matter.

Issued at Olympia, Washington, on the 21th day of July, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.