

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
ADAMS COUNTY SHERIFF'S EMPLOYEES) CASE 13285-E-97-2213
ASSOCIATION)
)
Involving certain employees of:) DECISION 6005-B - PECB
)
ADAMS COUNTY) ORDER DETERMINING
) ELIGIBILITY ISSUES
)
_____)

Cline & Emmal, by Alex J. Skalbania, Attorney at Law,
appeared on behalf of the petitioner.

Menke, Jackson, Beyer, and Elofson, by Rocky L. Jackson,
Attorney at Law, appeared on behalf of the employer.

On July 3, 1997, the Adams County Sheriff's Employees Association (union) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of Adams County (employer). The showing of interest filed in support of the petition was administratively determined to be sufficient, and an investigation conference was conducted by telephone conference call. The union had originally sought to represent approximately 23 employees in the employer's sheriff's department, including deputies, sergeants, jail employees, dispatchers, and clerical employees, but modified its request to seek only law enforcement officers eligible for interest arbitration under RCW 41.56.430 et seq. Set aside for determination after the question concerning representation was an issue concerning whether three persons holding the title of "sergeant"

should be excluded from the unit as supervisors. A cross-check was conducted, pursuant to WAC 391-25-410, in a bargaining unit described as:

All full-time and regular part-time uniformed personnel of the Adams County Sheriff's Department, excluding supervisors, confidential employees and all other employees.

A tally issued on August 5, 1997, indicated that the union had the support of the majority of the employees in that bargaining unit, and an interim certification was issued naming the union as exclusive bargaining representative of that unit.¹ Hearing Officer J. Martin Smith held an evidentiary hearing on January 22, 1998, concerning the disputed sergeants. The parties filed post-hearing briefs to complete the record. Authority to determine these "eligibility" issues has been delegated by the Executive Director to the Hearing Officer under WAC 391-25-390.

BACKGROUND

Adams County has a population of approximately 15,800 persons and a total land area of 1,925 square miles.² Ritzville, the county seat, is the second-largest town in the county, and had a population of 1,745 in 1995. The largest town in the county is Othello, which had a population of 5,240 in 1995.³ The county is predomi-

¹ Adams County, Decision 6005-A (PECB, August 19, 1997).

² Washington State Data Book, 1997. Published by the Office of Financial Management.

³ 1996-1997 Directory of Washington City & Town Officials.

nantly of a rural character, with agriculture as the primary industry.

POSITIONS OF THE PARTIES

The union argues that, although the sergeants at issue in this case have some responsibility for evaluations, discipline, scheduling and in the investigation of alleged wrongdoing by deputy sheriffs, they are functioning as "lead workers" or "working foremen" and are not independent supervisors. It asserts that the sergeants and the deputy sheriffs have a community of interest, and should be placed in the same bargaining unit for collective bargaining.

The employer asserts that both the employer's written policies and job descriptions for the sergeants identify responsibilities which are supervisory in nature. It argues that placing sergeants into a bargaining unit with the deputies would create a conflict of interest between the two groups of employees, and would not further the interests of either group.

DISCUSSION

Appropriate Bargaining Unit

The Legislature has delegated authority to the Public Employment Relations Commission to determine appropriate units for the purposes of collective bargaining:

RCW 41.56.060. DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The

commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives, the extent of organization among the public employees, and the desire of the public employees. ...

The Commission has described the unit determination function in the following fashion:

[T]he purpose [of unit determination] is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. The statute does not require determination of the "most" appropriate bargaining unit. It is only necessary that the petitioned-for unit be an appropriate unit. 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.

City of Winslow, Decision 3520-A (PECB, 1990), citing City of Pasco, Decision 2636-B (PECB, 1987).

In City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), the Commission stated the principle that the unit determination authority conferred by RCW 41.56.060 will be exercised to exclude supervisors from bargaining units containing their subordinates, in order to avoid a potential for conflicts of interest which would otherwise arise, and to recognize the

fundamentally different communities of interest between supervisors and their subordinates. That precedent and principle have been reiterated in numerous subsequent decisions in a variety of industrial settings. See, for example, Seattle School District, Decision 2830-A (PECB, 1988).

Status as "Supervisors"

While supervisors are excluded from the coverage and rights of the National Labor Relations Act (NLRA), supervisors have bargaining rights under Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), citing Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947).⁴

The Educational Employment Relations Act (EERA), Chapter 41.59 RCW, contains a generally similar definition of "supervisor", at RCW 41.59.020(4)(d), and the Commission has used that definition in implementing unit determinations in City of Richland, supra. In Yakima County, Decision 4672 (PECB, 1994), it was stated:

In evaluating a claim of supervisory status, the scope of the disputed individual's employment relationships with other employees is taken into consideration. Factors such as hiring, discharge, evaluation, the approval of leave requests, and the authority to recommend actions affecting subordinate employees are pivotal in assessing the existence of supervisory status.

⁴ See, also, City of Tacoma, Decision 95-A (PECB, 1977), which is the case and reasoning cited in the Commission referred to in a footnote to the Supreme Court decision.

And, in Franklin County, Decision 5192, 5193 (PECB, 1995), in a statement more directly related to public safety bargaining units, it was stated:

Clearly, the mere existence of a paramilitary structure of the type found in this and other public safety organizations does not warrant a conclusion that all persons holding rank titles are supervisors.

The task before the Hearing Officer in this case is, therefore, to apply well-established principles.

Application of Standards

The Adams County Sheriff's Department is headed by an elected sheriff and an appointed undersheriff who are excluded from this bargaining unit by stipulation of the parties. The department operates two offices, and effectively splits its workforce between them. "District 1" is staffed with five deputies working out of Ritzville, and is the Sheriff's primary office. "District 2" is staffed with six deputies working out of Othello, and is the primary office of the undersheriff. One additional deputy is assigned to work in an investigative unit.

There are three sergeants in the department. One sergeant is assigned to each of the two districts, and they are responsible for the basic patrol functions in their assigned district. The third sergeant is assigned to the investigative unit, but also provides relief to the other two sergeants. The job description of the sergeants are as follows:

MAJOR FUNCTION AND PURPOSE

This position is responsible for providing mid-management supervision for patrol and reserve personnel and for providing first line law enforcement coverage for the citizens of the county through patrol and investigations. Provides input to administration and acts in that capacity during their absence.

SUPERVISION RECEIVED

This position is given significant discretion within the scope of policy and regulations in the routine performance of their duties. Supervision and guidance are received from the Sheriff and the Undersheriff.

SUPERVISION EXERCISED

This position normally supervises Road Deputies and Reserve Deputies.

Person in this position has the authority to authorize vacations and to issue warnings.

SPECIFIC DUTIES AND RESPONSIBILITIES

Supervises employees by **performance evaluation, scheduling, approving time sheets, overtime and leave requests. Reviews and resolves employee conflicts.**

Conducts major investigations relating to criminal activities such as child abuse, sexual assault, assault, homicide, fraud, narcotics and counterfeiting.

Performs criminal investigations by collecting evidence and data for cases. Interviews people to gain information for cases and has contact with confidential informants. Writes reports to aid in investigations.

May control narcotic operations and related drug funds.

Attends advanced criminal training in such categories as homicide, child and sexual abuse seminars.

Must stay current with changes in law and investigative techniques.

REQUIRED KNOWLEDGE AND ABILITY

Ability to operate a patrol vehicle, pistol, rifle, radio, radar, radiation detector and forensic scientific instruments.

Ability to perform First Aid and CPR.

Ability to make immediate decision in life threatening situations and arrests.

Knowledge of Federal, State and County Laws. Must have the ability to read, comprehend and related case reports.

Employee is regularly required to sit and reach with hands or arms, talk and/or hear and use hand and finger dexterity. Employee is required to stand, walk, climb or balance, stoop, kneel, crouch or crawl and taste and smell.

Employee must be in good health and good physical condition appropriate to the position.

Must be able to utilize communications equipment necessary to perform required duties.

Ability to use a typewriter, computer terminal, calculator and other office equipment standard to area of assignment and to adapt to new and/or modified equipment which may be required.

Successful supervisory and law enforcement experience is preferred. Implements and maintains sound organization practices.

Maintains a high standard for accuracy, completeness and efficiency in the preparation of reports. Independent and self-motivated to complete required deadlines while simultaneously completing other tasks.

Must be able to maintain work and attendance reliability.

MINIMUM QUALIFICATIONS

High school diploma or GED equivalent. Three years experience as a commissioned deputy with the Sheriff's Office which requires attending and obtaining a degree from the Washington

state Criminal Justice Training Commission Basic Law Enforcement Academy and **obtain a Washington State Criminal Justice Training Commission First Level Supervision Certificate within one year of becoming Sergeant.**

Possession of a Washington State Driver's License, BAC Verifier Certificate, Doppler Radar Certificate, First Aid and DPR cards.

Ability to successfully complete various required training classes and obtain certificates necessary for functional skills performance, maintenance and improvement.

DESIRABLE QUALIFICATIONS AND ABILITIES

Ability to show patience and persuasion to violent or agitated persons.

Ability to establish trust with employees, drug informants and citizens.

Familiarity with tools, instruments, equipment and techniques commonly used in the performance of investigative tasks.

Ability to quickly grasp new techniques, deal with rapid changes in events and remain calm in stressful situation.

Understands the need for maintaining confidentiality of sensitive information.

Effectively communicates with others, both in writing and orally.

Assures efficient and effective utilization of reserves and department personnel, funds, materials, facilities and time.

WORK ENVIRONMENT

Work is normally performed both indoors and outside driving a patrol vehicle and performing services of the Sheriff's Office. Personal safety is of concern due to the nature of the work and possible contact with the public having infectious diseases.

[Emphasis by **bold** supplied]

In addition, the employer's personnel manual identifies further responsibilities of the sergeants in regard to the ability to administer discipline.

Authority to Administer Discipline **D-02**

Supervisors: Any employee holding or acting in supervisory rank recognized by Civil Service or within the department's chain of command is empowered to issue discipline in the form of counseling, both internal (to be conducted by a supervisor) or external (professional counseling), warning, reprimand and emergency suspension. **Whenever possible, supervisory action in the form of counseling, warning, reprimand and emergency suspension is limited in that disciplinary action will occur only by the employee's direct supervisor.** In those cases where disciplinary action is invoked by a supervisor or other supervisor other than by the supervisor directly responsible for the employee at the time the sanctioned conduct occurred and the direct supervisor will be informed that disciplinary action has occurred.

Sheriff: The Sheriff is empowered to impose any form of discipline set forth in the manual for the Adams County Sheriff's Office and/or the Adams County Sheriff's office Civil Service Rules and Regulations.

[Emphasis by **bold** supplied]

From the evidence and documentation presented on the work performed by the sergeants, it is clear that, although they perform some classic "supervisory" functions such as resolving conflicts, scheduling overtime, evaluating, and being involved in the initial steps in the disciplinary process of road deputies; they are not charged with the kind of responsibilities which would justify excluding them from the road deputies' bargaining unit. The job

duties of the sergeants are typical "lead" worker responsibilities and relate more to the fact of their working side-by-side with the deputies than because they are a part of a "management team".

Hiring and Discharge of Subordinates -

We find that no instance has been shown here where the Adams County sergeants were involved in hiring or discharge decisions in this bargaining unit. In testimony and 41 exhibits, the employer has not shown any instance since 1992 where hiring or discharge occurred with the sergeants actually making such decisions. It was also very clear, both from the testimony of Undersheriff Weise and from the department manual, that the final decision on hiring and important disciplinary matters and discharging of deputy sheriffs remains with the sheriff.

Day-To-Day Oversight -

The sergeants evaluate, schedule, and provide first-line counseling, because they have frequent or daily contact with the deputies. Their job assignment reflects the most practical way for those specific functions to be carried out - having the experienced employees on the work site provide the direction and feedback necessary for the department to function on a day-to-day basis.

Even the job description developed by the department management for the sergeants reflects "lead worker" responsibilities, rather than truly supervisory responsibilities which would warrant their exclusion from the bargaining unit:⁵

⁵ There was some controversy at the hearing concerning whether the employees had ever seen the sergeant job description. However, there was no testimony that the document does not accurately reflect the duties and requirements of the position.

- Of six paragraphs under the SPECIFIC DUTIES AND RESPONSIBILITIES heading, only the first paragraph in that section even uses the word "supervises". That paragraph then actually mentions only evaluating, scheduling and performance reviews. The remaining five paragraphs outline duties which can easily be viewed as responsibilities of all deputies.⁶
- Out of 11 items listed under REQUIRED KNOWLEDGE AND ABILITY, only one refers to "supervisory experience". The remaining 10 are all requirements which could reasonably be viewed as typical of a rank-and-file deputy.

Undersheriff Joe Weise testified that all of the sergeants spend time doing patrol duties, so the sergeants share basic responsibilities (which constitute the bargaining unit of the newly-certified unit) with the deputies. Even if they do not perform those functions frequently, or on a regularly-scheduled bases, they do perform bargaining unit work and therefore do share a community of interest with the members of the rank and file bargaining unit.

Because of the size of the county and the relatively small number of deputies available to patrol a rural county with a scattered

⁶ The job description for the deputies was not put in evidence, so that direct comparisons are impossible. The "performs major investigations" functions is clearly not limited to the sergeants, because Sergeant Satchwell testified that the deputy assigned to investigations (who is stipulated to be a member of the rank-and-file bargaining unit) performs similar duties. Satchwell testified that he and the deputy assigned to investigations divide their work on a functional basis, rather than a supervisor-subordinate basis. Satchwell stated that his expertise was in crime scenes, photography, and latent fingerprint examinations, while Deputy Taylor has expertise in child abuse and interviewing.

population, the sheriff has assigned sergeants the role of a lead worker. That assignment however, does not create a different community of interest and does not justify the exclusion of sergeants from the rank and file bargaining unit. Even with their "lead worker" responsibilities, however, the sergeants share a community of interest with the rank-and-file bargaining unit.⁷

A conclusion that the "lead" responsibilities of the sergeants do not warrant their being placed in a separate bargaining unit is consistent with the result reached in City of Redmond, Decision 2269-B (PECB, 1986). The actions of the sergeants there were subject to independent review by superior officers and therefore were not judged to place the sergeants in a position of potential conflict of interest. See, also, King County Fire District 16, Decision 2279 (1986) [fire department lieutenants not excluded as supervisors]; and State of Washington (Washington State Patrol), Decision 2806-B (PECB, 1988) [state patrol sergeants not excluded as supervisors].⁸

⁷ Sergeant Satchwell also testified that both he and the deputy assigned to investigations take calls for the patrol districts, if they are tied up or short of personnel. Satchwell testified that he and the deputy that he works with divide the investigations work on a functional basis rather than a "supervisor-supervised" basis. Satchwell stated that his expertise was concerned with crime scenes, photography and latent print examinations. Investigations Deputy Taylor has an expertise in child abuse and interviewing.

⁸ We note the employer spent several paragraphs comparing this case to the Washington State Patrol case. If anything, the employer in that case was able to show more immediate involvement of their sergeants in evaluating subordinates for promotional opportunities than exist at Adams County. See, union's brief at page 5.

In summation, it is worth re-iterating that lead workers are not to be barred from bargaining units on the grounds that they do not share a community of interest. We find that the record here establishes sergeants as "lead" deputies, who serve as a conduit for the chain-of-command authority of the undersheriff and sheriff. No evidence yet establishes that they fail to have a community of interest with the road deputies, or that a conflict of interest might now exist between the two groups.⁹

CONCLUSION

The inclusion of the sergeants in the petitioned-for bargaining unit of non-supervisory law enforcement officers will result in an appropriate unit for purposes of collective bargaining under RCW 41.56.060. The employer's challenges to the eligibility of the sergeants must be DENIED.

FINDINGS OF FACT

1. Adams County is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. The Adams County Sheriff's Employees Association, a bargaining representative within the meaning of RCW 41.56.030(3), has been certified as the exclusive bargaining representative of

⁹ Evidence that the sergeants are paid three ranges higher than deputies is inconclusive. The fact that the sergeants are paid at Step 14 while deputies are paid at Step 11 does not, by itself, establish any potential for conflicts of interest within the bargaining unit.

non-supervisory law enforcement officers employed by Adams County.

3. The sergeants in the Adams County Sheriff's Department share responsibility with the deputies for patrol (including the operation of police vehicles, pistols, rifles, radios, radars, and forensic instruments), and for major investigations (including interviewing and contacting confidential informants), which are also responsibilities of the members of the rank-and-file bargaining unit.
4. The sergeants do not have or exercise independent authority with regard to the hiring or discharge of subordinate employees, and authority in such matters remains with the sheriff and undersheriff.
5. The sergeants perform functions such as scheduling, adjusting overtime, participating in performance evaluations, and resolving of conflicts between employees, consistent with their working closely and interchangeably with the deputies, and with their responsibility for first-line conflict resolution, while the authority to effect substantial changes of employment relationships remains with the sheriff and undersheriff.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.


2. The Adams County Sheriff's Employees Association is a bargaining representative within the meaning of RCW 41.56.030(3).
3. Sergeants employed in the Adams County Sheriff's Department are uniformed public employees within the meaning of RCW 41.56.030(2) and (7), and are not supervisors whose duties warrant their exclusion from the rank and file deputy sheriff bargaining unit under RCW 41.56.060.

ORDER

1. The bargaining unit certified to include all uniformed law enforcement employees of Adams County, excluding supervisors and confidential employees, shall include uniformed employees holding the rank of deputy sheriff and sergeant.
2. The employer's challenges to the eligibility of the sergeants for inclusion in that bargaining unit are DENIED.

Issued at Olympia, Washington, on the 9th day of June, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


J. MARTIN SMITH, Hearing Officer

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).