

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of: }
SEATTLE POLICE MANAGEMENT ASSOCIATION }
Involving certain employees of: }
CITY OF SEATTLE }

Case No. 1620-E-78-314
Decision No. 689-A PECB
ORDER AFFIRMING EXECUTIVE DIRECTOR'S
DECISION IN PART, AND REMANDING FOR
ADDITIONAL TESTIMONY

APPEARANCES:

William M. Taylor, Attorney at Law, for the petitioner.

P. Stephen DiJulio, Assistant City Attorney, for the employer.

The petitioner sought certification of the Seattle Police Management Association as the exclusive representative for collective bargaining of a unit composed of the following job classifications: Lieutenant, Captain, Major, Assistant Chief, Records Manager, Personnel Director, Legal Advisor, Director and Clinical Psychologist.

It was stipulated on April 9, 1979, that from this list should be deleted Assistant Chief, Legal Advisor, Director of Fiscal and Property Management and Clinical Psychologist.

Since we hold with the Executive Director that the head of the bargaining unit in this case is the Chief of Police and not the Mayor of Seattle, we also affirm the finding of the Executive Director that the administrative assistant to the Chief of Police is not a public employee under RCW 41.56.030(2)(c).

Because of the differences in impasse resolution procedures available to uniformed, but not to non-uniformed personnel, the civilian personnel director and records manager were properly excluded from the bargaining unit.

The hearing in this case was held November 13 and 14, 1978. The direction of cross-check by the Executive Director was issued July 12, 1979. It was not until August 3, 1979 that the Commission received the City's motion and affidavit for further hearing concerning the Director of Communications and it was on August 17, 1979 that the Commission received yet another motion and affidavit for further hearing as a result of changed circumstances. This last motion is supported by an affidavit of the Chief of Police affirming that he has served as such since February 5, 1979. He states that the

command staff has been reorganized since May 15, 1979. All members of that command staff had been eliminated from the scope of "public employee" by agreement of the parties in April with the exception of Majors and the Directors of Communications and Community Services. The Chief's affidavit says, however, that these persons serve at his discretion.

RCW 41.56.030(2)(c) limits exclusions from the term "public employee" to one whose duties "as a deputy, administrative assistant or secretary (which none of these are) necessarily imply a confidential relationship to the executive head...of the applicable bargaining unit, or any person...appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head...of the public employer," (the Mayor of Seattle).

We have trouble fitting the command staff within that definition. Moreover, the motion to reopen the hearing comes very late.

However, this Commission is not disposed to refuse to hear even a tardy request for presentation of additional evidence by a new Chief of Police of the largest city in the state who is trying to put together an efficient law enforcement organization. If circumstances have changed, they will be considered. Under RCW 41.56.030(2)(c) the burden of excluding employees is a heavy one.

This decision should not be construed to suggest that hereafter parties may take their chances on the outcome and then plead change of circumstances they knew all about before the original decision.

Bargaining will proceed as ordered and a hearing will be held on the two belated motions. A conditional certification is attached.

DATED this 29th day of November, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY ELLEN KRUG, Chairman

Don E. Olson
DON E. OLSON, Commissioner

R. J. Williams
R. J. WILLIAMS, Commissioner