

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
KALAMA POLICE GUILD) CASE 12755-E-96-1234
Involving certain employees of:) DECISION 5778-A - PECB
CITY OF KALAMA) ORDER DETERMINING
ELIGIBILITY ISSUE

Cline & Emmal, by Patrick A. Emmal, Attorney at Law, appeared on behalf of the petitioner.

David A. Nelson, City Attorney, appeared on behalf of the employer.

On October 9, 1996, the Kalama Police Guild (KPG) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC. The KPG sought to replace Teamsters Union, Local 58, as exclusive bargaining representative of certain employees in the Police Department of the City of Kalama (employer). Teamsters Union, Local 58 disclaimed the bargaining unit. A prehearing conference held on November 26, 1996, resulted in agreement on all issues, except for a dispute concerning the eligibility of the police chief for inclusion in the bargaining unit. A cross-check was conducted, and an interim certification was issued on December 13, 1996.¹ A hearing on the eligibility issue was held in Longview, Washington, on March 26, May 20 and July 16, 1997, before Hearing Officer Pamela G. Bradburn. The parties filed briefs, the last of which was received on October 1, 1997.

¹ City of Kalama, Decision 5778 (PECB, 1996).

BACKGROUND

The City of Kalama is a small municipality located along the Columbia River in south-western Washington.² Glen Munsey has been the mayor of the City of Kalama at all times pertinent herein.

Michael Pennington began work as the chief of police in Kalama on March 1, 1994. When the petition was filed to initiate this proceeding, and continuing through the close of the hearing, the workforce in the department included the chief, one sergeant, four police officers, and one civilian clerk.³

Teamsters Union, Local 58 represented the police department employees when Pennington was hired. While a 1991-1993 collective bargaining agreement between the employer and Local 58 had expired by the time of Pennington's arrival, it provides basis for an inference that his position was excluded from that bargaining relationship.⁴ A successor collective bargaining agreement signed

² Kalama does not appear on the list of cities having a population of 2,500 or more as of April 1, 1997, as published by the Office of Financial Management. Accordingly, it does not appear that any of its employees are or ever have been eligible for interest arbitration under RCW 41.56.430, et seq.

³ The clerk resigned during the hearing process, but there was no indication of an intent to eliminate the position.

⁴ The employer made a continuing objection to the admission of the 1991-1993 collective bargaining agreement, on the basis that it predated Pennington's employment. The contract has probative value, however, to establish the scope of the bargaining unit at that time. The contract indicates that the employer recognized Local 58 as exclusive bargaining representative of "all employees in the City of Kalama Police Department as permitted by the state of Washington public employee collective bargaining

by the employer and Local 58 some four months after Pennington's arrival excluded both the chief of police and the sergeant classification from its coverage.

POSITIONS OF THE PARTIES

The KPG contends that the chief functions in Kalama are more like a working foreman than as a supervisor, and therefore belongs in the bargaining unit. It discounts the police chief title, pointing to the chief's testimony that his duties and benefits primarily mirror those of other officers. The KPG asserts that, as was the situation in prior cases where police chiefs have been included in bargaining units with their subordinates, the mayor retains and exercises authority over hiring, firing, and training of employees in the Kalama Police Department, as well as responsibility for interpreting and enforcing the collective bargaining agreement. As a result, the KPG argues, the chief possesses little or no ability to exercise independent judgment over the other employees' working conditions.⁵

The employer argues the chief of police must be excluded from the bargaining unit, because the authority vested in the position creates a potential for conflicts of interest, and because the chief has unique working conditions. The employer emphasizes the administrative powers granted to the chief by ordinance and his job

act", but its wage appendix only listed salaries for police officers and sergeant. The Hearing Officer properly overruled the objection.

⁵ The KPG's arguments concerning the chief's lack of involvement in the employer's labor relations are not repeated here or dealt with in the analysis which follows, because the employer has not argued the chief should be excluded as a confidential employee.

description, as well as the expectations communicated to Pennington when he interviewed for his job. With regard to hiring authority, the employer asserts that the chief's belief that the mayor exerted pressure in favor of a particular candidate is completely subjective. In the case of an employee discharged by the chief and later allowed by the mayor to resign, the employer notes the mayor became involved only through the grievance process. The employer argues that objective evidence undercuts the chief's testimony that he spends the vast majority of his time performing routine police duties. Finally, the employer notes the collective bargaining agreement gives the chief control over many aspects of his subordinates' employment.

DISCUSSION

Issue Timely Raised and Properly Before Commission

A representation proceeding under Chapter 391-25 WAC is the proper forum to resolve any and all issues concerning the formation and composition of a bargaining unit. The petition in this case described the proposed bargaining unit as: "All employees of the Police Department, including the chief of police." The KPG is not bound by any agreements made by the employer with the predecessor exclusive bargaining representative,⁶ and it is not prejudiced by its own past conduct.⁷

⁶ In exercising the unit determination authority delegated to it by the Legislature in RCW 41.56.060, the Commission is not bound by the agreements made by employers and KPGs. City of Richland, Decision 279-A(PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

⁷ See, Olympia School District, Decision 4736 (PECB, 1994), pages 15, 16; aff'd Decision 4736-A (PECB, 1994).

Applicable Legal Standard

While "supervisors" have the right to organize and bargain under Chapter 41.56 RCW,⁸ they are routinely excluded from the bargaining units which contain their subordinates, in order to avoid a potential for conflicts of interest.⁹ Such conflicts can occur within an individual (i.e., a person torn between an obligation to evaluate performance from the employer's viewpoint, and a desire to avoid harming a fellow bargaining unit member), or within a KPG (i.e., where both a supervisor and a rank-and-file bargaining unit member seek the KPG's support in a workplace conflict).

Because Chapter 41.56 RCW lacks a definition of "supervisor", the Commission has looked to the definition contained in the Educational Employment Relations Act, Chapter 41.59 RCW, as detailing the types of authority which give rise to conflicts of interest:

[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** ... The term "supervisor" shall include only those **employees who perform a preponderance of the above-specified acts of authority.**

RCW 41.59.020(4)(d) [emphasis by **bold** supplied].

⁸ Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

⁹ City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

It is important to note that the focus of the Commission's precedents and the cited definition is on interactions between the alleged supervisor and his or her subordinates. Relationships between an alleged supervisor and his or her own superiors are material only insofar as they affect the degree of authority actually vested in the position(s) under scrutiny.

Supervisors will be excluded from a bargaining unit even if they might prefer to be included in that unit, but may then be able to organize a separate bargaining unit of supervisors represented by the same organization.¹⁰ Positions that possess some, but not a preponderance, of the supervisory powers described in the cited definition are categorized as lead workers or working foremen, and are routinely included in bargaining units with their rank-and-file colleagues.¹¹

The KPG correctly notes that job titles are not dispositive. Nor are organizational charts, job descriptions, or comments made in hiring interviews, all of which the employer advances as support for its position. It is the actual exercise, or the potential to exercise, of power over subordinates that determines whether a position should be excluded from a bargaining unit. In this case, however, the evidence as a whole supports the conclusion that Pennington exercises sufficient supervisory authority that his position must be excluded from the proposed bargaining unit to avoid conflicts of interest.

¹⁰ See, IAFF Local 1052 v. PERC, 45 Wn.App 686 (Division III, 1986), review denied 107 Wn.2d 1030 (1987), reversing City of Richland, Decisions 1519, 1519-A (PECB, 1983).

¹¹ See, for example, Mukilteo School District, Decision 5896-A (PECB, 1997).

Authority to Hire

The parties produced voluminous evidence on this topic, including forays into the hiring practices in other departments.¹² It is

¹² Pennington testified about the hiring of Ireda Grohs as a part-time clerk for the Planning Commission. After Annie Bocchi, who was then the employer's clerk/treasurer, sent a rejection letter to Grohs, the mayor ordered Bocchi to hire Grohs anyway. The chief added that Bocchi "ended up getting terminated". Tr. Vol. III, p. 210. The employer did not offer any evidence which directly contradicted Pennington's testimony.

Public Works Director Carl McCrary testified that he asked the mayor to participate in interviews for three jobs, because he respected the mayor's knowledge about public works. McCrary also testified that he has picked at least one candidate who was not ranked at the top of the mayor's evaluation list. McCrary simply answered, "No.", in response to a leading question about whether he had felt any pressure from the mayor to hire any particular person. McCrary lacked direct knowledge of the reasons why Bocchi's employment ended, but expressed a belief that it was because of "a problem between her and the Mayor". Transcript, page 233.

Bocchi's successor, Val Marty, has hired two employees and reclassified another employee from part-time to full-time during her brief tenure which began after this proceeding was commenced. She testified that she asked the mayor to participate in the interviews for one of the positions, so she could have another viewpoint and a sounding board, but that she filled the other position while the mayor was out of town. Marty also answered, "No.", to a leading question about whether she had felt any pressure from the mayor to hire any particular person. Marty testified that she informed the mayor of her reasons for increasing the hours of a part-time employee, rather than going through a formal hiring process, and that she made the final decision to do so.

pertinent to observe, however, that this area of supervisory authority generally presents the fewest opportunities for conflicts within a bargaining unit: A KPG generally has no bargaining rights concerning hiring decisions;¹³ applicants do not become bargaining unit members until after they are hired;¹⁴ and unsuccessful candidates never become part of the bargaining unit.

Two positions have been filled during Pennington's tenure as chief of police: A police officer, and a civilian clerk. The mayor was involved in both hiring processes, but the parties disagree about the extent and effect of his participation.

The hiring of Police Officer Duain Dugan -

This hiring occurred at an unspecified time during Pennington's tenure.

The chief testified that the mayor wanted to participate in the interviews of the three candidates, that the mayor participated in all interviews, and that the previous incident between the mayor and clerk-treasurer caused the chief to feel he had to follow the mayor's direction and hire a candidate who had been to the police academy and had prior experience. Although Pennington is now completely satisfied with Dugan's work, the chief testified the information he had at the time of the selection had caused him to lean toward another candidate.

Mayor Munsey testified that his participation in interviews of the top three candidates referred by the civil service commission was requested by the chief. The mayor offered comments about at least

¹³ King County Fire District 39, Decisions 2160, 2160-A, 2160-B, 2160-C (PECB, 1986).

¹⁴ City of Pasco, Decision 4197-A (PECB, 1994) [as to training expense reimbursement agreement].

two of the candidates, and favored Dugan because the employer would be saved the expense of the academy and the candidate would be productive sooner. The mayor said that the chief also mentioned the cost savings if Dugan were to be hired, and that the chief made the hiring decision completely on his own.

The Hiring of Ireda Grohs as Police Clerk -

This hiring also occurred on an unspecified date. The new position was designed to relieve the law enforcement officers from routine paperwork so they could spend more time patrolling the city.¹⁵

The chief testified that he and the mayor talked about hiring a clerk, that the mayor recommended making the job part-time and said Grohs could probably handle the assignment in addition to her part-time work with the Planning Commission, that the mayor mentioned he and Grohs had been good friends for years, and that the mayor said Grohs had work experience in law enforcement. The chief testified he urged that the position be full-time, to which the mayor replied that the employer could not afford it. The chief offered to apply for a grant, and a grant was received. Grohs then tied for first place with another applicant on the civil service test. The chief testified he would have chosen a different candidate, but felt compelled to hire Grohs out of concern for his well-being in light of the incident with the clerk-treasurer and the mayor's comments. Nevertheless, the chief emphasized his satisfaction with Grohs' work and professionalism.

The mayor acknowledged his long-time friendship with Grohs and his mention of Grohs' previous law enforcement experience, but he recalled other events differently. According to the mayor, his encouragement to make the police department position half-time came after the chief had decided to hire Grohs, and was so that Grohs

¹⁵ This position was partially funded by a grant from a federal "COPS MORE" program.

could keep her other half-time position in case the employer decided not to continue the police clerk position after the grant funding expired. The mayor said he dropped the idea when both the chief and Grohs objected. The mayor denied having pressured the chief to hire Grohs.

Conclusion on Hiring Authority - Though the chief testified credibly about feeling constrained by the mayor's opinions in the hiring process, the employer correctly notes this is all subjective. The KPG has not supported the chief's feelings with objective evidence that anyone but the chief made the final decision to hire Dugan or Grohs.¹⁶ Additionally, the mayor's denial of any pressure to hire Dugan or Grohs is corroborated by McCrary's testimony that his ability to choose among candidates was not reduced by the mayor's participation in the hiring process. As a whole, the evidence indicates the chief possesses substantial authority in the hiring area.

Authority to Assign

There is no doubt that the chief has to assign particular areas of police work to individual employees. The minutes for a March 16, 1994 meeting of the City Council, note the chief having reported on his reorganization and expansion of the officers' duties and responsibilities. Organizational charts issued by the chief to all department personnel on March 21, 1994 and September 18, 1995, detail each officer's particular responsibilities. Neither document shows approval or authorization by the mayor or any person other than the chief.

¹⁶ This contrasts distinctly with the situation in City of Blaine, Decision 6122 (PECB, 1997), where a city manager's comments on drafts of performance evaluations confirmed a lack of actual supervisory authority.

Authority to Promote, Transfer, Layoff, and Recall

During Pennington's tenure, Robert Heuer has been promoted to the position of sergeant. Neither party offered any evidence explaining the promotional process, and the 1994-1996 collective bargaining agreement did not refer to promotions.

No instances of transfers, layoffs, or recalls of employees within this department were mentioned. The 1994-1996 collective bargaining agreement permits bumping in layoff situations, but it does not identify the employer official responsible for making layoff decisions, and does not refer to recalls.

The record is too ephemeral to support a conclusion on these aspects of supervisory authority.

Authority to Suspend, Discipline, or Discharge

The chief has counseled several officers, and told the mayor about those incidents later and without giving great detail. Although he also cautioned, recommended the demotion of, suspended, and even discharged the former sergeant, an issue is framed here because the mayor allowed the former sergeant to resign in lieu of discharge.

Documents in the record show the chief issued counseling letters to the former sergeant on May 16 and June 12, 1994. Those actions were subject to review under the grievance procedure that was in effect at the time.

On June 14, 1994, the chief placed the employee on four days' administrative leave with pay. The record establishes the chief took this action without prior approval of the mayor or council. On the same day that he placed the former sergeant on paid leave, the chief made a recommendation to the mayor that the individual

be demoted to a "senior patrol officer" title. The mayor concurred with the chief's recommendation.

On October 14, 1994, the chief notified this same employee of his pending discharge, and scheduled a meeting to hear the employee's response to the proposed discharge. The chief testified, however, that he sees himself as an investigator, rather than as the final decision-maker, on significant disciplinary matters.¹⁷ Again, there is a conflict in the testimony about what occurred:

- The chief testified that the mayor's intervention came after the notice of intended discharge was issued, but before the employee was formally discharged.¹⁸ The chief sees the resignation in lieu of discharge as an alteration of his discharge decision by the mayor.
- The mayor disclaimed any participation in the investigation leading to the chief's recommendation of demotion. The mayor said he and the chief had discussed the former sergeant's situation several times, but that the decision to discharge was made by the chief alone. The mayor described his involvement as occurring in the grievance process where, after discussing his concerns about the cost of an appeal with the

¹⁷ Pennington recalled a statement by the mayor, at their first meeting, that Munsey had promised the officers they would not be fired as long as he was mayor.

¹⁸ The chief testified that the employee "filed a grievance and went right to the Mayor and the Mayor heard the actual lauderman [sic]". Tr. Volume II, page 53. The chief was likely referring to Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), which requires public employers to give public employees notice of charges and an opportunity to respond before serious discipline or discharge can be imposed.

chief and obtaining his agreement, the mayor permitted the former sergeant to resign in lieu of discharge.

The chief clearly possesses the authority to warn employees about performance deficiencies, to suspend them with pay, and to make effective recommendations on their demotion. It is also clear that the chief was the moving party on behalf of the employer in the discharge of the former sergeant. These are the types of actions which give rise to employee grievances, and to a potential for conflicts of interest within a bargaining unit.

While unraveling the respective authority of chief and mayor on the discharge of the former sergeant is more complex, because of the confusing testimony about the timing of the mayor's interaction with the Teamsters KPG and the discharged employee, the fact remains that the chief was on the employer side of the equation at all times. The mayor's intervention through a grievance process would seem to be normal, if not predictable, and a settlement which got the employee out of the employer's workforce ultimately honors the chief's recommendation to get rid of the unsatisfactory employee.

The chief's testimony that the mayor took over at the Loudermill step in response to a grievance is inherently ambiguous. The due process hearing must precede a final disciplinary decision, while a grievance normally arises after final disciplinary decision. In this case, unusual terms in the collective bargaining agreement that was then in effect make it possible to harmonize the apparent conflicts in the evidence without impugning the credibility of either witness. Article 11 of the 1994-1996 collective bargaining agreement sets forth a grievance process with the mayor as the first formal step, a choice of going to the Civil Service Commission or the Public Employment Relations Commission if no resolution

is reached with the mayor,¹⁹ and ending with arbitration by a private arbitrator. That agreement included a separate process for suspensions and discharges at Article 10, which included:

In the event an employee is terminated or suspended he may request an investigation and should such investigation establish a lack of cause, he shall be reinstated without loss of pay. In the event the Employer and the Teamster [sic] Union cannot come to agreement as to the action after a fair hearing, the termination or suspension may be appealed before the Civil Service Commission of the City of Kalama or to the Public Employment Relations Commission for resolution.

Both of those contractual processes thus included potential appeals of the type which the mayor said caused him concern. Both processes involved the mayor, the grievance procedure specifically and the discharge procedure impliedly as representative of the employer. At the bottom line, however, even if the mayor conducted the due process hearing under Loudermill and worked out the resignation with the Teamsters and/or the employee in that context, the fact remains that the entire discharge process effected the chief's recommendation that the employment of the former sergeant be terminated. The chief's power to recommend discharge and to effect lesser discipline warrants his exclusion from the unit.

Miscellaneous Authority

The 1994-1996 agreement gave the chief authority to approve overtime work, to authorize use of compensatory time or vacation rather than taking a holiday; to reimburse employees for uniform cleaning; to approve extended bereavement leave for deaths within

¹⁹ The exact nature of the contemplated proceedings before the Public Employment Relations Commission is unclear.

the family, and to authorize police officers to take job-related classes.²⁰

The chief has determined which items in his budget should be reduced or eliminated to comply with City Council directives.

The chief has the power to approve or disapprove employees' requests to accept off-duty employment.

Pennington evaluates the performance of department employees, with input from the sergeant and mayor.

The chief approves short leaves of absence on his own; he consults the mayor in advance when extended leaves are requested.

Authority to Adjust Grievances

The 1991-1993 collective bargaining agreement, which continued in effect for several months after Pennington took office as chief of police, made the chief the second step of the grievance process. The City Council was the third step, and the Public Employment Relations Commission or the employer's civil service commission was the last resort.

²⁰ The mayor asks department heads, including the chief, to reduce overtime work if the mayor feels they are ahead of their budgeted amounts. After an explanation, the mayor accepted that mandated police overtime is not accrued proportionately through the year, and said "the chief went ahead and carried out his budget as was necessary." Transcript, page 119. In 1997, the mayor told department heads he had to approve out-of-city training in advance because of budget concerns. This evidence postdates the petition.

The 1994-1996 collective bargaining agreement, which was signed four months after Pennington's arrival, contains a grievance procedure with an informal step at the "immediate Supervisor/Department Head (Exempt Personnel)" level.²¹ The chief testified that he, or even the sergeant, could be the proper person for informal grievance discussion under this process. With the parties' agreement to include the sergeant in the bargaining unit, the chief of police is left as the only person within the police department who is qualified to receive an informal grievance. The chief testified that the mayor has told police department employees to skip the informal discussion step with the chief and come directly to him. In this event, the chief says his substantive input on issues is not requested,²² and he is not always timely informed of any resolution. However, the specific examples given by the chief of officers going straight to the mayor involve objections to the chief's implementation of the mayor's directives, rather than objections to the chief's independent decisions. These events do not cloud the chief's ability to resolve employee grievances since only the mayor could rescind his own directives or policies. The record provides no reason to believe employees would not approach the chief with objections to any of his independent actions they believe violate the collective bargaining agreement.

The record establishes that the chief has authority to resolve grievances on matters under his control.

²¹ The first formal step is at the mayor's level.

²² The KPG contends that the employer did not ask the chief to interpret the collective bargaining agreement until after the hearing was opened in this proceeding. The argument is not persuasive, because its focus is on the relationship between the chief and the mayor rather than on the chief's authority to affect his subordinates' working conditions. The employer has not claimed that the chief is a confidential employee.

Analysis of Parties' Arguments

The KPG contends that the chief is required to turn in time sheets like his subordinates do. The mayor denied the existence of any current requirement for time sheets, and explained an earlier requirement as having been due to a misunderstanding about what was required for the chief to qualify each month for pension benefits.²³ In fact, the chief sets his own work hours and is an exempt employee under the Fair Labor Standards Act (FLSA). The fact that the chief has chosen to submit monthly time sheets does not alter his status in the eyes of the law.

The KPG argues that the chief's leave rights and other benefits are similar to those of the other police officers, and claims the collective bargaining agreements have controlled such matters. The mayor testified, however, that the chief took almost a month of vacation time at the end of his first year of employment when the collective bargaining agreement would only have allowed a single week.²⁴ An alternate explanation would seem to lie in the chief's accumulation and use of compensatory time, which was charged on his time sheets for substantial absences in April through July, 1996.²⁵

The KPG cites the lack of a private office as a factor to be considered in determining his bargaining unit status. No provision of Chapter 41.56 RCW is cited or found, nor is any precedent found, for such a proposition. Moreover, the facts do not even fit the argument. Pennington had an office when he commenced employment,

²³ The mayor also noted that the public works director does not turn in time sheets.

²⁴ It is not clear whether this was a one-time event.

²⁵ This accumulation of compensatory time also seems to be at the chief's initiative. The mayor saw no need for it, since the chief is exempt under the FLSA.

but soon chose to share it with the sergeant. He then chose to continue sharing the office with the sergeant when redesigning the Police Department facility after damage by a flood.

The mayor has, several times, given the chief specific direction about areas of police work. The chief apparently does not object to a directive to arrange 24-hour coverage during a flood, but feels he should have been consulted before the mayor made a commitment at an open meeting of the City Council to have the Police Department make bar checks and do radar speed checks along a particular road. These directives appear, however, to fall into the category of "level of service" decisions made in the political arena. When it came to implementing the politician's directives or policies, the mayor did not tell the chief when to run radar or do bar checks (which are both regular activities of the department), or who to assign.

The KPG urges that the mayor told the chief to wear a uniform and walk around downtown. While the employer contests these claims, their irrelevance to the present issue obviates any need for resolution of the contradictory evidence. The wearing of a uniform does not preclude a conclusion that the chief exercises authority which presents a potential for conflicts of interest under Richland, supra.

Commission precedent includes a few cases where persons holding "chief of police" titles have been included in the same bargaining units with their subordinates. Those decisions were made, however, in police departments even smaller than the one at Kalama:²⁶

- In Town of Granite Falls, Decision 2617 (PECB, 1987), the police department workforce consisted of only the chief and

²⁶ The workforce in the Kalama Police Department includes the chief, a sergeant, four police officers, and a clerk.

one full-time police officer, with reserve officers providing the only additional law enforcement. The chief and the regular officer alternated shifts, did the same kind of work during their shifts, shared the administrative duties, and had the same holidays and leave benefits. The authority to hire both full-time and reserve officers was vested in the mayor, along with the scheduling of work, approval of any changes of the work schedule, and disciplinary decisions.

- In Town of Granger, Decision 2634 (PECB, 1987), the police force consisted of a chief, a sergeant, and part-time police officer. The chief was scheduled for routine patrol shifts during which he was the only employee on duty, and he transported prisoners. The chief did background checks on applicants for employment and made recommendations on hiring, but the mayor retained independent authority over hiring, as well as over all discipline. The chief kept department records and made budget recommendations, but those administrative duties did not create potential conflicts of interest.
- In City of Winlock, Decision 4056 (PECB, 1992), aff'd Decision 4056-B (PECB, 1993), the police force consisted of the chief and one other police officer. The chief regularly performed patrol duties on one shift, and had generally the same working conditions as the other full-time officer. A new mayor had taken over scheduling, and discipline above the level of oral counseling.

The opposite result was reached in City of Goldendale, Decision 4448-A (PECB, 1994), where the police force consisted of a chief and five other employees. The chief and lieutenant worked together on day shift, while the other officers worked other shifts to provide 24-hour coverage. Both the chief and lieutenant would back up other officers when a field situation escalated, but the chief only took patrol shifts to fill in for an absent employee. That

chief had authority to impose some discipline, and his recommendations on more severe discipline were effective. That chief granted leaves of absence and recommended approval of overtime, but lacked authority to hire or promote employees. The chief was excluded from the bargaining unit, because his actual authority giving rise to a potential for conflicts of interest.

The situation now before the Executive Director is readily distinguishable from those in Granite Falls, Granger, and Winlock, and is comparable to the situation in Goldendale. Pennington does not have a regular patrol shift.²⁷ He has authority to act on behalf of the employer in regard to hiring decisions, assigning duties to employees, discipline of employees, approving employee leaves, and training classes, approving off-duty employment, and adjusting employee grievances involving his own exercise of authority. If anything, Pennington has greater authority over hiring and day-to-day issues (e.g., leaves, overtime work, and off-duty employment) than the chief excluded in Goldendale. A conclusion that the chief of police at Kalama is supervisory, and should be excluded from the petitioned-for bargaining unit on that basis, is consistent with Commission precedent and supported by the record.

FINDINGS OF FACT

1. The City of Kalama is a municipal corporation of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

²⁷ Pennington sought to emphasize the periods when he is the only officer on duty, but work schedules confirm that is the exception rather than the rule. The chief may occasionally take a patrol shift to fill in for an absent employee.

2. The Kalama Police Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of law enforcement employees of the City of Kalama.
3. As chief of police for the City of Kalama, Michael Pennington does not regularly perform patrol duties like those of his subordinates. Pennington exercises authority, on behalf of the employer, to hire, assign, suspend, discipline and discharge other employees. He evaluates employees, approves overtime, approves employee requests for leaves and off-duty employment, and adjusts grievances on behalf of the employer. Such authority is exercised independently and/or by means of effective recommendations affecting the wages, hours and working conditions of other employees in the Police Department.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The chief of police in the Kalama Police Department has authority over subordinates which is sufficient to create a potential for conflicts of interest, warranting the exclusion of that position from the bargaining unit of police department employees under RCW 41.56.060.

ORDER

1. The position of "police chief" is excluded from the bargaining unit involved herein.

2. The interim certification issued in this matter will stand as the certification of the exclusive bargaining representative.

Issued at Olympia, Washington, this 7th day of January, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Marvin L. Schurke". The signature is fluid and cursive, with a large initial 'M' and 'S'.

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 391-25-390(2).