

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 117

Involving certain employees of:

CITY OF TACOMA

CASE 23425-E-10-3583

DECISION 10989 - PECB

DIRECTION OF CROSS-CHECK

Spencer Nathan Thal, General Counsel, for Teamsters Local 117.

Cheryl Comer, Deputy City Attorney, for the City of Tacoma.

On August 4, 2010, Teamsters Local 117 (union) filed a petition seeking to represent all full-time and regular part-time non-commissioned employees in the Crime Analysis Unit (CAU) of the Tacoma Police Department. An investigation conference was held on September 16, 2010. Two issues remained unresolved: whether the Senior Crime Analyst should be excluded from the bargaining unit as a supervisory position, and whether two program technicians should be included in the unit. Hearing Officer J. Martin Smith conducted an hearing on October 11, 2010. The parties filed post-hearing briefs.

ISSUES

1. Should the Senior Crime Analyst be excluded from the bargaining unit as a supervisory position?
2. Should the two Program Technicians be included in the bargaining unit?

Based upon the record, applicable statutes, rules, and case precedent, the Executive Director concludes that the Senior Crime Analyst is not a supervisor under Commission standards and

should be included in the bargaining unit, and that the two Program Technicians should also be included in the bargaining unit. A cross-check of records is ordered.

ISSUE 1: STATUS OF THE SENIOR CRIME ANALYST

APPLICABLE LEGAL STANDARDS

In cases under Chapter 41.56 RCW, the Commission has historically used the definition of supervisor provided in RCW 41.59.020(4)(d) due to the lack of a supervisory definition in Chapter 41.56 RCW:

(d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which 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, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

The Commission has interpreted preponderance as meaning that the disputed employee spends either a majority of work time engaging in supervisory duties or performs a majority of the supervisory activities enumerated in RCW 41.59.020(4)(d). *Ronald Wastewater District*, Decision 9874-B (PECB, 2008), *aff'd*, Decision 9874-C (PECB, 2009). To make these determinations, it is necessary to consider whether the disputed employee has independent authority to act in the interest of the employer.

Actual duties and authority exercised by the disputed employee – not job title or job description – play the predominant role in determining whether that individual is a supervisor excluded from a rank-and-file bargaining unit. *Morton General Hospital*, Decision 3521-B (PECB, 1991). The Commission has distinguished between supervisors and “lead workers” who lack authority and

independent judgment in several cases, including *City of Toppenish*, Decision 1973-A (PECB, 1985), which held that lead workers “may be given some supervisory responsibilities, but not a full complement, or they may be allowed to share supervisory responsibilities with their own superiors.” In *Grant County*, Decision 4501 (PECB, 1993), the Executive Director determined that “[w]hile lead workers may possess authority to direct subordinates in their daily job assignments, they generally do not have the authority necessary to make meaningful changes in the employment relationship.” A lead worker’s authority might extend to evaluating a subordinate’s job performance because the lead worker is in the best position to observe that performance, but this activity does not automatically create a conflict of interest that would warrant a supervisory exclusion. *City of Lynnwood*, Decision 8080; *see also State—Fish and Wildlife*, Decision 10962 (PSRA, 2011).

ANALYSIS

The CAU is part of the Tacoma Police Department. The employer defines the CAU’s function as providing “data and analysis on crime patterns and trends, including tactical and strategic analysis.” The CAU operates within the department’s Administrative Services Bureau, under the command of an Assistant Chief. The CAU is within the department’s Planning and Research Unit, under command of Lieutenant Pete Cribbin. Planning and Research is part Support Services, commanded by a Captain, who reports to the Assistant Chief.

The CAU consists of five employees: the Senior Crime Analyst, Jacqueline Shelton; two Crime Analysis Technicians, Debra Jean Brown and Megan Yerxa; and two Program Technicians, Qinmei Lai and Teresa Lynn Lorberau. Shelton assigns and directs work, evaluates performance, and generally oversees the daily work of the unit; however she does not have authority to promote, transfer, layoff, recall, suspend, discipline, discharge, or to adjust grievances. Hiring decisions have been made by a board which included Shelton. Shelton’s recommendations were followed although she does not have authority to independently hire employees.

Although Lieutenant Cribbin testified that Shelton spends approximately 70% of her time performing supervisory duties, Shelton's testimony did not support that assertion. Shelton testified that "Probably about 50 percent of my time is spent helping either the program techs or crime analysts. Whether it's with queries that they're writing or just checking their work. And I also-- I guess I would be a worker as well." Additionally Shelton, because of her expertise, performs higher level project work, testifying that, "Probably over half [of the projects she works on] are of a higher level than what the crime analysts work are."

CONCLUSION

The evidence establishes that Shelton is more a lead worker than a supervisor under Commission precedent. She performs a significant amount of work at the level of the Crime Analysts, in addition to working on her own higher level projects. The fact that her recommendations might carry weight in hiring decisions does not equate to supervisory status. As the petitioner correctly points out, the CAU employees are subject to the multiple layers of authority within the command structure of the Tacoma Police Department. While Shelton has authority to direct subordinates in their daily job assignments, perform evaluations, and oversee the daily work of the other four members of the unit, the record did not establish that Shelton performs a preponderance of supervisory duties, or that she spends a preponderance of her time performing supervisory duties. As Senior Crime Analyst, Shelton does not have the authority necessary to make meaningful changes in the employment relationships of the other unit employees. The Senior Crime Analyst is not a supervisory position and will be included in the proposed bargaining unit.

ISSUE 2: APPROPRIATENESS OF THE UNIT

APPLICABLE LEGAL STANDARDS

Collective bargaining, under Chapter 41.56 RCW, is a process whereby employees join together as a single unit, to bargain with their employer over terms and conditions of their employment. RCW 41.56.060 tasks the Commission with deciding what unit (grouping of employees) is

appropriate for the purpose of collective bargaining. “The Commission’s goal is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer.” *Community Transit*, Decision 8734-A (PECB, 2005), *citing Quincy School District*, Decision 3962-A (PECB, 1993). “The statute does not require determination of the ‘most’ appropriate unit; it is only necessary that a petitioned-for unit be an appropriate unit.” *Community Transit*, Decision 8734-A, *citing City of Winslow*, Decision 3520-A (PECB, 1990).

The framework for determining bargaining unit configuration is described in RCW 41.56.060:

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.

ANALYSIS

Desires of Employees and History of Bargaining

None of the positions at issue are currently covered under a collective bargaining agreement, nor do they have any history of collective bargaining. There are eight Program Technicians employed by the City of Tacoma; all of them are currently unrepresented and have no history of bargaining. The desires of the employees will be determined by the wishes of the employees, in this case, by a cross-check of records.

Extent of Organization

The CAU employees work together on a daily basis within the Tacoma Police Department’s headquarters building. The two Program Technicians work exclusively on projects within the unit. There are eight Program Technician positions within the employer’s workforce. One of the Program Technicians works in the Tacoma Fire Department, the other five within the city’s Human Rights and Human Services Department. Those Program Technicians do not perform any

work for the Police Department or interact with the CAU, nor do the CAU Program Technicians perform any work for the other city departments. The CAU Program Technicians do not work with, or even know, the other six Program Technicians.

The employer's organization has multiple bargaining units that are organized both horizontally and vertically. The employer states that the eight Program Technicians it employs should be considered as having a community of interest that precludes dividing the group into six unrepresented and two represented employees. The employer conducted a wage survey in 2007 which determined that the Program Technicians should be compensated as a group based upon a common job description. In addition, the employer states that all other represented classifications within its workforce are within the same bargaining units; the proposed unit constitutes a unique splintering of a classification that would not only contribute to fragmentation, but could lead to skimming claims.

Duties and Skills

The CAU Program Technicians were reclassified sometime in 2008; prior to that they had been classified as Research Technicians. The job duties have not changed and are specifically related to analyzing information concerning crime within the City of Tacoma and working with the Crime Analysts. The Program Technician position is defined as working “[u]nder close supervision, responsible for a wide variety of moderately difficult or entry-level professional duties assisting in the development, administration and evaluation of a program.” The position requires a bachelor's degree, but no special training in crime analysis. In contrast, Crime Analyst duties are specifically related to crime patterns and trends and the clearance of criminal cases, requiring not only a bachelor's degree, but also formal training and certification as a crime analyst. The Crime Analyst positions were added to the CAU in 2010. The CAU Program Technicians have always performed work unique to the CAU; as noted above, their reclassification from Research Technicians dealing specifically with crime patterns and trends did not change their job duties.

Working Conditions

The Program Technicians work in the same office as the Crime Analysts and the Senior Crime Analyst, and are subject to the same working conditions and the same organizational command structure. Of the eight Program Technicians employed by the city, only the two in the CAU are subject to background checks and polygraph tests, and only the CAU Program Technicians have access to CAU data contained within the CAU.

Conclusions

The employer argues that the Program Technician classification should not be subject to division because of the classification's compensation structure, the unique splintering of a classification, the possibility of skimming claims, and fragmentation of the employer's workforce. The compensation structure is not determinative in assessing whether a community of interest exists, nor is the fact that inclusion of Program Technicians in the proposed bargaining unit would splinter the classification.

The employer cites the future risk of having to defend skimming allegations. However, the employer has control of its operations and, should it determine that the unique and specialized work of CAU employees should be performed by any other employees outside the CAU group, it would, depending upon the representation status of the CAU employees, have resulting bargaining obligations. For current purposes in determination of the appropriateness of the bargaining unit, no claim or evidence was proffered that there has ever been interchange of work or personnel between the CAU Program Technicians and any other city Program Technicians or other employees. The employer's argument is clearly speculative.

The CAU Program Technicians perform duties and have working conditions unique to that unit and shared by the Senior Crime Analyst and the Crime Analysis Technicians. The proposed unit is distinct and clearly defined, with precise boundaries. Claims of fragmentation are unfounded. *Washington State University*, Decision 9613-A (PSRA, 2007). The Program Technicians' duties, skills and working conditions evince a community of interest that render the unit appropriate for the purposes of collective bargaining.

Accordingly, the Senior Crime Analyst, Crime Analysis Technician, and Program Technicians employed in the Tacoma Police Department Crime Analysis Unit constitute an appropriate bargaining unit.

FINDINGS OF FACT

1. The City of Tacoma is a public employer within the meaning of RCW 41.56.030(13).
2. Teamsters Local 117 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The Crime Analysis Unit (CAU) is a unit within the Tacoma Police Department, providing “data and analysis on crime patterns and trends, including tactical and strategic analysis.” The CAU is the only employer entity providing this service.
4. The CAU consists of five employees: the Senior Crime Analyst, two Crime Analysis Technicians, and two Program Technicians. The Senior Crime Analyst assigns and directs work, evaluates performance, and generally oversees the daily work of the unit. The Senior Crime Analyst does not have authority to hire, promote, transfer, layoff, recall, suspend, discipline, discharge, or to adjust grievances.
5. Hiring decisions are made by a board, which includes the Senior Crime Analyst. The Senior Crime Analyst’s recommendations have been accepted.
6. The Senior Crime Analyst works on projects with the Crime Analysts, in addition to working on her own higher level projects. She spends about half of her time helping the Program Technicians and Crime Analysts with their work.
7. The CAU employees are not currently covered under a collective bargaining agreement, nor do they have any history of collective bargaining. There are eight Program

Technicians employed by the City of Tacoma; all of them are currently unrepresented and have no history of bargaining.

8. The employer's organization has multiple bargaining units that are organized both horizontally and vertically.

9. Two Program Technicians work in the same office as the Crime Analysts and are subject to the same working conditions and the same organizational command structure. CAU employees work together on a daily basis in the Tacoma Police Department's headquarters building. The Program Technicians work exclusively on projects within the unit. Of the eight city Program Technicians, one works in the Tacoma Fire Department, and five work within the city's Human Rights and Human Services Department. Those six Program Technicians do not perform any work for the Police Department or interact with the CAU, nor do the CAU Program Technicians perform any work for the other city departments. The two CAU Program Technicians do not work with, or even know, the other six Program Technicians. Of the eight Program Technicians employed by the city, only the two in the CAU are subject to background checks and polygraph tests, and only they have access to data contained within the unit.

10. The CAU Program Technicians were reclassified sometime in 2008; prior to that they had been classified as Research Technicians. The job duties have not changed. Their duties are specifically related to analyzing information concerning crime within the City of Tacoma and working with the Crime Analysts. There is no evidence that there has ever been interchange of work or personnel between the CAU Program Technician employees and any other city Program Technicians or employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. The Senior Crime Analyst is included in the bargaining unit as a non-supervisory position.
3. The Program Technicians are included in the bargaining unit.
4. The proposed unit is appropriate for collective bargaining.
5. For the purposes of collective bargaining under Chapter 41.56 RCW, an appropriate bargaining unit consists of:

All full-time and regular part-time non-commissioned employees in the Crime Analysis Unit of the Tacoma Police Department, excluding supervisors, confidential employees, and all other employees.

DIRECTION OF CROSS CHECK

1. The employer shall immediately supply the Commission with copies of documents from its employment records which bear the signatures of the employees included in the bargaining unit set forth in paragraph 5 of the foregoing Conclusions of Law.
2. A cross-check of records shall be conducted in the bargaining unit described as:

All full-time and regular part-time non-commissioned employees in the Crime Analysis Unit of the Tacoma Police Department, excluding supervisors, confidential employees, and all other employees.

ISSUED at Olympia, Washington, this 31st day of January, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-590.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

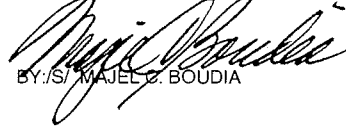
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ MAJEL C. BOUDIA

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