

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

SNOQUALMIE POLICE OFFICERS'  
ASSOCIATION

Involving certain employees of:

CITY OF SNOQUALMIE

CASE 24657-E-12-3707

DECISION 11837 - PECB

ORDER OF DISMISSAL

Cline & Associates, by *Cynthia McNabb*, Attorney at Law, for Snoqualmie Police Officers' Association.

Reid, Pedersen, McCarthy & Ballew, LLP, by *Thomas A. Leahy*, Attorney at Law, for Teamsters, Local 763

Summit Law Group, PLLC, by *Sofia D'Almeida Mabee*, Attorney at Law, for the employer.

On March 13, 2012, the Snoqualmie Police Officers' Association (Association) filed a petition seeking to represent a bargaining unit of two non-commissioned positions with the City of Snoqualmie (employer). In 2012, two positions, the Police Records Technician and the Police Support Officer, were removed from a bargaining unit containing uniformed law enforcement officers once the bargaining unit became eligible for interest arbitration under Chapter 41.56 RCW. The two positions are not eligible for interest arbitration.

During the Investigation Conference, the parties stipulated to certain matters, including the correct employee eligibility list. The parties disagreed, however, on the appropriate bargaining unit for the two positions. The Association asserted that a separate non-commissioned law enforcement employee bargaining unit is the most appropriate bargaining unit for the two positions. The employer asserted that the petitioned-for unit is not an appropriate unit because the two positions do not share a separate community of interest. The Teamsters, Local 763 (Teamsters), which represents a residual bargaining unit at the city, was invited to file a notice of appearance and

participate in all subsequent proceedings. On August 28, 2012, the Teamsters filed a Notice of Appearance.

On March 13, 2013, Hearing Officer Dario de la Rosa conducted a hearing to determine whether the petitioned-for bargaining unit is appropriate. The parties filed post-hearing briefs. The Teamsters' brief indicates that it is neutral in the determination of the appropriate bargaining unit for the Police Records Technician and the Police Support Officer positions.

### BACKGROUND

The employer's workforce consists of approximately 86 employees. Sixteen employees are in the employer's police department, including eight police officers who are currently represented by the Association. The employer's workforce contains two other bargaining units: The Teamsters' residual bargaining unit includes 43 employees, while the International Association of Fire Fighters bargaining unit includes approximately nine fire fighters and lieutenants.

In 1984, the Teamsters was certified as the exclusive bargaining representative of a bargaining unit described as follows: "residual unit consisting of all unrepresented employees of the city, excluding elected officials, appointed officials, uniformed personnel, supervisors and confidential employees." *City of Snoqualmie*, Decision 1984 (PECB, 1984). Under this bargaining unit definition, the Police Records Technician was historically included in this bargaining unit. In 2008, the employer and the Teamsters settled two grievances and three unit clarification petitions which resulted in the inclusion of the Administrative Coordinator position in the police department into its existing residual bargaining unit.

In 1980, the Teamsters were certified as the exclusive bargaining representative of the law enforcement officers within the city. *City of Snoqualmie*, Decision 1014 (PECB, 1980). In 2002, the Snoqualmie Police Officers' Association was certified as the exclusive bargaining representative of the bargaining unit of law enforcement officers. That bargaining unit was described as follows: "all full-time law enforcement officers of the City of Snoqualmie Police Department, excluding all officers above the rank of sergeant." *City of Snoqualmie*, Decision

7938 (PECB, 2002). When the Police Support Officer position was created, it was considered a uniformed position and included in the law enforcement bargaining unit.<sup>1</sup>

In 2002, the employer and the Association agreed to move the Police Records Technician into the Association bargaining unit.<sup>2</sup> The voluntary recognition to move the Police Records Technician positions from the Teamsters' bargaining unit to the Association bargaining unit was never certified by this agency. The record does not indicate what the Teamsters' position was at that time the positions were removed from its bargaining unit to the Association's bargaining unit.

On February 22, 2012, the employer filed a petition to clarify the Association's bargaining unit to remove the two non-interest arbitration eligible employees, the Police Support Officer and the Police Records Technician from the Association's police bargaining unit. The petition was filed because the population of the employer grew beyond 2500 or more residents, thereby making the full-time commissioned law enforcement officers interest arbitration eligible and precluding the commingling of non-interest arbitration eligible personnel in the same bargaining unit. See RCW 41.56.030(12), WAC 391-35-310. The Association stipulated to the petition, and the Association's bargaining unit was clarified. *City of Snoqualmie*, Decision 11343 (PECB, 2012). The order also amended the Association's bargaining unit as follows, "All full-time and regular part-time uniformed law enforcement officers of the City of Snoqualmie, excluding officers above the rank of sergeant, confidential employees, and all other employees." *Id.* The Association then filed this representation petition.

### ISSUE PRESENTED

Is the proposed bargaining unit consisting of the two positions, Police Support Officer and Police Records Technician, appropriate under RCW 41.56.060?

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<sup>1</sup> When it was originally created, the Police Support Officer was included in the Law Enforcement Officer and Fire Fighter (LEOFF) retirement plan. The incumbent left the position for a brief period of time. Upon his return, the position was placed in the Public Safety Employees Retirement System (PSERS) retirement plan.

<sup>2</sup> Testimony by Deborah Whalawitsa, Director of Administrative Services, and Lawrence Warren (Warren), the Police Support Officer, indicated that the move of the Police Records Technician and the Police Support Officer from the then-Teamsters' bargaining unit to the Association bargaining unit occurred in 2001. However, given the Association was not certified until 2002, so 2002 is the more likely date this occurred.

The proposed bargaining unit is not appropriate because the positions do not share a community of interest.<sup>3</sup> The Police Records Technician shares a community of interest with the clerical employees in the Teamsters' bargaining unit. The Police Records Technician position cross-trains with and receives backup from the Administrative Coordinator position within the police department. To grant the petitioned-for bargaining unit would create work jurisdiction issues and unduly fragment the employer's workforce. The Police Support Officer shares more of a community of interest with the employees in the police bargaining unit, but the position is not a uniformed position within the meaning of RCW 41.56.030(13).<sup>4</sup> Accordingly, the Police Support Officer position cannot be included in that unit.

## DISCUSSION

### Applicable Legal Standard

The determination and modification of bargaining units and the certification of the exclusive bargaining representative of appropriate units is a function delegated to this Commission by the Legislature. RCW 41.56.060; *Snohomish County*, Decision 5375 (PECB, 1995). When this Commission certifies a bargaining unit, the work performed by the employees in that bargaining unit becomes the historic work jurisdiction of that unit. *See, e.g., Washington State University*, Decision 11498 (PSRA, 2012)(bargaining unit work is defined as "work that bargaining unit employees have historically performed"). If an employer assigns new work to employees in a bargaining unit, that work becomes historical bargaining unit work unless there is a prior agreement between the employer and exclusive bargaining representative to make the transfer of work temporary. *City of Snoqualmie*, Decision 9892-A (PECB, 2009); *see also State – Social and*

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<sup>3</sup> While testimony at the hearing indicated that the employer may hire an additional position in the Police Department in September 2013, the Commission is bound to decide a case on the record as they find it. *See City of Winslow*, Decision 3520-A (PECB, 1990), n. 2.

<sup>4</sup> While it appears that the Police Support Officer position could be included in the Teamsters' bargaining unit in order to avoid stranding that position, the actual unit placement of that position as well as the Police Records Technician position cannot be resolved through this proceeding. Should the Police Records Technician and the Police Support Officer wish to pursue inclusion as interest arbitration eligible based on their job duties under the Law Enforcement Officers and Fire Fighter (LEOFF) Retirement System, their recourse would be through designation within a city charter provision, by ordinance enacted by the legislative body of the city, or through the Washington court system. RCW 41.26.030(18). *See also City of Pasco*, Decision 2636-B (PECB, 1987), *citing Beggs v. Pasco*, 93 Wn. 2d 682 (1980).

*Health Services*, Decision 9551-A (PSRA, 2008). In determining new appropriate bargaining units or modifying existing bargaining units, RCW 41.56.060 directs the Commission to examine the following: the duties, skills, and working conditions of the employer; the history of collective bargaining; the extent of organization among the employees and the desires of the employees.

No one factor is controlling and all four factors need not arise in each and every case. *Benton County*, Decision 7651 (PECB, 2002), *aff'd*, Decision 7651-A (PECB, 2003). There is no requirement that the Commission determine or certify the “most” appropriate bargaining unit configuration in any case; it is only necessary that the petitioned-for unit be an appropriate unit. *City of Winslow*, Decision 3520-A (PECB, 1990). The starting point for any unit determination analysis is the configuration sought by the petitioning organization. *King County*, Decision 5910-A (PECB, 1997). In making unit determinations, the Commission seeks to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. *King County*, Decision 5910-A.

#### Application of Standards

Application of the RCW 41.56.060 unit determination criteria demonstrates the following:

#### *Duties, Skills, and Working Conditions of the Public Employees –*

The employer’s police department includes the following positions: Chief of Police, Police Captain, Sergeant, Officer, Administrative Coordinator, Police Records Technician, and Police Support Officer. The Administrative Coordinator reports directly to the Chief and has been in the Teamsters’ residual bargaining unit since 2008. The Police Records Technician and the Police Support Officer report directly to the Captain, work in the police department, and are both subject to the Snoqualmie Police Department Policies and Procedures Manual.<sup>5</sup> Warren, who has served as the Police Support Officer for approximately eight years, testified he is the “third backup” for

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<sup>5</sup> The record reflects conflicting testimony as to whether the Police Department Manual applies to the Police Records Technician, the Police Support Officer, or the Administrative Coordinator positions. However, witness testimony and sections of the manual indicate all members of the police department are subject to the rules and regulations in the manual. “Member” includes “all paid and non-paid employees of the department.” “Officer” is separately defined from “Member.” See Exhibit 5, Sections 01.090, Definitions, and 05.020, Discipline.

the Police Records Technician when she is on vacation. The Administrative Coordinator, Deanna Mihelich, is the Police Records Technician's primary backup when Munson is out of the office.

Other than the similarities indicated herein, the Police Records Technician and the Police Support Officer do not share a community of interest because their duties, skills, or working conditions differ. The Police Support Officer's pre-employment process involved a background investigation, psychological examination, and a physical; the Police Records Technician's hiring process involved an interview after human resources selected the most qualified applicants from the responses to the hiring announcement. The Police Support Officer received two months of training at a correctional academy followed by a two-week course on evidence management. In addition, the Police Support Officer receives state-mandated periodic training on firearms, tasers, HIPAA blood borne pathogens, fitness, and defensive tactics. The Police Records Technician took an eight-hour ACCESS course through the Washington State Patrol. ACCESS is a database for those with training and clearance to conduct criminal records checks.

The Police Records Technician's main equipment while working is the computer; the Police Support Officer's main equipment while on duty, is a badge, firearm, ammunition, handcuffs, radio, and flashlight. The Police Support Officer wears a uniform, has an assigned department vehicle and a paid meal break; the Police Records Technician does not. The Police Support Officer coordinates his vacation with police officers in the department and often works in the field transporting criminal defendants to jail, managing the home detention program, handling evidence, and IT assistance. The Police Records Technician only works in the office and processes police records, enters reports into a database, assembles records for the prosecutor, issues concealed pistol licenses, maintains sex offender and subpoena tracking, answers the phone and greets visitors to the department. Becky Munson (Munson), the incumbent Police Records Technician, testified that on occasion she conducts searches of female detainees. Vacation schedules are coordinated between the Police Records Technician and Police Administrative Coordinator. Mihelich testified that as the Police Records Technician's backup she enters citations and infractions, does fingerprinting, sends documents to the prosecutor and court, and has conducted searches of female detainees. Finally, the Police Support Officer and Police Records

Technician are members of different retirement systems, the PSERS and Public Employees' Retirement System (PERS) Plan 2, respectively.

The Association asserts that the two disputed positions, the Police Records Technician and Police Support Officer, have "identical features" with the Records Clerk and Community Services Officers in *City of Battle Ground*, Decision 10514 (PECB, 2009). In that case, the Battle Ground Police Department had two non-commissioned job classes, with two employees in each position. The Executive Director found that, "[u]nique to the police department is that *all* employees are covered by a civil service system. That system controls procedures for appointment, transfer, promotion, reinstatement, demotion, and discharge." *City of Battle Ground*, Decision 10514. (emphasis added). Both of the disputed job classes in Battle Ground had civil service coverage, required uniforms, worked in a secure building, and had pre-employment conditions including background checks, fingerprinting, and passing polygraph testing. These facts were sufficient for the Executive Director to find that the Records Clerk and Community Services Officers shared a unique community of interest and could therefore appropriately be placed in a separate vertical unit within the police department. The Executive Director also determined that the two disputed positions did not share similar duties, skills, and working conditions with the employees in the larger clerical unit. *Id.* (emphasis added.)

In this case, neither the City of Snoqualmie Police Department Police Records Technician nor the Police Support Officer is covered by a civil service system.<sup>6</sup> Only the Police Support Officer wears a uniform and only the Police Support Officer was required to undergo a background investigation, psychological exam, and physical as pre-employment conditions. Additionally, the Police Records Technician's duties and working conditions are more similar to the clerical positions found in other city departments. The Police Records Technician cross-trains with the Police Administrative Coordinator; both positions received training in ACCESS and search procedures of female detainees. The Administrative Coordinator provides administrative support to the Police Chief, prepares correspondence and reports, manages portions of the department's

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<sup>6</sup> Testimony indicated that the Police Records Technician also serves as the Civil Service Secretary, whose duties include posting the public safety testing, assistance with administration of the testing, and certification of the qualification list. The Police Records Technician position itself, however, is not covered under the Civil Service System.



budget, and tracks department overtime. In the Police Records Technician's absence, the Administrative Coordinator runs criminal history checks in the ACCESS database. The Police Records Technician provides entry to a secure building and greets visitors; the Fire Department's Administrative Assistant, who is included in the Teamsters' bargaining unit, also provides entry to a secure building and greets visitors. Clerical employees in the Teamsters bargaining unit work in a variety of departments and handle non-labor confidential information, such as fire accident reports, medical information, business license applications, business and occupational tax issues, payment for parking fees, rental fees, back-up for permit applications, and payroll for city employees. These types of administrative and clerical duties are more similar to the nature of the Police Records Technician's work described above.

*History of Collective Bargaining –*

In addition to the collective bargaining history detailed herein, the Association has bargained on behalf of the two disputed positions since the parties' voluntarily agreed to include the positions in the Association's bargaining unit. Munson also acted as the Association's first vice president, during which time she negotiated the 2010 and 2011-2014 collective bargaining agreements and filed grievances on behalf of Association members.

Similar to the unit description in *City of Snoqualmie*, Decision 7928, the current agreement between the employer and the Association recognizes that the Association represents "all full time Law Enforcement Officers, excluding all officers above the rank of Sergeant." When the Association and the employer agreed to include the Police Records Technician and Police Support Officer in the bargaining unit, they ignored not only their recognized agreement, but also the Commission's bargaining unit certification.

The current agreement between the employer and the Teamsters recognizes that the Teamsters' unit includes ". . . all Public Works, Parks, IT, Building, and Finance & Administration departments of the Employer, and the office-clerical employees of all departments, excluding all elected and appointed officers, department heads and confidential employees and temporary employees." This recognition agreement generally conforms to the certification issued in *City of Snoqualmie*, Decision 1984.



The employer's past voluntary recognition of the Association as the exclusive bargaining representative does not bind the Commission for future cases. *King County*, Decision 11441 (PECB, 2012), *aff'd*, Decision 11441-A (PECB, 2013). In particular, when a bargaining unit is not established through an election conducted by this agency, the history of bargaining between the incumbent union and employer is not binding in future unit determinations. *King County*, Decision 11441, *citing Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, 24 Wn. App. 476 (1979), *review denied*, 93 Wn.2d 1025 (1980), *citing General Electric Co. (River Woods)*, 107 NLRB 70 (1953). In this case, no election was held for the Police Records Technician and Police Support Officer positions and the employer voluntarily recognized the placement of the positions in the Association's bargaining unit. This agency is not bound by the parties' history of voluntary recognition in this case and a unit determination election must be held to determine the employees' bargaining unit desires under WAC 391-25-420. Finally, when the parties agreed to remove the Police Records Technician and Police Support Officer from the Association's law enforcement officer bargaining unit, that work ceased to be Association bargaining unit work.

*Extent of Organization Among the Public Employees –*

In the present case, the Association seeks to create a second bargaining unit within the police department consisting of two non-commissioned positions within a police department which has a law enforcement officer unit of eight and a total of 16 employees. Very small units are discouraged where the positions can properly be fit into broader bargaining units. *King County*, Decision 5910-A, *citing City of Auburn*, Decision 4880-A (PECB, 1995). Where work jurisdiction conflicts are likely to arise on an ongoing basis due to a bifurcated workforce, separate bargaining units have been found inappropriate. *South Kitsap School District*, Decision 1541 (PECB, 1983), *cited with approval in Ephrata School District*, Decision 4675-A (PECB, 1995).

The Commission must be mindful of the problems created by a "legacy of small units," and must avoid stranding employees in units too small to engage in meaningful collective bargaining. *City of Winslow*, Decision 3520 (PECB, 1990), *aff'd*, Decision 3520-A. The Police Records Technician position is better aligned with the clerical and administrative positions found in the Teamsters unit. The Police Records Technician position was originally included in the Teamsters' residual bargaining unit based upon the job duties of the Police Records Technician

position and the description of the Teamsters' bargaining unit. If the Police Records Technician was placed in the petitioned-for unit with the Police Support Officer under the Association, work jurisdiction conflicts with the Administrative Coordinator position would likely arise given the two positions' cross-training and vacation coverage. While there was speculation that the employer might hire additional administrative staff at the police department, those employees would logically fall within the Teamsters' bargaining unit description.

Finally, while the Police Support Officer's duties have more in common with the uniformed police officers, the Police Support Officer is not interest arbitration eligible and may not be included in that unit. WAC 391-35-310. Based upon the description of the Teamsters' residual bargaining unit, the Police Support Officer position could be included in that unit to avoid stranding the Police Support Officer position.

*Desires of Employees –*

Although "desires of the employees" is one of the unit determination criteria listed in RCW 41.56.060, testimony under oath is an inherently coercive and inappropriate method for ascertaining the desires of employees. *Valley Communications Center*, Decision 4465-A (PECB, 1994). Unless an accretion is appropriate, the desires of employees are ascertained through the election process. *Central Washington University*, Decision 9963-B (PSRA, 2010).

Conclusion

The petitioned-for bargaining unit of two non-commissioned employees in the police department is not appropriate under RCW 41.56.060. The Police Records Technician position shares a community of interest with the clerical and administrative type positions found in the Teamsters' bargaining unit. The Police Records Technician and the Police Support Officer do not share similar duties, skills, or working conditions or a unique community of interest sufficient to separate them into a small, fragmented bargaining unit of two positions. The petition is dismissed.

FINDINGS OF FACT

1. The City of Snoqualmie is a public employer as defined by RCW 41.56.030(12).
2. The Snoqualmie Police Officers' Association is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The Teamsters, Local 763, a bargaining representative within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of a bargaining unit described as:

Residual unit consisting of all unrepresented employees of the city, excluding elected officials, appointed officials, uniformed personnel, supervisors and confidential employees.
4. On March 13, 2012, the Snoqualmie Police Officers' Association filed a petition seeking to represent the employees in the employer's police department in the positions of Police Records Technician and Police Support Officer.
5. The Administrative Coordinator's duties include: administrative support to the Police Chief, prepares correspondence and reports, manages portions of the department's budget, and tracks overtime within the department. The Administrative Coordinator has cross-trained and acts as backup on some of the Police Record Technician's duties such as fingerprinting, searches of detainees, entering citations and infractions, and sending documents to the courts and Prosecutor's Office.
6. The Police Records Technician's pre-employment process involved an interview after the human resources department selected the most qualified applicants. The Police Record Technician works in the office and her duties include processing police records, entering reports into a database, assembling records for the Prosecutor's Office, issuing concealed pistol licenses, maintaining sex offender and subpoena tracking, and answering the phone and greeting visitors to the department.
7. The Police Support Officer's pre-employment process involved a background investigation, psychological examination, and a physical. The Police Support Officer

works out in the field, often in an assigned vehicle, transporting criminal defendants to jail, managing the home detention program, handling evidence, and IT assistance. While on duty, the Police Support Officer is equipped with a badge, firearm, ammunition, handcuffs, radio, and flashlight.

8. The Police Records Technician and the Police Support Officer are not “uniformed personnel” as defined by RCW 41.56.030(13) and therefore are not eligible for interest arbitration per RCW 41.56.430 through .450.

#### 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. Based upon Findings of Fact 5 through 7, the petitioned-for bargaining unit of the Police Records Technician and Police Support Officer is not an appropriate bargaining unit under RCW 41.56.060(1) as the positions do not share a community of interest.

#### ORDER

The petition for investigation of a question concerning representation filed by the Snoqualmie Police Officers Association in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 1<sup>st</sup> day of August, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission pursuant to WAC 391-25-660.



**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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BY: /s/ MAJEL C. BOUDIA

CASE NUMBER: 24657-E-12-03707 FILED: 03/13/2012 FILED BY: PARTY 2  
DISPUTE: QCR UNORGANIZED  
BAR UNIT: NON UNIFORMED  
DETAILS: -  
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