

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
CITY OF SUNNYSIDE	)	CASE NO. 2173-C-79-100
For clarification of an existing bargaining unit of employees represented by:	)	DECISION NO. 1178 - PECB
SUNNYSIDE POLICE PATROLMAN'S ASSOCIATION	)	ORDER CLARIFYING BARGAINING UNIT

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Paul J. Murphy, Attorney at Law, appeared on behalf of the City.

Craig L. Smith, Attorney at Law, appeared on behalf of the Association.

By petition filed July 16, 1979, the City of Sunnyside (hereinafter "city") requested the Public Employment Relations Commission to clarify an existing bargaining unit represented by Sunnyside Police Patrolman's Association (hereinafter "association") with respect to positions titled "Sergeant" and Clerk/Typist--Secretary to Police Chief (hereinafter "Department Assistant III"). A formal hearing was conducted before James N. Leibold, Hearing Officer, on May 14, 1980.

POSITIONS OF THE PARTIES:

The City contends that the positions of "Sergeant" are supervisory employees, comparing them to supervisors in the Public Works Department who are represented in a separate unit by Teamsters Local No. 524, Decision 688-E (PECB, 1979). The City further contends the position of "Department Assistant III" entails confidential duties within the meaning of RCW 41.56.030(2)(c).

The Association resists removal of the positions of "Sergeant" and "Department Assistant III" from the existing bargaining unit, contending the contested employees do not fit within the meaning of RCW 41.56.030(2)(c).

STATUTORY PROVISIONS:

41.56.030 Definitions. As used in this chapter:

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer.

BACKGROUND:

On November 10, 1970, the Sunnyside Police Patrolman's Association was certified by the Washington State Department of Labor and Industries as the exclusive bargaining representative for all commissioned Police Officers below the rank of Sergeant and all non-commissioned personnel performing duty as probationary officers below the rank of Sergeant. Excluded were the Police Chief, one Captain, one Lieutenant, and one Sergeant. On November 24, 1971, the certification was amended to include the rank of Sergeant. On April 17, 1980, the parties executed a collective bargaining agreement for the period of time from January 1, 1980, through January 1, 1981, which contains the following:

ARTICLE 1 - RECOGNITION

Section 1.1 The City recognizes the Sunnyside Police Patrolman's Association as the exclusive bargaining agent in all matters of wages, hours, and conditions of employment for all commissioned Police Officers below the rank of Captain.

Section 1.2 That said personnel shall be considered for the purpose of the Agreement to include all Police Matrons and/or Clerks and the Animal Control/Parking Meter Officer employed by the Sunnyside Police Department.

The position of Lieutenant was abolished in 1977. By City Council action in 1979, the position of Captain was abolished and the Police Department was restructured by placing a Sergeant in charge of each shift. At the same time, the position of "Department Assistant III" was established. This position was referred to in the petition as Clerk/Typist--Secretary to Police Chief. Prior to execution of the 1980-81 Agreement, the City attempted to negotiate placement of the positions of "Sergeant" and the "Department Assistant III" into a separate bargaining unit.

DISCUSSION:Shift Sergeants

There are four Sergeants in the Sunnyside Police Department. Three are assigned to shifts and one is the Detective Sergeant. The Sunnyside Police Department operates three shifts, around the clock, with a Sergeant in charge of each shift. Each shift has at least three Patrolmen and one Clerk/Dispatcher. Each shift Sergeant has duties and responsibilities that include training, supervising, and evaluating employees, including the authority to discipline employees and adjust employee grievances. The three shift Sergeants share a common office. They are the only link in a chain of command between the rank and file and the Police Chief, who presently is the only person excluded from the bargaining unit.

The record clearly shows there has been a change in the shift Sergeants' duties since the City restructured the Police Department in 1979. See: White Pass School District, Decision 573-A (PECB, 1979). Leaving them in the same bargaining unit with the rank and file employees would pose a potential conflict of interest within the bargaining unit. City of Richland, Decision 279-A (PECB, 1978); City of Bellingham, Decision 575 (PECB, 1979); Naches School District, Decision 969 (PECB, 1979). These three Sergeant positions are supervisors who could be included in a separate bargaining unit, but no question concerning representation has been raised in a supervisor unit. It is sufficient to resolve the instant case to conclude that it would be inappropriate to include them in the same bargaining unit with those they supervise.

Detective Sergeant

The same cannot be said for the Detective Sergeant. He is the lone Detective in the Police Department, and has no subordinates. He formerly held the rank of Captain, but lost that rank as a result of disciplinary action. Through a civil service ruling, he was reinstated to employment; but was given his present rank of Detective Sergeant, as the rank of Captain had been abolished. He is neither a supervisory nor confidential employee and should remain in the existing bargaining unit.

Department Assistant III

The position of Department Assistant III was established by the City Council after a salary survey was conducted in 1979. According to a job description pertaining to this position, assignments include, but are not limited to, the following:

As a secretarial assistant to a department head, performs the full range of secretarial assistance and relieves the department head of delegated administrative details; provides confidential secretarial assistance

to a department head relating to personnel administration and labor relations, including typing memos, dealing with collective bargaining strategies, costing union and management proposals, typing disciplinary actions and grievances, gathering information relating to the preparation for bargaining as well as general processing; maintains cost accounting systems for the department; types correspondence, reports and minutes of meetings obtained by longhand, speedwriting, shorthand or tape recording or dictaphone; maintains department budget and recommends transactions to meet present or anticipated needs; responds to personal, telephoned, or written inquiries of citizens and government, industrial, or community leaders and officers; screens callers and determines proper referral of callers using tact and diplomacy; maintains calendar of appointments; assigns, directs and coordinates the work of subordinates. Performs related work as assigned.

Job descriptions tend to be self-serving documents, and are accorded little evidentiary weight where evidence is available of the actual duties performed. According to the record, Sharon Cooper, the person currently filling the position of Department Assistant III, works as a Clerk Dispatcher on the day shift from 7 am to 3 pm. She is the only Dispatcher working that particular shift. Most of her duties entail handling incoming calls to the Police Department from the public. She also does routine typing as time permits. According to the record, she has no supervisory duties other than clarifying memos to other Dispatchers who are under the direct supervision of the Sergeant on their shift. The bulk of her typing consists of typing complaints and reports, preparing index cards, and keeping other statistical records. Typing for the Police Chief entails a very small percentage of her time. She does not adjust grievances or sit in on the negotiation process. City Manager, John Bingham, acknowledged that she works principally as a Dispatcher.

In order to be excluded from the coverage of RCW 41.56 as a "confidential" employee, an individual must have duties which flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or other public official.

The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exception.

IAFF v. City of Yakima, 91 Wn.2d 101 (1978). The burden of excluding persons as "confidential" is a heavy one. City of Seattle, Decision 689-A (PECB, 1979). A secretary to a police chief can be excluded as a confidential employee, on a showing that she has actual access to confidential information concerning the labor relations policies of the employer. City of Pasco,

Decision 939 (PECB, 1980). Although her present salary is higher than that of other clerk/dispatchers, the actual duties of the Department Assistant III are not in conformity with the job description set forth above, nor have her duties changed to the extent that would warrant exclusion of her position from the bargaining unit on some basis other than the "confidential" claim advanced by the employer.

#### FINDINGS OF FACT

1. City of Sunnyside is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Sunnyside Police Patrolman's Association is a "labor organization" within the meaning of RCW 41.56.010 and a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Sunnyside Police Patrolman's Association has been recognized as a certified bargaining representative of all employees of the City of Sunnyside, except the Police Chief. A dispute has arisen as to whether positions of "Sergeant" and "Department Assistant III" should be excluded from the existing bargaining unit.
4. Sergeants in charge of shifts have duties and responsibilities that include training, supervising, evaluating and disciplining of employees and adjusting employee grievances, such that the potential for conflicts of interest arise from their inclusion in the same bargaining unit with those they supervise.
5. The Detective Sergeant has no authority to act on behalf of the employer in matters and relationships involving the employer and its employees.
6. The Department Assistant III is a clerical employee who spends the preponderance of her time performing clerk/dispatcher functions and who is not privy to confidential information concerning the labor relations policies of the employer.

#### CONCLUSIONS OF LAW

1. No question concerning representation presently exists in the bargaining unit described in paragraph 3 above, and the Public Employment Relations Commission has jurisdiction in this matter to issue an order clarifying bargaining unit.
2. Sergeants in charge of shifts are public employees within the meaning of RCW 41.56.030(2) and not "confidential employees" excluded from the coverage of the Act by RCW 41.56.030(2)(c); but are supervisors whose duties warrant their exclusion from the existing bargaining unit.

3. The Detective Sergeant and the Department Assistant III are public employees within the meaning of RCW 41.56.010 whose community of interest remains with the employees within the bargaining unit described in paragraph 3 of the foregoing findings of fact.

ORDER

IT IS ORDERED that the existing bargaining unit be clarified to exclude the Sergeants in charge of shifts.

DATED at Olympia, Washington this 10<sup>th</sup> day of June, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director