

*City of Kirkland*, Decision 12196 (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

KIRKLAND POLICE GUILD

For clarification of an existing bargaining  
unit of employees of:

CITY OF KIRKLAND

CASE 26194-C-14-1578

DECISION 12196 – PECB

ORDER CLARIFYING  
BARGAINING UNIT

Cline & Casillas, by *Mitchell A. Riese* and *Therese N. Norton*, Attorneys at Law, for  
the union.

*William R. Evans*, Assistant City Attorney, for the employer.

The City of Kirkland Police Department (employer) operates a jail that is staffed 24 hours a day, 7 days a week. Five different job classes are currently assigned to work at the jail: Corrections Officers, Corrections Corporals, Corrections Sergeants, Corrections Lieutenants and a Corrections Captain. The Corrections Captain oversees the jails operation and reports to the Chief of Police. No other employees in the employer's workforce hold Corrections job titles.

The Kirkland Police Guild (union) is the exclusive bargaining representative for all non-commissioned employees of the employer, excluding supervisory, confidential, and fully commissioned personnel. Corrections Officers and Corrections Corporals are included in the non-commissioned bargaining unit. This agency previously excluded the Corrections Sergeant job class from the Guild's bargaining unit. *City of Kirkland*, Decision 8896 (PECB, 2005). The Corrections Lieutenant job class was created subsequent to that decision and its supervisory status has not been an issue before this agency.

On January 8, 2014, the union filed a petition asking this agency to clarify its non-commissioned bargaining unit to include the Corrections Sergeant position. The employer opposed the union's petition and argued that the Corrections Sergeant supervises Corrections Officers and Corrections

Corporals and is properly excluded from the bargaining unit. Hearing Officer Jessica J. Bradley conducted a hearing on July 1, 2014, and the parties filed post-hearing briefs.

The issue to be decided is whether the Corrections Sergeant remains a supervisory employee which precludes its placement in the non-commissioned, non-supervisory bargaining unit. The duties and responsibilities of the Corrections Sergeant have changed since this agency last considered the position's unit placement in 2005. The creation of a new Corrections Lieutenant position shifted the distribution of many supervisory functions from the Corrections Sergeant to the Corrections Lieutenant. The Corrections Sergeant does not spend a preponderance of work time performing supervisory duties or perform a majority of the supervisory activities required for exclusion under the current management structure. The Corrections Sergeant does not have the authority to make meaningful changes in the employment relationship in areas other than daily assignment of work. The supervisory authority that the position exercises is similar to a lead worker as opposed to a supervisor. Accordingly, it is appropriate to include the Corrections Sergeant in the Kirkland Police Guild's non-commissioned, non-supervisory bargaining unit.

### BACKGROUND

The City of Kirkland experienced significant population growth in recent years. In June 2011, the neighborhoods of Kingsgate, Finn Hill, and North Juanita were annexed into the City of Kirkland. The annexation added approximately 31,000 new residents to the city's population, bringing the total population to 79,000. This represented an increase of 65 percent.

Prior to the annexation, the employer's jail was staffed by four different job classes: Corrections Officer, Corrections Corporal, Corrections Sergeant, and Corrections Captain. In 2004, the parties asked the agency to determine whether the Corrections Sergeant position, occupied by Robert Balkema, was properly excluded from the non-supervisory bargaining unit. This agency determined that the Corrections Sergeant position was a supervisory position that was properly excluded from the non-supervisory bargaining unit. *City of Kirkland*, Decision 8896.

In 2007 the employer promoted Balkema from Corrections Sergeant into a newly created Corrections Lieutenant position. As a Corrections Lieutenant, Balkema continued to perform the supervisory duties he performed in his Corrections Sergeant position. Balkema had been the only Corrections Sergeant. The employer did not hire another Corrections Sergeant after promoting Balkema. Balkema also took on some long-range planning functions and continued to perform most of the supervisory duties that he had performed in the Corrections Sergeant position. The Corrections Sergeant job classification remained vacant for approximately 4 years.

In 2011, the City of Kirkland Police Department reorganized its operations and added new police officer positions and Corrections Officer positions in response to the increased need for police services due to the recent annexation. This included increasing the staffing at the employer's jail. As part of the increase to corrections staffing, the employer promoted Corrections Corporal Kevin Florence into the long-vacant Corrections Sergeant position.

The Corrections Sergeant is responsible for overseeing the day-to-day functions of the jail, including scheduling inmate transports, ensuring minimum staffing is maintained, and reviewing bookings and written reports to ensure that they are completed according to policy. On the night shift, or on the day shift when staffing is tight, the Corrections Sergeant assists the Corrections Officers with their normal assignments, such as booking and transporting inmates. The Corrections Sergeant plays a similar role to the Corrections Corporals, who also draft evaluations, approve leave and shift trades, and reviews work on the shifts they are assigned. The Corrections Sergeant position is counted for purposes of minimum staffing needed to operate the jail. The Corrections Lieutenant position is not counted towards minimum staffing for the jail.

During contract negotiations in March 2013, the union requested that the Corrections Sergeant position be placed in the non-commissioned, non-supervisory bargaining unit. The employer did not agree to a change in unit placement. The parties signed a collective bargaining agreement covering the 2013-2015 period in January 2014. The union filed its unit clarification petition on January 8, 2014.<sup>1</sup>

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<sup>1</sup> The parties stipulated that the petition for unit clarification was timely filed. *Statement of Results of Prehearing Conference*, January 28, 2014.

DISCUSSIONApplicable Legal Standards

The determination and modification of bargaining units is a function delegated to the Commission by the Legislature. RCW 41.56.060; *Ronald Wastewater District*, Decision 9874-C (PECB, 2009). Generally, supervisors are not included in the same bargaining units as the people they supervise. WAC 391-35-340. The exclusion of supervisors from the bargaining units of their subordinates is presumed appropriate when they exercise authority on behalf of the employer over rank-and-file subordinates, and such exclusion avoids a potential for conflicts of interest. WAC 391-35-340(1). Supervisors are those employees whose *preponderance* of duties include the independent authority “to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action.” *Granite Falls School District*, Decision 7719-A (PECB, 2003); *see also* RCW 41.59.020(4)(d).

“Preponderance” can be met in two ways. An employee is a supervisor if they spend a preponderance of their time performing one or more of the statutory supervisory activities. *City of East Wenatchee*, Decision 11371 (PECB, 2012); *Inchelium School District*, Decision 11178 (PECB, 2011). An employee also is a supervisor if they spend less than a preponderance of their time performing supervisory activities but perform a preponderance of the type of supervisory activities enumerated in RCW 41.59.020(4)(d). *City of East Wenatchee*, Decision 11371; *King County*, Decision 10075 (PECB, 2008). The determination of whether an employee possesses sufficient authority to be excluded from a rank-and-file bargaining unit as a supervisor is made by examining the actual duties and authority exercised by that individual, not on the basis of his or her title or job description. *Rosalia School District*, Decision 11523 (PECB, 2012); *Morton General Hospital*, Decision 3521-B (PECB, 1991).

When examining supervisory indicia, the Commission places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. *State - Office of Administrative Hearings*, Decision 11503 (PSRA, 2012), *citing State - Corrections*, Decision 9024-A (PSRA, 2006). If an employee merely executes the instructions of a higher ranking employee when making meaningful changes

to the workplace, that employee has not exercised independent judgment. *State - Office of Administrative Hearings*, Decision 11503, *citing City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006).

A determination under the Commission's definition of supervisor does not negate or strip away any titular or other supervisory authority of that employee. Indeed, an employee may possess a lower level of supervisory authority than the statutory definition contemplates and still be deemed a "supervisor" by subordinates. The distinguishing characteristic is that the authority does not rise to the level of conflict expressed in the statute which would require separating the employee out of the bargaining unit. *Rosalia School District*, Decision 11523.

#### Application of Standard

The Corrections Sergeant does not spend a preponderance of work time performing supervisory duties. A majority of the Corrections Sergeant's time is spent performing bargaining unit corrections officer work. When Florence was assigned to the day shift he estimated that he spent 50-60 percent of his time performing Corrections Officer and Corrections Corporal job duties. The parties do not dispute that the Corrections Corporals are non-supervisory positions that are included in the bargaining unit.

In April 2014, the employer moved Florence off of the day shift and assigned him work on the night shift in order to help cover for staffing shortages. Florence is counted as a corrections employee for purposes of minimum staffing. Florence estimates that he spends 80 percent of his work hours on the night shift performing the same job functions as Corrections Officers and Corporals. The Corrections Sergeant does not spend a preponderance of his time performing the supervisory duties necessary to warrant his exclusion from the existing non-supervisory bargaining unit.

In addition to not spending a preponderance of his time performing supervisory duties, the Corrections Sergeant position does not exercise a preponderance of the type of supervisory duties required to warrant exclusion from the existing non-supervisory bargaining unit.

The Corrections Sergeant and Corrections Corporals have independent authority to approve leave, shift trades, and overtime. Scheduling for the Corrections Officers is based upon a bid system to determine their shift assignments. Both the Corrections Corporals and Corrections Sergeant use independent judgment in approving leave to ensure that each shift has minimum staffing.

The Corrections Sergeant also has the independent authority to assign work tasks such as assigning a Corrections Officer or Corporal to transport an inmate to a different facility. The Corrections Sergeant reviews case intake records created by Corrections Officers and Sergeants and may ask them to make entries or corrections to paperwork.

The position does not have the independent authority to discipline employees beyond a documented verbal warning, discharge employees, adjust grievances, or to promote, transfer, layoff, and recall employees. Like the Corrections Corporals, who are included in the union's bargaining unit, the Corrections Sergeant has a limited amount of authority while participating in hiring panels and only has the independent authority to approve leave, evaluate, and assign work.

For example, the Corrections Sergeant does not have the independent authority to suspend, discipline or discharge employees. Rather, the position only has the independent authority to issue a documented verbal warning. The Corrections Sergeant may be involved in employee discipline if a subordinate employee is having an issue at work and is expected to report incidents up the chain of command. If the issue is unresolved and requires discipline, the Corrections Sergeant provides the background information to the Corrections Lieutenant. Furthermore, while the Corrections Sergeant, like the Corrections Lieutenant, has access to review the jail's video surveillance recordings to investigate use of force complaints or other allegations of officer misconduct, any reports and recommendations are sent to the Chief of Police for a final determination on employee discipline.

The Corrections Sergeant also does not have the independent authority to adjust employee grievances. The Corrections Sergeant is expected to send any contractual grievances up the chain of command. A grievance could be resolved by the Corrections Captain or the Chief of Police.

The Corrections Sergeant does not have any independent authority to hire or promote employees, even though the position provides input and scores applicants. The Corrections Sergeant participates on oral interview panels that generally consist of three members. For a Corrections Officer interview, the panel would typically consist of one member of management at the Lieutenant level or above, one bargaining unit line staff, and one additional person such as the Corrections Sergeant. Each panelist independently scores the interview. The interview panel then averages the interview scores and develops a list of the top three applicants. The members of the interview panel make recommendations to the Chief of Police. The Chief of Police has the final decision on which applicant will be hired and does not always accept the hiring panel's recommendations. The employer uses the same process for hiring and promotions.

The Corrections Sergeant also does not have authority with regards to layoff and recall decisions. The Chief of Police has authority to make layoff and recall decisions pursuant to limitations in the collective bargaining agreement.

The Corrections Sergeant is responsible for evaluating the Corrections Corporals. The Corrections Sergeant also reviews the evaluations of the Corrections Officers that are drafted by the Corrections Corporals. Those evaluations are then reviewed by the Corrections Lieutenant, the Corrections Captain, and the Chief of Police. Florence explained that there have been times when one of his superiors asked him to change the way things were worded on an evaluation, but Florence has not been asked to make any substantive changes to the feedback itself. The employer uses employee evaluations to monitor employee performance. Employee evaluations are not tied to any incentive pay or other financial compensation to employees, although they may be considered when an employee applies for a promotion.

In *City of Lynnwood*, lead employees who drafted evaluations which were reviewed and edited by their superiors were deemed to be lead, and not supervisory, employees. The lead employees were also involved in the disciplinary process, but did not recommend discipline or directly discipline subordinate employees on their own. In this case, the Corrections Sergeant evaluates subordinate employees and is involved in the discipline process. Like the employee in *City of*

*Lynnwood*, these interactions do not automatically create a conflict of interest that would warrant the Corrections Sergeants exclusion from the non-supervisory bargaining unit.

Even if “lead workers” exercise some supervisory authority, there still must be a sufficient preponderance of supervisory duties to warrant their separation from the rank-and-file employees they lead. *Ronald Wastewater District*, Decision 9874-C, *citing City of Lynnwood*, Decision 8080-B. Monitoring the work of a fellow employee, even if done constantly, is not enough to satisfy the “preponderance of time” standard. *City of East Wenatchee*, Decision 11371, *citing Inchelium School District*, Decision 11178. 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. *State – Fish and Wildlife*, Decision 10962 (PSRA, 2011), *citing City of Lynnwood*, Decision 8080-A, *aff’d*, Decision 8080-B.

Furthermore, even where lead workers have the authority to direct subordinate employees in their daily job assignments, they generally do not have the authority necessary to make meaningful changes in the employment relationship. *Inchelium School District*, Decision 11178, *citing Grant County*, Decision 4501 (PECB, 1993). While the Corrections Sergeant may have the limited authority to assign work, approve leave, participate on hiring panels, and evaluate subordinates, he lacks authority to make meaningful changes to the employees’ relationship with the employer in hiring, promoting, adjusting grievances, laying off and recalling, transferring, and issuing discipline.

The Corrections Sergeant does not perform a preponderance of the supervisory duties. The Corrections Sergeant position currently does not have the authority to make meaningful changes in most areas of the employees’ employment relationship with the employer.

### Conclusion

The Corrections Sergeant fails to meet either the preponderance of time or preponderance of duties supervisory tests. Because the position is not supervisory, the position is logically included in the union’s non-commissioned, non-supervisory bargaining unit.



FINDINGS OF FACT

1. The City of Kirkland (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. The Kirkland Police Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit of all non-commissioned employees of the City of Kirkland Police Department, excluding supervisory, confidential, and fully Commissioned Personnel. Corrections Officers and Corrections Corporals are included in the non-commissioned bargaining unit.
4. The union filed a timely petition seeking clarification as to whether the Corrections Sergeant should continue to be excluded from the bargaining unit based on supervisory status.
5. The Corrections Sergeant does not have the independent authority to perform or make effective recommendations on a preponderance of the following types of activities: suspend, discipline, discharge, transfer, adjust grievances, schedule work and overtime, and layoff and recall.
6. The Corrections Sergeant has no independent authority to hire or promote.
7. The Corrections Sergeant has the independent authority to evaluate employees and assign work.
8. The Corrections Sergeant does not spend a preponderance of work time engaged in the supervision of subordinate 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. Based upon Findings of Fact 5 through 8, the Corrections Sergeant is a public employee under RCW 41.56.030(11) and is not a supervisor within the meaning of RCW 41.59.020(4)(d) or WAC 391-35-340.

ORDER

The Corrections Sergeant position is included in the non-commissioned, non-supervisory bargaining unit represented by the Kirkland Police Guild.

ISSUED at Olympia, Washington, this 7<sup>th</sup> day of November, 2014.

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 under WAC 391-35-210.



**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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CASE NUMBER: 26194-C-14-01578 FILED: 01/08/2014 FILED BY: PARTY 2  
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