

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

CITY OF TUMWATER

and

TUMWATER POLICE OFFICER'S  
GUILD

For clarification of an existing bargaining  
unit.

CASE 128261-C-16

DECISION 12630 - PECB

ORDER CLARIFYING  
BARGAINING UNIT

*Eric Trimble, Administrative Services Director, for the City of Tumwater.*

*John Kenderesi, Guild President, for the Tumwater Police Officer's Guild.*

On June 15, 2016, the City of Tumwater (employer) and the Tumwater Police Officer's Guild (union) jointly filed a unit clarification petition to remove the lieutenants and sergeants from the non-supervisory bargaining unit of uniformed police officers represented by the union. The parties agree that the duties of the lieutenants and sergeants bring their positions into conflict with the non-supervisory bargaining unit. As a result, the parties stipulate that the lieutenants and sergeants no longer share a community of interest with the 21 rank-and-file police officers in the existing bargaining unit. The parties request that the lieutenants and sergeants be placed in their own separate bargaining unit.

The issue to be decided is whether the parties' stipulations to remove the lieutenants and sergeants from the bargaining unit should be accepted. The Executive Director accepts the parties' stipulations. The bargaining unit is clarified to remove the lieutenants and sergeants from the existing bargaining unit and those employees are placed in their own separate bargaining unit.

## BACKGROUND

The union represents a non-supervisory bargaining unit of uniformed police officers in the employer's workforce. When that bargaining unit was originally certified, it included any employees of the Tumwater Police Department that were compensated for 16 or more hours per week and excluded the police chief, captains, lieutenants, and the secretaries and clerk typists working in the department. *City of Tumwater, Decision 2627 (PECB, 1987)*. Although the bargaining unit certification explicitly excluded lieutenants from the bargaining unit, those positions are currently included in the bargaining unit.

Employees in the ranks of lieutenant and sergeant share similar responsibilities and duties that revolve around directing and coordinating the activities of the rank-and-file officers. They train new employees and have the independent authority to assign work, schedule employee work shifts, grant employee leave, and approve employee overtime. In the event of an emergency, they also have the authority to reassign officers based upon the needs of the emergency event. The lieutenants and sergeants provide instruction and guidance to officers on the performance of their duties, and they have the authority to approve police reports made by officers or to request that an officer resubmit a report if it does not meet departmental standards.

The lieutenants and sergeants also participate in the development of department policies and goals. They recommend priorities and objectives and assist in the implementation of new policies and directives. Additionally, they are responsible for enforcing departmental rules and for investigating officer misconduct. Should the need for discipline arise, the lieutenants and sergeants participate on behalf of the employer in all disciplinary actions as well as any grievances that result from the disciplinary process. However, they do not have the independent authority to issue written discipline, and all disciplinary actions must be approved by the chief of police.

The rank-and-file officers take direction from the lieutenants and sergeants and are required to follow their directions. They do not participate in the development of department policies and are

not responsible for the implementation of those policies. The rank-and-file officers are not responsible for training new employees and have no role in the disciplinary process.

## DISCUSSION

### Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the Legislature. RCW 41.56.060; *Central Washington University*, Decision 10215-B (PSRA, 2010). The goal in making bargaining unit determinations 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. *Quincy School District*, Decision 3962-A (PECB, 1993).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of Chapter 391-35 WAC. The general purpose of the unit clarification process is to provide this agency as well as the parties to a collective bargaining relationship a mechanism to make changes to an appropriate bargaining unit based upon a change of circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

### Application of Standards

The parties' joint request to remove the lieutenants and sergeants from the existing non-supervisory bargaining unit is granted. The lieutenants were specifically excluded from the bargaining unit through the original certification. Arguably, those positions should not have been included in the existing bargaining unit. Additionally, the duties performed by the sergeants demonstrate that their community of interest lies with the lieutenants. Both the lieutenants and sergeants are responsible for overseeing and monitoring the activities of subordinate employees, and they also play a substantial role in the disciplinary process. The lieutenants and sergeants are

placed in their own bargaining unit separate and apart from the existing bargaining unit, and the existing bargaining unit description shall be modified to reflect the change in circumstances.

#### FINDINGS OF FACT

1. The City of Tumwater is a public employer within the meaning of RCW 41.56.030(12).
2. The Tumwater Police Officer's Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union currently represents a bargaining unit of uniformed police officers in the employer's workforce. When that bargaining unit was originally certified, it included any employees of the Tumwater Police Department that were compensated for 16 or more hours per week and excluded the police chief, captains, lieutenants, and the secretaries and clerk typists working in the department.
4. The bargaining unit described in Finding of Fact 3 includes four police sergeants.
5. Although the certification for the bargaining unit described in Finding of Fact 3 explicitly excluded lieutenants from the bargaining unit, three lieutenant positions are currently included in the bargaining unit presumably through a voluntary recognition.
6. The lieutenants and sergeants have the independent authority to assign work, schedule employee work shifts, grant employee leave, and approve employee overtime. They also have the authority to approve police reports made by officers. Additionally, they are responsible for investigating misconduct and participate on behalf of the employer in all disciplinary actions as well as any grievances. However, they do not have the independent authority to issue written discipline, and all disciplinary actions must be approved by the chief of police.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon Finding of Fact 6, the lieutenants and sergeants may appropriately be included in a bargaining unit separate from the unit described in Finding of Fact 3.

ORDER

1. The lieutenants and sergeants are removed from the bargaining unit described in *City of Tumwater*, Decision 2627. That bargaining unit description shall be modified as follows:

All non-supervisory uniformed police officers as defined by RCW 41.26.030 employed by the City of Tumwater, excluding lieutenants, sergeants, supervisory employees, confidential employees, and all other employees.

2. The lieutenants and sergeants shall be included in a separate bargaining unit described as follows:

All uniformed police officers as defined by RCW 41.26.030 in the ranks of lieutenant and sergeant employed by the City of Tumwater, excluding confidential employees, and all other employees.

ISSUED at Olympia, Washington, this 10th day of November, 2016.

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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### RECORD OF SERVICE - ISSUED 11/10/2016

DECISION 12630 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 128261-C-16

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