

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
SEATTLE POLICE DISPATCHERS' GUILD) CASE 14104-C-98-910
For clarification of an existing) DECISION 6604-B - PECB
bargaining unit of employees of:)
CITY OF SEATTLE) ORDER CLARIFYING
BARGAINING UNIT
_____)

Campiche, Hepburn, McCarty and Bianco, by Mark S. McCarty, Attorney at Law, represented the Seattle Police Dispatchers' Guild.

Mark H. Sidran, City Attorney, by Marilyn F. Sherron, Assistant City Attorney, represented the employer.

Aitchison and Vick, by Christopher K. Vick, Attorney at Law, represented intervenor, Seattle Police Officers' Guild.

On August 31, 1998, the Seattle Police Dispatchers' Guild filed a petition for clarification of an existing bargaining unit under Chapter 391-35 WAC, seeking reallocation of four "sergeant" positions in the Seattle Police Department which have historically been represented by the Seattle Police Officers' Guild. On September 10, 1998, the Seattle Police Officers' Guild moved for intervention, and sought dismissal of the petition. Following three postponements (one for an indefinite period), a hearing was held on July 27 and 28, 1999,¹ before Hearing Officer Paul T. Schwendiman. The parties submitted briefs.

¹ Part of the delay in processing of this case was related to an erroneous dismissal of the case, a motion for re-opening, and reopening of the case on February 23, 1999.

Based on the evidence and arguments, the Executive Director rules that the bargaining unit status of the disputed sergeants should not be changed.

BACKGROUND

The City of Seattle (employer) operates a communications/dispatch center within the Seattle Police Department. The operation is overseen by a communications director and a police lieutenant,² who receive office-clerical support from a secretary-receptionist.³ Other employees assigned to that operation include an administrative sergeant,⁴ four sergeants who head shifts,⁵ four police officers staffing a "telephone reporting unit",⁶ a communications analyst, a systems analyst, six chief dispatchers and approximately 94 dispatchers.

² The communications director and the lieutenant are law enforcement officers included in a bargaining unit of supervisory "uniformed personnel" represented by the Seattle Police Management Association (SPMA).

³ The secretary-receptionist is included in a bargaining unit represented by International Federation of Professional and Technical Engineers, Local 17.

⁴ An employer organization chart dated July 1999, indicates the administrative sergeant heads an operations/training unit which includes seven other positions.

⁵ The same organization chart shows three sergeants heading the first, second and third watches (which include 22 to 36 other positions) and shows a fourth sergeant as a "relief" sergeant.

⁶ These police officers conduct telephonic investigations and make reports that otherwise would require dispatch of a police officer to the scene. The telephone reporting unit is a limited resource, as 600 to 1000 other incidents that could be investigated by telephone are referred to patrol officers each year.

The Seattle Police Dispatchers' Guild (Dispatcher Guild) is the exclusive bargaining representative of a bargaining unit composed of the dispatchers and chief dispatchers.

The Seattle Police Officers' Guild (Police Guild) is the exclusive bargaining representative of a bargaining unit of the employer's non-supervisory law enforcement officers. That bargaining unit is composed of commissioned police sergeants and police officers, including those assigned to the communications/dispatch operation. The employees in that bargaining unit are "uniformed personnel" within the meaning of RCW 41.56.030(7).

Restructuring of the Dispatch Operation

Prior to 1970, the communications/dispatch workforce consisted entirely of police officers, sergeants, a lieutenant and the director. The evidence indicates a restructuring has occurred gradually since that time:

- Beginning in the early 1970's, civilian dispatchers were added to the workforce, where they worked alongside dispatchers who were police officers.
- The communications analyst and systems analyst positions were "civilianized", at uncertain times, by agreement between the employer and the Police Guild.
- By 1990, by agreement between the employer and the Police Guild, all of the police officers working as dispatchers were replaced with civilian dispatchers.
- By 1995, pursuant to an interest arbitration award, the police officers working in the chief dispatcher positions were replaced with civilian chief dispatchers.

- As part of a contract signed on December 24, 1996, the employer and Police Guild agreed to implement a 9-hour day for the employees represented by the Police Guild, and to re-assign the sergeants working in the dispatch center to patrol duties.

The employer has not followed through with the last of those steps toward "civilianization", however. The chief of police has since decided that none of these sergeant positions would be replaced with civilians. Thus, the sergeants working on regularly-scheduled shifts in the dispatch center were never transferred to patrol duty; the relief sergeant was transferred to patrol duty for a time, but was never replaced with a civilian employee; a relief sergeant has since been restored in the dispatch center.

The Present Situation

Police sergeants continue to oversee the shifts in the communications/dispatch center, in much the same manner as has been in effect throughout the history detailed in this record:

- On the First Watch (11:15 p.m. to 7:45 a.m.), the sergeant oversees two chief dispatchers and 20 dispatchers;
- On the Second Watch (7:45 a.m. to 3:45 p.m.), the sergeant oversees two chief dispatchers and 31 dispatchers, along with two police officers in the telephone reporting unit;
- On the Third Watch (3:45 p.m. to 11:45 p.m.), the sergeant oversees two chief dispatchers and 32 dispatchers, along with two police officers in the telephone reporting unit.

While on duty, a sergeant supervises both the civilian dispatchers and any police officers working in the telephone reporting unit. A sergeant may answer telephones to handle "911" emergency calls

while on duty in the dispatch center, particularly during overload periods.⁷

When there is no sergeant on duty, a chief dispatcher becomes the acting shift supervisor. A civilian working in an "acting" capacity supervises the dispatchers working on the shift, but does not supervise or sign the reports of police officers working in the telephone reporting unit,⁸ and is not subject to assignment to other duties performed by law enforcement officers.

POSITIONS OF THE PARTIES

The Dispatcher Guild argues that the positions historically held by police sergeants should be re-allocated to the bargaining unit it represents. It starts from the premise that the employer and the Police Guild once agreed to civilianize the dispatch operation, and it contends that the sergeants are not actually performing the work of law enforcement officers sufficient to warrant their inclusion in the "uniformed personnel" bargaining unit. It places strong reliance on the large percentage of days when chief dispatchers fill in because no sergeant is on duty, and it argues that the sergeants share duties and skills with the chief dispatchers. The Dispatcher Guild dismisses the sergeants' oversight of the telephone reporting unit as a "minor duty", and appears to suggest that the reports originating in that unit could or should be approved by a sergeant from some other part of the department. The Dispatcher Guild points out that the sergeants work in close

⁷ Ninety percent of "911" calls must be answered within 10 seconds. The answer rates are continually displayed by a computer.

⁸ The acting shift supervisor only tracks the attendance of police officers for the shift.

proximity with the civilian personnel, and points out limitations on promotional opportunities and other problems which flow from the sergeants and chief dispatchers being in two separate bargaining units. It claims that the circumstances have changed sufficiently to warrant the result which it seeks.

The employer contends that the bargaining unit status of the disputed sergeants should not be changed. It points out Commission precedents and rules which prohibit placing "uniformed personnel" and other employees in the same bargaining unit, and it contends that the sergeants are law enforcement officers within the "uniformed personnel" definition. The employer argues that the Dispatcher Guild has failed to establish a basis for its proposed change of bargaining unit configurations, and that there are substantial differences between the duties and skills of the sergeants and those of the civilian chief dispatchers. The employer characterizes its agreement with the Police Guild as one which "permitted", rather than "obligated", the employer to supplant the sergeants with civilians, and points out that it has not exercised the rights reserved to it by that contract.

The Police Guild also contends the bargaining unit status of the disputed sergeants should remain unchanged. It relies on the Commission rule which prohibits placing "uniformed personnel" and other employees in the same bargaining unit, but it also contends that this case turns upon (and it offers extensive argument concerning) the interpretation of the statute referenced in the definition of "uniformed personnel", RCW 41.26.030. While characterizing the sergeants as "leadworkers", it contends that their duties, skills and working conditions differ from those of the civilian dispatchers. The Police Guild urges that there has not been a change of circumstances sufficient to warrant any change of the unit configurations.

DISCUSSIONAuthority to Determine Bargaining Units

The determination and modification of appropriate bargaining units is a function delegated by the Legislature to the Commission, at 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.

Unit determination is not a subject for bargaining in the usual mandatory/permissive/illegal sense and, while parties may make and implement agreements on unit questions, their agreements are not binding upon the Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn. App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

The Commission described the unit determination process in King County, Decision 5910-A (PECB, 1997), as follows:

The purpose is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. See, City of Pasco, Decision 2636-B (PECB, 1987); City of Centralia, Decision 3495-A (PECB, 1990); Quincy School District, Decision 3962-A (PECB, 1993), affirmed 77 Wn.App. 741 (Division III, 1995); and Ephrata School District, Decision 4675-A (PECB, 1995).

Caution is indicated throughout the unit determination process, because the configurations implemented often outlast the individuals who participate in their creation.

Commission precedent recognizes the need to alter unit configurations from time to time, and Chapter 391-35 WAC establishes procedures for such situations. Particularly applicable to this case is WAC 391-35-020(3), which provides: "Disputes concerning the allocation of employees or positions between two or more bargaining units may be filed at any time." See also Grant County, Decision 6704 (PECB, 1999).

The availability of unit clarification proceedings under Chapter 391-35 WAC does not assure success for parties filing petitions, however. In Richland, supra, the Commission wrote:

Absent a change of circumstances warranting a change of unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate bargaining unit by agreement of the parties or by certification will not be disturbed.

The Commission has applied that principle in numerous cases under Chapter 391-35 WAC.

Application of Standards

Some Arguments are Anticipatory -

The arguments advanced by the Dispatcher Guild in this case tend to focus on similarities between the disputed positions and the unit it represents, and inherently assume that it would be appropriate to include the disputed positions in that unit. The Dispatcher Guild gets ahead of itself in that regard:

First, the propriety of the present unit placement of the disputed positions must be resolved before looking into what (if any) bargaining unit the disputed positions would or could be allocated to upon removal from their present bargaining unit. There would be no occasion to decide whether the disputed positions have the characteristics of a "dispatcher" or "chief dispatcher" if they continue to belong in the bargaining unit represented by the Police Guild.

Second, it is not at all clear that the work performed by the sergeants would properly be included in the bargaining unit represented by the Dispatcher Guild. The employer's job description for the shift sergeant positions is in evidence, and it suggests the sergeants have and exercise substantial authority on behalf of the employer in personnel matters. The Police Guild characterizes the sergeants variously as "leadworkers" or "supervisors". Even the Dispatcher Guild acknowledges that the shift sergeants "direct and supervise the operations of the shift to which they are assigned 'on a day to day, hour by hour, minute by minute basis'." Supervisors have bargaining rights under Chapter 41.56 RCW, under Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), but are routinely excluded from the units containing their rank-and-file subordinates, to avoid a potential for conflicts of interest which would otherwise exist. Richland, supra. Thus, sergeants who would not be excludable as "supervisors" in the context of the unit represented by the Police Guild could be excludable from the unit represented by the Dispatcher Guild based on their supervision of dispatchers.⁹

⁹ Previous decisions such as City of Seattle, Decision 689-A (PECB, 1979), indicates there are multiple paramilitary ranks in place among the employer's law enforcement officers, above the sergeants. In contrast, the record here indicates there is only one level between the sergeants and the communications director.

1996 Agreement Inapposite -

The Dispatcher Guild relies heavily, or even primarily, on the agreement made by the employer and the Police Guild in 1996, whereby the Police Guild would "not object" to the work of the four shift sergeants being performed by civilians.¹⁰ That line of argument is rejected for multiple reasons:

First, it is abundantly clear that the employer never exercised the authority reserved to it by the cited agreement. The three sergeants regularly assigned to shifts were never transferred to patrol work. The relief sergeant position was left vacant for a time, but was never civilianized. The Dispatcher Guild was neither a party nor a third-party beneficiary to that agreement, and it has no basis to complain if the employer backed off on its quest to civilianize positions in the communications/dispatch operation.

Second, a substantial question exists as to whether the cited agreement has any further force or effect. RCW 41.56.070 imposes a three-year limit on collective bargaining agreements negotiated under Chapter 41.56 RCW. The agreement signed by the Police Guild and the employer on December 24, 1996, was to remain in effect (and could only have remained in effect) for calendar years 1997, 1998 and 1999. Given the passage of time, and the absence of any evidence that the Police Guild has waived its bargaining rights in a subsequent collective bargaining agreement, the Dispatchers Guild places more weight on the now-expired agreement than it will bear.

¹⁰ That contract is in evidence as Exhibit 7 in this record. It includes:

4. In order to help provide a sufficient number of patrol police sergeants for the 9-hour day, the Guild agrees to relinquish jurisdiction over the work performed by ... the four shift supervisor Police sergeants in Communications. The guild will not object to such work being performed by civilians.

No Change of Circumstances Shown -

The Commission takes the parties and the positions as it finds them in a unit clarification proceeding under Chapter 391-35 WAC, and makes determinations that will control future collective bargaining relationships. The evidence in this record strongly suggests that management of the communications/dispatch operation remains in the hands of commissioned law enforcement officers. The basic job duties and organizational role of the shift sergeants have not changed materially since 1970, when the communications/dispatch operation was staffed entirely by law enforcement officers.

In stating that civilians could perform the duties of the disputed positions, the Dispatcher Guild suggests the assignment of commissioned law enforcement officers to those functions is unusual and/or unnecessary. This line of argument is not persuasive.

First, the Commission has no authority to directly review an employer's decisions about the management of its operations.¹¹

Second, this line of argument contravenes the "take where found" precept. The possibility that arrangements different from those historically used by the employer might be available does not provide a basis for the Commission to usurp the management responsibilities of the employer or the bargaining rights of the union which now represents the sergeants.¹² If the employer has chosen to use law enforcement officers in roles where civilian personnel might suffice, that is a political question to be decided by the voters and elected officials in Seattle.

¹¹ This does not exclude the Commission from deciding related "discrimination" or "refusal to bargain" claims.

¹² Under South Kitsap School District, Decision 472 (PECB, 1978) and numerous subsequent precedents, the Police Guild is entitled to notice and an opportunity for bargaining before tasks within the historical work jurisdiction of the bargaining unit it represents are transferred to persons outside of that unit.

"Uniformed Personnel" Arguments Inapposite -

The parties have each advanced arguments about whether the disputed sergeants should continue to enjoy the status and benefits of the "uniformed personnel" category within the group of public employees covered by Chapter 41.56 RCW.¹³ In view of the conclusion that there has been no change of circumstances warranting the removal of the disputed sergeants from the bargaining unit represented by the Police Guild, the Executive Director declines to become embroiled in their debate.

It is true that the Legislature has adopted an "interest arbitration" procedure for resolving impasses involving commissioned law enforcement officers,¹⁴ that the Commission has consistently ruled that employees who are "uniformed personnel" within the meaning of RCW 41.56.030(7) should not be mixed in the same bargaining unit with employees who are not eligible for the special impasse resolution procedure,¹⁵ and that the Commission codified those precedents in WAC 391-35-310, adopted in 1996:

Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration.

¹³ Regrettably, the Dispatcher Guild devoted nearly 1/3 of the argument in its brief to this issue; the employer devoted nearly 1/4 of the argument in its brief to this issue; the Police Guild devoted nearly 2/5 of the argument in its brief to this issue.

¹⁴ RCW 41.56.430 through .490.

¹⁵ The earliest decisions on this point are Thurston County Fire District 9, Decision 461 (PECB, 1978); City of Yakima, Decision 837 (PECB, 1980); King County Fire District 39, Decision 2638 (PECB, 1987).

However, the definition of "uniformed personnel" contained in Chapter 41.56 RCW has little to do with the type or uniformity of clothing worn by employees. Rather, RCW 41.56.030(7) defines the class of employees eligible for interest arbitration as including:

"Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more ...

RCW 41.26.030 is a provision in the statute which establishes the Law Enforcement Officers and Fire Fighters Retirement System Act (LEOFF), and it defines "law enforcement officer" as including "[A]ny person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally", subject to some exceptions.

The LEOFF statute was first enacted in 1969. Parties can be presumed to have conformed to a statute promptly after its enactment, and the practice of having commissioned law enforcement officers in charge of communications/dispatch operations has remained in effect in Seattle throughout the period the LEOFF statute has been in effect. Nothing is cited or found in the original LEOFF statute or any amendment which expressly precludes a city from assigning commissioned law enforcement officers to oversee a police dispatch center such as the one before the Commission in this case. Apart from the fact that the state Department of Retirement Systems has the primary responsibility for interpreting the LEOFF statute, the Executive Director is certainly not compelled to interpret either RCW 41.56.030(7) or RCW 41.26.030 in this case just because the parties have made their arguments here.

FINDINGS OF FACT

1. The City of Seattle, a municipal corporation of the state of Washington under RCW 41.56.020, operates a communications/dispatch center within the Seattle Police Department.
2. The Seattle Police Dispatchers' Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory, non-uniformed employees working in the communications/dispatch operation within the Seattle Police Department.
3. The Seattle Police Officers' Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory, uniformed employees of the Seattle Police Department, including certain employees working in the communications/dispatch operation within the Seattle Police Department.
4. Prior to 1970, all of the employees in the communications/dispatch operation were commissioned law enforcement officers. The operation continues to be headed by a communications director and a police lieutenant who are excluded, as supervisors, from the bargaining unit described in paragraph 3 of these Findings of Fact.
5. Training, projects, and supervision of shifts in the communications/dispatch center continues to be under the direction of police sergeants who are included in the bargaining unit described in paragraph 3 of these Findings of Fact.
6. Police officers assigned to a telephone reporting unit within the communications/dispatch operation report to the shift

sergeants described in paragraph 5 of these Findings of Fact, and are included in the bargaining unit described in paragraph 3 of these Findings of Fact.

7. As the result of gradual changes up to 1995, the regular dispatcher and chief dispatcher functions in the communications/dispatch center are now performed by civilian employees in the bargaining unit described in paragraph 2 of these Findings of Fact.
8. The City of Seattle and the Seattle Police Officers' Guild entered into an agreement in 1996, to be effective from January 1, 1997 through December 31, 1999, under which the employer would have been permitted to replace the sergeants described in paragraph 5 of these Findings of Fact with employees who were not commissioned law enforcement officers.
9. The City of Seattle did not exercise the rights reserved to it by the agreement described in paragraph 8 of these Findings of Fact, and the sergeants described in paragraph 5 of these Findings of Fact continue to work in essentially the same manner as they and their predecessors have performed since prior to 1970.

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. There has been no change of circumstances sufficient to warrant a change, under RCW 41.56.060, of the bargaining unit status of the police sergeants described in paragraphs 5 and 9 of the foregoing Findings of Fact.

ORDER CLARIFYING BARGAINING UNIT

The police sergeants assigned to the communications/dispatch center within the Seattle Police Department shall continue to be included in the bargaining unit of non-supervisory law enforcement officers represented by the Seattle Police Officers' Guild.

Issued at Olympia, Washington, on the 1st day of December, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, 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.