

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-7-07

(UNIT CLARIFICATION PETITION)

OREGON STATE POLICE OFFICERS' ASSOCIATION,	)	
	)	
	)	
Petitioner,	)	RULINGS,
	)	FINDINGS OF FACT,
v.	)	CONCLUSIONS OF LAW,
	)	AND ORDER
STATE OF OREGON, DEPARTMENT OF STATE POLICE	)	
	)	
	)	
Respondent.	)	
_____	)	

On August 20, 2008, this Board heard oral argument on both parties' objections to a Recommended Order issued on May 12, 2008 by Administrative Law Judge (ALJ) Wendy L. Greenwald, following a hearing held on October 10, 11, 12, 15, 16, 17, 18, November 27, and 28, 2007, in Salem, Oregon. The record closed on December 27, 2007 upon receipt of the parties' post-hearing briefs.

Daryl S. Garrettson and Becky Gallagher, Garrettson, Goldberg, Fenrich, and Mackler, 423 Lincoln Street, Eugene, Oregon 97401-2516, represented Petitioner.

Stephen D. Krohn, Assistant Attorney General, Department of Justice, 1162 Court Street N.E., Salem, Oregon 97301-4096, represented Respondent.

On April 10, 2007, the Oregon State Police Officers' Association (Association) filed this petition seeking to add the sergeant classification to the existing bargaining unit. The State of Oregon, Department of State Police (Department) filed timely objections to the petition on May 4, 2007. It asserts that sergeants are supervisors who cannot be included in the bargaining unit.

After investigation, the ALJ set the petition for hearing. At hearing, the parties examined witnesses and offered exhibits. The issues are:

1. Has there been a significant change of circumstances since this Board excluded sergeants from the Association bargaining unit in *Department of Administrative Services v. Oregon State Police Officers Association*, Case No. UC-35-95, 16 PECBR 846 (1996)?

2. If there has been a significant change in circumstances, are sergeants supervisors under ORS 243.650(23)?

### RULINGS

1. On September 10, 2007, the Department filed a Motion to Bifurcate, requesting that this Board first address the issue of whether there has been a significant change of circumstances before it considers whether the sergeants are supervisory or managerial personnel. The ALJ correctly denied this motion. Whether a significant change of circumstance has occurred since this Board's last ruling is an issue of fact that cannot be considered separately from the other issue raised by the petition.

2. The Department objected to the receipt of Association Exhibit P-15, a disciplinary letter, as irrelevant. The ALJ correctly excluded the exhibit because the discipline did not involve either sergeants or members of the Association bargaining unit.

3. After the hearing, the ALJ determined that Exhibit R-70 had been both received into evidence and withdrawn by the Department. The ALJ contacted the parties regarding this discrepancy, and the Department confirmed its intent to withdraw Exhibit R-70. The ALJ properly withdrew Exhibit R-70 from the record.

4. As requested by the Association, we take official notice of the Findings of Fact in *Oregon State Police Officers' Association v. State of Oregon, Department of State Police and Oregon AFSCME Council 75*, Case No. UC-6-00, 18 PECBR 930 (2000). We also take official notice of the Findings of Fact in *Department of Administrative Services v. Oregon State Police Officers Association*, Case No. UC-35-95, 16 PECBR 846 (1996).

5. The ALJ's remaining rulings were reviewed and are correct.

### FINDINGS OF FACT

1. The Association, a labor organization, is the exclusive representative of a bargaining unit of personnel employed by the Department, a public employer. In

addition to some other classifications, the Association bargaining unit includes approximately 480 troopers and senior troopers.

2. The Department is organized into several divisions including patrol, criminal, fish and wildlife, gaming, and training. There are approximately 90 sergeants in the Department.

3. In 1990, this Board determined that the majority of sergeants were included in the Association bargaining unit. *Oregon State Police Officers Association v. Oregon State Police Department*, Case No. UC-20-89, 12 PECBR 570 (1990) (*OSP I*).

4. In 1995, the legislature changed the definition of “supervisory employee.” In 1996, this Board determined that the Department sergeants were supervisory employees under the new statutory definition and thus were excluded from the Association bargaining unit. *Department of Administrative Services v. Oregon State Police Officers Association*, Case No. UC-35-95, 16 PECBR 846 (1996) (*OSP II*).

5. Sergeants do not exercise supervisory authority in the areas of hiring, layoff and recall, or the adjustment of grievances.<sup>1</sup>

#### Assignment of Duties

6. Sergeants assign duties and direct the day-to-day activities of bargaining unit members. Sergeants make work location and case assignments. Some assignments are routine, such as those based on geographic location or a criminal matter. In other situations, a sergeant assigns troopers after considering a trooper’s special skills or abilities and the type of matter being assigned. Sergeants also make assignments in major incidents and assign the lead detective in a criminal matter. Sergeants have the authority to call back employees under their supervision and to authorize overtime. Sergeants typically monitor the activities of troopers and radio calls, and when necessary, provide direction. The collective bargaining agreement generally addresses the process for assignment of hours of work, shifts, and schedules.

7. Sergeant Eric Judah has made determinations about who to assign to a fatal crash incident and whether to call in additional deputies. Sergeant Vern Fowler generally assigns work based on geographic area or a trooper’s skills and abilities. Sergeant Brent Seaholm, who frequently receives complaints regarding fishing and hunting violations, often has to decide whether to wait for a trooper to be on duty, take

---

<sup>1</sup>This Finding is based on the oral stipulation of the parties

the call himself, or call out a trooper on overtime. Sergeant Molly Cotter screens criminal cases, considers requests from other agencies for the services of the criminal detectives, determines when it is appropriate to assign a detective, and assigns detectives to cases based on the matter being investigated and the team affected.

8. The Department has a number of special assignments such as the SWAT team, mobile response team, and bomb technician. A trooper's request for a special assignment is submitted through their sergeant. Sergeants write a recommendation and forward the request up the chain of command. Sergeants have recommended against an assignment based on a lack of experience, skills, time in the present position, or the manpower needs of the trooper's current office. In most cases, a sergeant's recommendation against an assignment is followed by the Department without independent investigation. Sergeants' recommendations for assignments are not always granted by the Department due to competing requests or the lack of available openings.

9. In a few cases, a superior officer has requested review of a sergeant's recommendation for a special assignment. In March 2004, after Sergeant Scott Lorimor recommended against the assignment of a trooper to a bomb technician position, Captain Gerald Gregg asked the criminal division to review the request before he also denied the assignment. In another matter, due to the need for more troopers on the SWAT team, Lieutenant Michael Bloom asked Sergeant Ron Martin to reconsider his recommendation against assigning a trooper to the SWAT team. Martin agreed that if the trooper improved his report writing, he could then be placed on the SWAT team. Troopers applying for the SWAT team must also pass a physical agility fitness test and be interviewed by a review board and the unit commander

### Transfers

10. Troopers seeking a transfer to another division within the Department submit their requests through their sergeant. Sergeants evaluate the request, write a recommendation, and then forward the request up the chain of command. Sergeants have recommended against transfers based on their assessment of a trooper's time in their current position, abilities and/or experience, and performance. Sergeants' recommendations against a transfer have generally been followed by the Department without additional investigation. Sergeants' recommendations for transfers are not always granted by the Department due to competing requests or lack of available openings.

## Awards and Commendations

11. Sergeants have written letters of congratulation and commendation that are placed in troopers' personnel files. Such letters have been written for receiving accreditation as a traffic accident reconstructionist, providing a quick and organized response to a fire, and identifying another crime while conducting a traffic stop. Sergeants have also made nominations for Life Saving Awards and Team of the Year. The Department does not accept all nominations. Citizens also may submit letters of commendation or nominate troopers for awards. These letters are placed in the trooper's personnel file.

## Evaluations and Work Plans

12. Sergeants independently prepare performance evaluations for troopers under their supervision. In preparing the evaluation, sergeants determine the number of points to award in 10 separate categories, provide comments regarding key duties, and include additional comments regarding performance issues. A completed evaluation is forwarded up the chain of command before it is placed in the trooper's personnel file. A trooper must score at least 80 points on an evaluation to receive a merit increase and 100 points to be recommended for promotion. Sergeants have denied merit pay increases in evaluations and issued evaluations with a 50-point rating, which is not considered a passing score.

13. Evaluations prepared by sergeants are not generally changed. For example, after Sergeant Fowler refused to change an evaluation as requested by Lieutenant Tim Steiner, Steiner later told him that he was right not to make the change. A supervisor who disagrees with a sergeant's evaluation of a trooper generally writes an "administrative insight," rather than changing the evaluation. Administrative insights are memoranda which provide feedback to a subordinate. The memorandum is sent down the chain of command and is not discipline. For example, in 2007, Captain Travis Hampton wrote an administrative insight to a sergeant who issued an evaluation ranking of 100 points to a trooper who was on a work plan.

14. In a few cases, sergeants have changed evaluations at the request of a superior officer. Sergeant Cotter, who conducts seven to eight evaluations a year, was comfortable with a superior's request to remove a reference to a medical issue from an evaluation. Sergeants Robert Fenner, Lawrence Lucas, and Craig Flierl changed an evaluation from 100 points to 90 points as requested, although they did not agree with the change.

15. Sergeant Scott Lorimor, who has conducted 25 to 30 evaluations, also changed an evaluation upon a superior's request, although he did not agree with the change. In December 2001, after Lorimor had been a sergeant for approximately two months, he evaluated PJ at a 90-point rating. PJ wrote a rebuttal to this rating. In August 2002, PJ filed a tort claim notice with the Department alleging gender discrimination and hostile work environment. In September 2002, Lorimor wanted to rate PJ at 50 points on the transfer evaluation. However, Lieutenant Jerry Palmer advised Lorimor that he needed to bring the rating up to a passing level. Lorimor and Palmer met with Captain Gregg and Mel Galvin-Conrad, a member of the Department's labor relations unit, to discuss issues related to PJ, including the preparation of the transfer evaluation. Galvin-Conrad told Lorimor that he could not back up a 50-point rating. Lorimor issued an evaluation with a 70-point rating. As a result, Lorimor does not believe he has the authority to dismiss an employee.

16. A sergeant who determines that a deficiency exists as the result of an evaluation process or general oversight can place a trooper on a work-improvement plan. A sergeant can also remove a trooper from a work plan. Sergeant Michael Dingeman placed MB on a work plan after MB did not respond to verbal corrections of deficiencies. Sergeant Dingeman also supervised DP while he was on a work plan, and then removed him from the plan. Sergeant Lorimor placed two employees on work plans, one as a result of an evaluation process. Lorimor developed the work plans, which he provided to the Department's Office of Professional Standards (OPS) for their review. OPS made some substantive changes in the work plans. Lorimor removed one of the employees from the work plan after determining it had been satisfactorily completed. Sergeant Eric Judah understood from discussions with his lieutenant that he was expected to prepare and oversee a work plan himself.

### Promotions

17. The process for promotion to sergeant is set by policy. When a promotion opportunity exists for a sergeant position, interested employees submit a letter of interest to their sergeant. Pursuant to the policy, the sergeant then evaluates the trooper and makes a recommendation based on the individual's employment history, evaluations, and supervisory potential. Sergeants may also talk to the employee's peers or other coworkers. Under the policy, sergeants must recommend against a promotion if a trooper did not receive 100 points on their last evaluation. Promotion decisions are generally made based on the sergeant's recommendation, candidate interviews, personnel files, and candidate letters. A sergeant's recommendation against a promotion is generally followed by the Department. A sergeant's recommendation for a promotion is not always followed due to competing candidates.

### Assignment of Recruits to Solo Patrol

18. New recruits are assigned to a team of rotating coaches. The coaches write daily observation reports and notify the sergeant when they believe the recruit is ready to be assigned to solo patrol. Sergeants make the recommendation for a recruit's assignment to solo patrol, relying primarily on the coach's recommendation, but also on their own experience with the recruit and a review of the recruit's training. Sergeants have also reviewed the coach's daily observation reports, the recruit's citations and notebooks, and consulted with other employees, such as those in the dispatch center, to determine a recruit's readiness. Lieutenants do not generally observe recruits directly and rely on the sergeant's recommendation.

### Recruit Dismissals

19. Sergeants make decisions to terminate a recruit's employment, relying primarily on the recommendation of the coach who worked with the recruit and also on their own experience with the recruit. Sergeants may assign a recruit to a different coach before deciding to dismiss the recruit. In April 1998, Sergeant Randy Westbrook terminated Recruit BM's employment based primarily on the recommendations of BM's two coaches, and also on his own experience riding with the recruit. In February 1999, Sergeant Glenn Chastain conducted a personnel investigation of a complaint alleging that Recruit GP had inappropriately used his authority while off duty. After consulting with OPS, Chastain sustained the complaint and dismissed GP. In February 2007, Sergeant John Keeler decided to terminate Recruit KR's employment after assigning KR to a second coach, who recommended that KR be terminated. After discussing his recommendation for KR's termination with his lieutenant and OPS, Keeler notified KR that he would not be extending his service and KR resigned.

### Discipline and Discharge

20. The Department administers discipline pursuant to the Personnel Complaint Procedures Manual, which has not significantly changed since *OSP II*. The manual applies to all personnel complaints concerning Department employees, including sworn represented employees. Personnel complaints may be filed by citizens, coworkers, or supervisors. From 2002 through November 1, 2007, the approximate number of complaints filed against sworn represented personnel are: 2002—143; 2003—129; 2004—159; 2005—169; 2006—174; and 2007—105.

21. The manual sets out a seven-step process for supervisors to use when processing personnel complaints.

(a) “STEP 1: RECEIPT AND DOCUMENTATION OF COMPLAINT” addresses the initiation of a complaint. It outlines which complaints may be addressed informally and those that should be dealt with formally. The manual also includes a complaint form and instructions for completing the form.

(b) “STEP 2: COMPLAINT ASSESSMENT” identifies the “affected employee’s immediate supervisor” as the person generally responsible for investigating, evaluating, and processing personnel complaints. It also identifies when assistance with the investigation may be appropriate and how duty status considerations are to be addressed during the investigation.

(c) “STEP 3: INVESTIGATING” identifies the principles that the investigator should keep in mind during the investigation process and provides a general guide on the order of the investigation, timeliness issues, and the preparation and delivery of the investigative report.

(d) “STEP 4: MAKING FINDINGS OF FACT” requires the decision maker to develop a written report which contains findings, including the allegations at issue; a decision regarding whether the allegation is or is not sustained; the evidence, both supporting and contrary to the finding; and any additional allegations developed through the investigation. A suggested format and examples for the findings are included in the manual.

(e) “STEP 5: DECIDING ON CORRECTIVE ACTION” identifies the standards for imposing corrective action, and the types of informal and formal corrective action. It also provides that:

- “2. Supervisors do not have arbitrary authority concerning personnel matters. All supervisors are required to exercise their authority in conformance with both the standards and procedures established by the Department.
- “3. To assist the supervisor in determining the appropriate level of corrective action, he/she may contact the Office of Professional Standards to ascertain whether comparable performance/behavior has been addressed with other employees and the range of the corrective action taken as a result of those violations ”

Step 5 also provides that a supervisor's decision can be modified without the supervisor's permission by a grievance settlement, a decision by an arbitrator or the Employment Relations Board, or where the Department determines the supervisor acted "unlawfully in violation of a union contract, or the decision objectively shows a serious impairment of judgement."

(f) "STEP 6: TAKING CORRECTIVE ACTION LESS THAN DISMISSAL/REMOVAL" identifies the process and format for the delivery of corrective action less than dismissal. A sample of the suggested format is included.

(g) "STEP 7: TAKING DISMISSAL/REMOVAL ACTION" outlines the steps and provides a suggested format and samples of the pre-dismissal notice, pre-dismissal meeting, and dismissal notice. It also suggests that supervisors consult with upper level management, OPS, and if necessary, the Department of Justice during the dismissal process.

(h) "STEP 8: The Closure Report" provides that the original documents with a closure report are to be forwarded up the chain of command and then to OPS. No documents related to a personnel complaint are kept in the local office once a complaint is closed. Under Step 8, report reviewers, including OPS, may provide an administrative insight if a reviewer determines that it would be of value.

22. OPS acts as a control to ensure that discipline issued by the Department is timely, fair, and consistent on a statewide basis. In processing a personnel complaint, a sergeant's first contact with OPS generally occurs when the sergeant decides to formalize a complaint and contact OPS for an internal investigation tracking number. The OPS tracking number is used for database purposes and to ensure compliance with the collective bargaining agreement requirement that "[d]iscipline shall normally be rendered within forty-five (45) calendar days of the time the Department knows of the incident giving rise to the discipline." Sergeants are also required to contact OPS to obtain the appropriate range of corrective action for a sustained complaint.<sup>2</sup> The range provided by OPS is based on computerized information regarding the trooper's disciplinary record and the range of discipline issued by the Department regarding this type of incident in the past. The range may include only one option, but usually includes two or more options. For instance, the current range of discipline for a first offense for using profanity, a first offense for giving bad advice, and a first offense for a minor

---

<sup>2</sup>Although the manual does not require that supervisors contact OPS for a range of corrective action, in practice sergeants are required to do so.

preventable accident is either counseling or a verbal reprimand. Sergeants select the corrective action they intend to impose from the options provided by OPS.

23. New sergeants learn about the manual's complaint process primarily through on-the-job experience. Some employees received training on the manual when they become sergeants. In 2004, OPS Captain Cynthia Kok and Inspector Jeffrey Hershman developed and presented a statewide training on the complaint process after they identified a general need for such training.

24. Sergeants usually process a personnel complaint regarding a trooper under their supervision, unless the sergeant is a fact witness to an allegation in the complaint. Sergeants initiate the complaint process by identifying the specific allegations to be investigated on the complaint form, requesting a tracking number from OPS, and obtaining the signature of the complainant. Complaints that were originally submitted to OPS or elsewhere may be initiated by the other department before they are forwarded to the sergeant. Complaints which raise potential criminal issues are referred for criminal investigation prior to going through the personnel complaint process.

25. After the complaint is initiated, the sergeant conducts the investigation, which may include interviewing the affected employee and witnesses, reviewing video tapes or documentation, visiting the incident location, and contacting other agencies for information. In cases where a criminal investigation has occurred prior to the personnel investigation, sergeants may also use the criminal investigation report as part of their investigation. Sergeants then prepare findings and decide whether to sustain the allegations. Sergeants often discuss their investigations and review the drafts of their findings and disciplinary letters with their lieutenant and/or OPS. In most cases, the purpose of these discussions is for the sergeant to obtain feedback so they are sure they did not miss issues and they have produced a quality written product. The amount of assistance requested or provided often depends on the level of the sergeant's experience and the degree of complexity or seriousness of the complaint.

26. After completing the findings, the sergeant delivers the investigative report to the affected employee, who is entitled to submit a response within seven days. After considering the employee's response, the sergeant is required to contact OPS to obtain the appropriate range of discipline for the particular type of offense. In most cases, sergeants select the level of discipline to be imposed from within the range, sometimes with assistance and feedback from OPS or their lieutenant. Sergeants then draft the disciplinary letter and provide it to the employee. After discipline has been imposed, the sergeant completes a closure report and forwards the matter up through the chain of command.

27. Sergeants also investigate and determine whether employee-involved motor vehicle crashes or other incidents resulting in damage to State equipment were preventable. If a sergeant decides that an incident was preventable, the sergeant follows the personnel complaint process to determine the appropriate corrective action. From 2004 through 2006, sworn bargaining unit personnel were involved in the following number of motor vehicle crashes: 2004—51 preventable and 43 non-preventable; 2005—57 preventable and 61 non-preventable; and 2006—54 preventable and 60 non-preventable. From 2004 through 2006, sworn bargaining unit personnel were involved in other incidents resulting in damage to state equipment as follows: 2004—3 preventable and 9 non-preventable; 2005—19 preventable and 12 non-preventable; and 2006—14 preventable and 15 non-preventable.

28. Sergeants have independently decided whether particular complaints should be sustained or not sustained. Sergeants have issued verbal counseling, letters of instruction, written reprimands, economic sanctions, and dismissals. In a few cases, administrative insights have been issued after a sergeant issued a corrective action. In a few other cases, a superior officer required a sergeant to change a discipline decision, change the level of discipline imposed, or reinvestigate the charge. In some cases, corrective action issued by a sergeant has been reduced during the grievance process.<sup>3</sup> A representative sample of investigations are set out below.<sup>4</sup>

### Sergeant Eric Altman

29. In May 2006, Sergeant Eric Altman sustained a complaint alleging that KA had left an intoxicated driver he had stopped to pursue another vehicle. Altman issued a six-month, one-step salary reduction. After the Association filed a grievance, Major Daniel Durbin reduced the discipline to a one-month, one-step salary reduction to resolve the grievance.

---

<sup>3</sup>However, as we stated in *OSP II*, “The Department’s later reduction of the economic discipline to a reprimand does not negate the fact that the sergeant, exercising independent judgment, made a discipline decision that was implemented.” 16 PECBR at 865 n 20.

<sup>4</sup>The parties’ contract requires that the Department purge personnel files of discipline records resulting in a loss of time or pay after four years and other discipline records after three years. Thus, the representative samples discussed in Findings of Fact 29 through 102 are primarily based on records for the past four years.

### Sergeant Michael Brewster

30. Michael Brewster was promoted to patrol sergeant in 2003. In November 2006, Brewster became aware that VY had missed court. He initiated a complaint by contacting OPS for the tracking number. He then conducted an investigation, sustained the complaint, and decided to issue a verbal reprimand, after OPS told him that VY had previously missed court.

31. In another situation, Brewster contacted Lieutenant Bloom regarding a complaint that CA had inappropriately towed the car of a driver without a license. Initially, when Brewster talked with OPS, he concluded the incident was a training issue that could be handled informally. Later, Inspector Hershman told Brewster that he needed to conduct a formal investigation. Brewster conducted the investigation, prepared the findings, sustained the complaint, and decided to issue verbal counseling, after contacting OPS for a range of discipline. This is the only time OPS has told Brewster what to do.

### Sergeant Molly Cotter

32. Molly Cotter became a sergeant in the Salem criminal division in February 2005. In March 2005, prior to receiving any supervisory training, Cotter investigated a complaint alleging that MO would not share information with the Department of Corrections regarding an investigation. Cotter initially thought the matter could be handled informally because the complainant told her he did not want to file a complaint. However, her lieutenant directed her to conduct a formal investigation. Cotter found the complaint was not sustained. Later, after Cotter received supervisory training, she understood why she had been told to process a formal complaint.

33. In July 2005, Cotter investigated a complaint alleging that MO had left evidence in a locker. Cotter consulted with her lieutenant who referred her to the manual. Cotter obtained a tracking number and then independently investigated the complaint, prepared the findings, and concluded that the complaint should be sustained. Cotter decided to issue a written reprimand from the range of discipline provided by OPS. Cotter also requested that Inspector Hershman review her report. Hershman proposed no changes and praised the quality of her report.

34. In May 2006, Cotter was notified that MO was ill. She discussed her concerns about the illness with Lieutenant Eric Davenport and Captain Kok. Captain Kok provided Cotter with the necessary forms to place MO on administrative leave

pending a fitness for duty exam. While MO was off duty, Cotter found evidence in the trunk of his patrol car. Lieutenant Davenport told Cotter to wait until they knew whether MO was returning to work to start a personnel investigation so MO's medical issues did not affect any discipline issues. Later, while MO was duty-stationed at home, Cotter called and found that he was not available at home as required.

35. After MO returned to work, Cotter investigated a complaint alleging improper handling of evidence and unauthorized absence during administrative leave. Cotter prepared the findings, which sustained the complaint, and reviewed it with Davenport and Kok. After OPS indicated that an economic sanction would be appropriate, they decided to issue a three-month, one-step salary reduction. Kok scheduled a meeting with the Attorney General's office to review the matter, which she invited Cotter to attend. The attorney proposed some changes to Cotter's draft of the disciplinary letter and advised Cotter to indicate on MO's evaluation that the personnel complaint issue would be considered in the next evaluation, after Cotter told her she was concerned about a double economic sanction. Cotter later told Inspector Hershman that she wanted to transfer MO because of frustration with his performance. Hershman told her that Major Durbin did not believe in transferring problems. MO was ultimately transferred after Cotter complained to Lieutenant Davenport about his performance.

#### Sergeant Michael Dingeman

36. Michael Dingeman was originally promoted to patrol sergeant in 1996 and then reappointed to a sergeant position in 2004. In October 2005, he was promoted to lieutenant. Dingeman has conducted approximately 15 to 20 personnel complaint investigations. In April 2005, Dingeman investigated a complaint alleging that TA had acted inappropriately during a traffic stop. Dingeman interviewed the complainant, developed the allegations, interviewed witnesses, and then issued a finding that the allegation was not sustained.

#### Sergeant Robert Fenner

37. Robert Fenner was promoted to patrol sergeant in the Klamath Falls office in March 2005. He initially learned how to conduct investigations through on-the-job experience, although he later received some training. He understands that he is to contact OPS in order to obtain a range of discipline. He also recognizes that he sometimes makes mistakes during his investigation process and has a good relationship with his lieutenant and captain, from whom he seeks feedback. He does not believe he should have total autonomy in making discipline decisions. Sergeant Fenner has conducted approximately six use-of-force investigations, one of which was reinvestigated,

and between five and ten motor vehicle accidents. None of his recommendations were overturned.

38. In approximately May 2005, Fenner conducted his first investigation of a use-of-force incident involving MM. Fenner determined the use of force was justified and submitted his decision up the chain of command. Captain Kurt Barthel initially signed the report. However, after Barthel again reviewed the report and watched the video of the incident, he asked Sergeant Judah to reinvestigate the incident. Judah understood why the captain had requested a second investigation after he reviewed Fenner's report on the incident and concluded the original investigation had not been done well. After reinvestigating the incident, Judah concluded that the use of force was justified.

39. In 2006, Fenner investigated a complaint alleging that PD had appeared in commercial advertising wearing his uniform. After consulting with his lieutenant and captain, Fenner determined that the complaint was sustained and issued a verbal counseling without contacting OPS because he was at the end of the 45-day timeline. Fenner's lieutenant later told him that Captain Kok said Fenner should have contacted OPS before issuing the discipline.

40. In October 2006, Fenner investigated a complaint alleging that TL had failed to provide assistance for a medical situation during a traffic stop. Fenner decided the complaint should not be sustained. In February 2007, Fenner investigated a complaint alleging that Trooper H had failed to complete his time and activity reports as directed. Fenner sustained the complaint, contacted OPS for a range of corrective action, and decided to issue a verbal reprimand.

41. In another case, Fenner investigated a motor vehicle accident involving RN and determined that the crash was not preventable. Captain Randie Martz thought the accident was preventable and ordered a lieutenant to counsel Fenner on the investigation, which the lieutenant did.

42. In another case, Fenner investigated an accident in which RD ran his patrol car into a pole. Fenner found the accident preventable and then conducted a personnel complaint investigation. After sustaining the complaint, Fenner contacted OPS for a range of corrective action. Inspector Hershman told Fenner that an economic sanction would be appropriate because RD had previously received a written reprimand. Fenner decided that a one-month, one-step salary reduction was the appropriate discipline and prepared the discipline letter using an example provided by Hershman.

### Sergeant Craig Flierl

43. Craig Flierl was promoted to patrol sergeant in the Albany office in May 2005. Flierl generally follows the checklist provided in the manual when processing personnel complaints. Prior to July 2006, Flierl had conducted three or four personnel investigations. In July 2006, after Inspector Hershman conducted a criminal investigation, Flierl was assigned to investigate a complaint alleging that IG had consumed an excessive amount of alcohol and assaulted another officer. Flierl relied on Hershman's investigation, but independently examined the allegations, wrote the findings, and decided that the complaint should be sustained. Flierl provided the findings to Hershman for his review, but Hershman had no changes. Hershman told Flierl that the range of corrective action was anything above a written reprimand and suggested that Flierl include an alcohol treatment option. Flierl felt this was a serious matter, but did not believe dismissal was appropriate. Flierl issued a discipline letter including a one-year, two-step salary reduction to be reduced to a written reprimand upon completion of alcohol treatment. He had Hershman review the letter before he presented it to IG.

### Sergeant Vern Fowler

44. Vern Fowler was promoted to sergeant in the gaming division in 1998. In December 2000, Fowler was assigned to investigate a personnel complaint alleging that JG had committed perjury. The personnel investigation was suspended while OPS Inspector Michael McKernan conducted a criminal investigation. After a determination that no criminal conduct had occurred, McKernan turned his investigation materials over to Fowler. McKernan worked with Fowler during the personnel investigation, including assisting him with drafting the findings of fact. When Fowler indicated that he wanted to dismiss JG, McKernan told Fowler that he did not believe that the facts of the case supported dismissal and that if the sergeant dismissed JG, it would likely be rescinded.

45. In July 2004, Sergeant Fowler determined that IG had been involved in a preventable crash with another vehicle and issued a letter of instruction, without consulting with OPS. Later, OPS Inspector Eric Davenport issued an administrative insight indicating that because IG had a prior preventable crash for which he had been counseled, IG should have received formal corrective action for the second incident.

46. In December 2004, Fowler determined that JL had been in a preventable accident. Fowler issued JL a verbal counseling due to extenuating

circumstances regarding the accident even though JL had been involved in prior incidents.

47. In December 2004, Fowler received a complaint from a citizen who alleged that CF, whose wife is related to the citizen, had been rude during a traffic stop and then taken a video of the traffic stop home for his wife to view. Fowler talked with the citizen and then investigated the complaint. Fowler met with the employee, who chose to represent himself and admitted that he had taken the video home. Fowler decided to issue the employee a verbal counseling.

48. In January 2005, Sergeant Fowler received a complaint alleging that HM had been driving at a high rate of speed. Fowler investigated the complaint, prepared findings, and decided to issue a verbal counseling.

### Sergeant Alan Gilbert

49. Alan Gilbert has worked as a patrol sergeant in the Springfield office since April 2004. In June 2007, he became a sergeant in the criminal division. Gilbert has processed 15 to 17 personnel complaints, some of which resulted in verbal reprimands or economic sanctions. None of his decisions in these complaints have been reversed. When Gilbert first became a sergeant, his lieutenant took him through his first personnel investigation process. Gilbert later attended sergeant management school. His lieutenant explained that there would be times when someone would disagree with a decision he made, and that person would issue an administrative insight. Gilbert continues to confer with his lieutenant during personnel investigations because he wants the lieutenant's opinion and recognizes there is always the chance he could be wrong.

50. Gilbert has also conferred with OPS during personnel investigations. However, as Gilbert became more experienced he normally contacted OPS only to obtain the tracking number and range of corrective action. Gilbert has a good relationship with Inspector Hershman, who does not tell him what to do or usurp his authority, but provides helpful assistance. Gilbert is not afraid to voice his opinion to Inspector Hershman or Lieutenant Bloom and has had good discussions with both.

51. Gilbert does not believe he has the authority to dismiss or recommend dismissal. He believes that because of the nature of the Department, nothing he or even a captain does occurs in a vacuum, but must be approved up the chain of command. He believes that because he cannot even order pencils without going through his lieutenant, there is no way he has the authority to issue discipline. He also thinks he cannot close out a personnel complaint without first checking with OPS or his

lieutenant, and that he can make disciplinary decisions only as long as everyone else agrees with him.

52. In July 2004, he investigated and sustained a complaint alleging that RR had missed court. Gilbert issued RR a verbal reprimand because he was told his captain would accept no less than a verbal reprimand for such employees. This is the only situation in which Gilbert believed a superior officer directed him to impose a particular form of discipline. In May 2005 and January 2007, after Gilbert developed more confidence in processing personnel complaints and had a new captain, Gilbert decided to issue a verbal counseling for missing court based on the range of discipline provided by OPS.

53. In October 2004, RR's patrol car was damaged by Jiffy Lube employees while being serviced. Gilbert investigated the damage to state property and determined that it was non-preventable.

54. In December 2004, MT was accused of attempting to purchase marijuana during a traffic stop. After reviewing the criminal investigation report, Gilbert prepared the findings and determined that the allegation should not be sustained. He had Lieutenant Bloom review his findings to make sure he had not missed any issues and that his report was worded correctly.

55. In April 2005, Gilbert investigated a complaint by a citizen alleging that JH behaved inappropriately during a traffic stop. After Gilbert consulted with his lieutenant and OPS, he decided that the complaint should not be sustained.

56. In May 2005, JH scraped the side of his patrol car on a bridge railing. Gilbert investigated the incident, consulted with his lieutenant, and found that the damage was non-preventable.

57. In June 2005, RR's patrol car was struck from behind when he decelerated in the traffic lane in order to pull onto the shoulder to assist with an accident on the other side of the freeway. A complaint was filed alleging that RR had acted unprofessionally after the crash. After the complainant did not return a signed complaint form, Gilbert considered the available information and decided that no discipline was appropriate.

58. Gilbert also investigated the accident that was the basis of the complaint and initially concluded that the accident was not preventable. After Gilbert shared his conclusion with Lieutenant Bloom, Bloom asked him to take another look at

the accident because Bloom thought the accident was preventable. Gilbert did not agree. Several days later, Bloom told Gilbert that OPS also thought it was a preventable accident and asked Gilbert to drive to the accident location with him. Bloom told him it was not a matter of whether RR was guilty or not guilty, it was a question of whether there was something RR could have done to prevent the accident. Gilbert did not agree with Lieutenant Bloom's logic, because a person could always do something different. However, he agreed that RR probably could have done something different to prevent the accident and Gilbert changed the finding to preventable. Once Gilbert determined the accident was preventable, he then processed a personnel complaint regarding the accident, received assistance from Lieutenant Bloom in drafting the report, consulted with OPS regarding the range of discipline, and decided to issue RR a verbal reprimand.

59. In June 2005, Gilbert investigated a serious accident involving RH and found that it was preventable. Gilbert discussed the circumstances of the accident and RH's discipline record with Inspector Hershman before he decided to issue a verbal reprimand. Hershman agreed with Gilbert that this level of discipline was appropriate.

60. In June 2006, Gilbert investigated a citizen complaint alleging that TP had been untruthful during a trial. Gilbert determined there was no merit to the allegation and made a finding of "no basis for complaint" after conferring with Lieutenant Bloom. Several weeks later, Bloom told Gilbert that the correct term was "not sustained," which Gilbert substituted on the complaint form. The citizen then filed a second complaint alleging, in part, that Gilbert had mishandled the investigation of the initial complaint. Lieutenant Bloom investigated the complaint against Gilbert and determined that Gilbert failed to adequately document his investigation because he had not kept records of his phone calls and conversations with the complainant. Bloom also determined Gilbert had failed to confer with OPS appropriately concerning the case because the complaint raised an allegation of perjury. Gilbert concurred with Lieutenant Bloom's findings and Bloom issued Gilbert a verbal counseling.

61. In August 2006, Gilbert investigated an accident in which VY struck a parked vehicle. Gilbert found the accident was preventable and, after consulting with Inspector Hershman, decided to issue a verbal reprimand.

62. In October 2006, Gilbert investigated a complaint alleging that CA had knocked on the back door of the complainant's house and scared his wife. At his lieutenant's suggestion, Gilbert sought Inspector Hershman's advice. Hershman told Gilbert that it was Gilbert's decision and that Gilbert needed to decide whether it was too late for CA to call at the house. Gilbert decided the complaint should not be sustained.

63. In December 2006, Gilbert decided to verbally counsel TH for damaging his patrol car, after consulting with Inspector Hershman to obtain the range of sanctions.

#### Sergeant Eric Judah

64. Eric Judah was promoted to patrol sergeant in the Albany office in February 2004. In August 2006, Judah was promoted to lieutenant. In June 2006, Judah took over the processing of a complaint alleging that RD had been untruthful and failed to conduct a complete investigation. Judah reviewed the investigation report, prepared the findings of fact, and determined that the allegations were sustained. Judah consulted the manual and his lieutenant throughout the process because it was such a serious matter. Judah decided that because of extenuating circumstances an economic sanction, rather than dismissal, was appropriate. At a meeting with his lieutenant and captain regarding the complaint, Judah proposed that RD be reduced in rank and pay instead of being terminated. Judah was told as a matter of policy this double economic penalty was not allowed. The group then reached consensus on a one-year demotion.

#### Sergeant John Keeler

65. John Keeler was promoted to sergeant in 2005. Keeler received no formal training on complaint investigations, and learned primarily through his mentor relationship with Lieutenant Steve Smartt. Keeler still seeks advice from Lieutenant Smartt and OPS when conducting personnel complaint investigations. However, they do not direct him what to do. Keeler also has Smartt review all of his written work to ensure it is presented in a professional, clear, and concise manner.

66. In October 2005, Keeler received a complaint alleging that FD had acted inappropriately during a traffic stop. The complaint was initially assigned to Sergeant Jeff Proulx to conduct a criminal investigation. After the criminal investigation, Keeler used Proulx's investigation report to develop his findings and decided that the complaint should not be sustained. Keeler consulted with Smartt to make sure there were no problems with the report.

67. In February 2007, Keeler investigated a complaint alleging that three troopers under his supervision had disregarded the order of a judge and committed perjury. Keeler decided that the complaint should not be sustained.

68. In April 2007, Keeler investigated and sustained a complaint alleging that JW had inappropriately yelled at a pedestrian. Keeler had not had a case like this

before, so he consulted with Lieutenant Smartt about the appropriate level of discipline. Keeler and Lieutenant Smartt decided that a letter of instruction was appropriate. Keeler had Smartt review the letter of instruction prior to issuing it to JW; however, Smartt made no changes.

#### Sergeant Jeff Lanz

69. Jeff Lanz was promoted to sergeant in May 2005. In November 2006, Lanz investigated a personnel complaint alleging that Trooper H was driving his patrol car at an excessive speed. Lanz sustained the complaint and contacted OPS for a range of corrective action. Inspector Hershman provided him with a range that included three options. Lanz decided to issue a verbal reprimand.

#### Sergeant Scott Lorimor

70. Scott Lorimor was promoted to sergeant in November 2001. Lorimor has conducted three investigations of incidents involving damage to state equipment. In one case, after he found that an incident was not preventable, he was asked to change it to preventable. Lorimor has also conducted approximately six personnel investigations. None of these recommendations have been overturned. Lorimor does not believe he has the independent authority to discipline employees because those above him in the chain of command can change his decisions.

#### Sergeant Lawrence Lucas

71. Lawrence Lucas was promoted to patrol sergeant in December 1993. He is currently assigned to the St. Helens office. Lucas feels that there have been changes in the level of a sergeant's authority in the last 10 years. Previously, Lucas felt he had more authority to decide such things as purchases for the office and how the office is run. Now he cannot even decide to replace bald tires on a vehicle without requesting it through his lieutenant. Although Lucas has not been involved in many discipline matters, he feels such decisions are currently second guessed more than they had been previously.

72. In December 2006, Lucas investigated a motor vehicle accident involving DM and determined the accident was preventable. Based on the range of corrective action provided by OPS, Lucas issued a verbal counseling although he did not agree with this level of discipline. In January 2007, DM was involved in another accident, which Lucas found was preventable. When Lucas met with his lieutenant and Captain Curths to discuss this and other accidents, Lucas indicated his disagreement

with the verbal counseling issued regarding the first incident. Curths told Lucas that the level of discipline regarding the second accident was up to him, but directed him to call OPS to obtain a range of corrective action. Lucas wanted to issue a verbal counseling for the second accident, but Inspector Hershman told him that because of the prior accident, a verbal reprimand was the minimum on the range of corrective action. Lucas issued a verbal reprimand because he felt he had no authority to do otherwise.

73. In another situation, in his role as an Association officer and while off duty, AM sent an e-mail to the Governor's office. Captain Curths told Lucas, who supervised AM, that the e-mail was not appropriate and did not respect the chain of command. Lucas told Curths that he did not believe it was appropriate to discipline AM because it was a free-speech issue. Curths directed Lucas to issue AM a verbal counseling, which he did. Later, after Major Peter Spirup told Curths that AM was entitled to send the e-mail, Curths apologized to Lucas and AM, and the discipline was rescinded.

#### Sergeant Darin Lux

74. Darin Lux was promoted to sergeant in December 2002. In March 2006, Lux investigated a personnel complaint alleging unauthorized entry and use of equipment by SH. Lux relied on the criminal investigation report in preparing his findings. This was the most complex investigation he had conducted, so he consulted with Inspector Hershman and Captain Kok throughout the process. After deciding to sustain the complaint, Lux had five or six discussions with Hershman and Kok in which he sought guidance regarding the level of discipline. They provided Lux with the range of corrective action and told him that he could select the discipline. Lux decided to issue a six-month, two-step salary reduction. As the result of a grievance filed by the Association, Major Durbin reduced the discipline to a six-month, one-step salary reduction.

#### Sergeant Steve Mitchell

75. Steve Mitchell was promoted to sergeant in November 2006. In April 2007, while off duty, Mitchell was notified that DC had backed his patrol car into a water pipe. Mitchell reported to the scene, determined that the incident was preventable, and initiated and conducted a personnel investigation. Mitchell's lieutenant provided him with guidance during the investigation process. Mitchell was aware that DC had prior discipline, so he suggested to his lieutenant that a written reprimand was probably appropriate. However, after OPS told him that one of DC's prior disciplines had been expunged, Mitchell decided to issue a verbal reprimand.

### Sergeant Lee Pearce

76. Lee Pearce was promoted to sergeant in July 1999. In May 2004, after a criminal investigation was completed, Pearce investigated a personnel complaint that EM had acted inappropriately with another trooper. Pearce prepared the findings with assistance from Inspector Davenport and sustained the complaint. Davenport provided Pearce with a range of economic sanctions and suggested a one-month salary reduction. Pearce felt a stronger penalty was appropriate and issued a three-month salary reduction.

### Sergeant Jeff Proulx

77. Jeff Proulx was promoted to patrol sergeant in 2001 and became a criminal sergeant in 2005. In June 2007, Proulx investigated and sustained a complaint alleging that DY had arrested the wrong person. Proulx wanted to issue an informal corrective action, such as a verbal counseling, but Captain Kok told him that a stronger discipline, such as a letter of instruction, was more appropriate. Proulx issued the letter of instruction because he believed he was required to do what OPS told him. A letter of instruction is not considered formal discipline and is not subject to the just cause provision of the parties' collective bargaining agreement.

### Sergeant Dale Rutledge

78. Dale Rutledge was promoted to sergeant in 1989. In 1998, he was promoted to lieutenant. In approximately 1996, while he was a sergeant, Rutledge investigated and sustained a personnel complaint. Rutledge felt this was not a clear-cut situation, so he consulted with the Attorney General's office, which provided input on different ways to proceed. Rutledge made the decision to issue an economic sanction instead of a dismissal.

### Sergeant David Scholten

79. David Scholten was promoted to sergeant in 1989. He currently works at the Department's general headquarters. In August 2005, Scholten investigated a complaint alleging that KC had failed to conduct a complete and accurate investigation. Scholten sustained the complaint and issued a verbal reprimand after consulting with OPS regarding the range of corrective action.

80. In February 2006, Scholten investigated and sustained a complaint alleging that KC violated written performance expectations. Scholten decided to issue

a written reprimand, even though Inspector Hershman had suggested he issue a verbal reprimand.

### Sergeant Jeff Scroup

81. Jeff Scroup was promoted to a sergeant in the fish and wildlife division in October 1997. Scroup has conducted approximately 20 personnel complaint investigations, none of which have been overturned. Scroup feels there has been a change in authority since he became a sergeant to the extent that he is no longer authorized to even sign off on invoices, expenses, or equipment purchases.

82. In late 2005 and early 2006, Lieutenant Steven Lane investigated a complaint filed by a trooper against Scroup. Lane determined that Scroup had not fully investigated some past incidents, sustained the complaint, and issued Scroup a written reprimand. Scroup carries hard feelings over his discipline and the threat to his employment, and as a result, wants to be represented.

83. In 2005, Scroup investigated a complaint alleging that RH manipulated and coerced a suspect to get an admission. Scroup found that the complaint was not sustained. Captain Kok reviewed the file in the process of closing out the complaint and issued an administrative insight indicating that Scroup's findings on the complaint were not responsive to the allegations. Kok suggested that both RH and Scroup might benefit from training on search and seizure issues. Kok did not change Scroup's decision on the complaint.

84. In 2007, Sergeant Scroup conducted a lengthy investigation concerning damage that had occurred when a boat rolled off a trailer. Scroup determined that the accident was not preventable because of an equipment problem. Later, Lieutenant Cleary told Scroup to rewrite the report and hold the trooper responsible for the accident.

### Sergeant Pat Shortt

85. Pat Shortt was promoted to sergeant in 1996 or 1997. He has conducted approximately 20 personnel investigations, none of which have been overturned. He has also conducted 10 to 15 investigations regarding damage to state property, only one of which was overturned. In that case, which occurred in late 2005 or early 2006, he investigated an incident in which CS lost traction in the snow and ran into a guardrail. Shortt found that the incident was non-preventable. Several weeks later,

he was told by his lieutenant that Captain Hampton felt the incident was preventable. Shortt's decision was changed and CS was counseled.

#### Sergeant Michael Turner

86. Michael Turner was promoted to a patrol sergeant in the Pendleton office in August 2005. In September 2006, Turner investigated a complaint alleging that AJ acted inappropriately while off duty. Turner conducted the investigation, developed the findings, and sustained the complaint, consulting the manual throughout the process. After consulting with his lieutenant and OPS, Turner decided to issue a written reprimand based on AJ's tenure and a desire that this incident not be repeated. He asked his lieutenant and OPS to review his draft of the discipline letter. They made no significant changes.

87. In January 2007, Turner investigated a complaint alleging that DC acted unprofessionally during a traffic stop. Turner contacted OPS to obtain a tracking number. He determined that the complaint was not sustained and informed his lieutenant of the complaint's status.

#### Sergeant Tom Worthy

88. Tom Worthy was promoted to sergeant in 1999. He currently works out of the Portland office. He has been involved in approximately 40 personnel investigations, three or four of which have been changed. Worthy generally develops the allegations based on his discussions with the complainant. He then conducts the investigation, determines if the allegations are sustained, and prepares the findings. Throughout this process, Worthy seeks feedback from his lieutenant. Worthy also may seek feedback from OPS on the investigation process, although he has conferred with OPS less often as he has gained more experience. Inspector Hershman also has helped Worthy with his report writing. For instance, Hershman suggested that Worthy work on writing statements of fact rather than conclusions. Worthy always contacts OPS to determine the appropriate range of corrective action for an offense, and then selects the discipline. Worthy generally makes his own decision about an investigation and does not believe his lieutenant or OPS are trying to usurp his authority.

89. In November 2004, Worthy conducted a personnel investigation and issued a verbal reprimand to JN for negligently discharging his weapon. A verbal reprimand was the only form of discipline provided by OPS. Later, Captain Curths also removed JN from his firearms instructor position for six months since he felt it was hypocritical for JN to continue in that position. Worthy believed this constituted

additional discipline. A change of assignment is not considered discipline and is not subject to the just cause provision of the parties' collective bargaining agreement.

90. In November 2004, Worthy investigated a personnel complaint alleging that DH failed to properly investigate a motor vehicle accident and exhibited inappropriate behavior. Worthy sustained the complaint and issued a verbal reprimand.

91. In February 2005, Worthy conducted a personnel investigation of a complaint alleging that KA was late to work. Worthy decided to sustain the complaint and issue a three-month, one-step salary reduction because KA had been late to work before. After the Association grieved the discipline, Major Durbin agreed to a settlement which rescinded the salary reduction.

92. Worthy has conducted approximately 10 investigations regarding damage to state property in the last five years. To his knowledge, none of these have been reversed. In June 2005, Worthy determined that CW was involved in a preventable motor vehicle accident. After Worthy conducted the personnel investigation, he issued a one-month, one-step salary reduction. After the Association grieved the discipline, Major Durbin reduced the salary reduction to a written reprimand to resolve the grievance.

93. In July 2005, WJ, a citizen, sent a long letter containing numerous complaints regarding KA's behavior during a traffic stop. Worthy reviewed the video of the traffic stop, made some initial inquiries, and determined there was no cause for an investigation. Worthy decided to informally resolve the matter and notified the citizen that there was no cause for the investigation.

94. Later, WJ filed another complaint alleging that KA had vindictively required that WJ undergo a driving retest after KA was subpoenaed to testify regarding the initial citation. Lieutenant Evans told Worthy to conduct a formal investigation of this complaint. After Worthy conducted an investigation, he told Lieutenant Evans that he was not going to sustain the complaint. Evans told Worthy that it was his decision, but that Captain Curths felt KA could be vindictive, that Evans believed the complaint should be sustained, and that he would write an administrative insight if it was not sustained. Curths, Evans, and Worthy met several times to discuss this complaint and other complaints that had been filed by WJ. Worthy decided to sustain the complaint and issue a verbal reprimand, although he did not believe that the allegations should be sustained.

95. After the criminal investigation was concluded, Worthy conducted a third personnel investigation arising out of KA's traffic stop of WJ, which included four allegations that KA had entered Washington without the approval of his supervisor. Worthy asked Inspector Hershman to do the findings since Hershman had conducted the criminal investigation. Hershman told Worthy that Worthy needed to do the personnel investigation report. Worthy consulted with Inspector Hershman throughout the process. Worthy decided to sustain three of the allegations in the complaint and issued a written reprimand to KA.

96. In August 2005, Worthy conducted a personnel investigation of a complaint alleging that TS stopped his vehicle in an unsafe manner and conducted a traffic stop unprofessionally. Worthy decided to sustain a portion of the complaint and issued TS a verbal reprimand.

97. In August 2005, Worthy conducted a personnel investigation of a complaint alleging that DH acted unprofessionally during a traffic stop. Worthy determined that the allegations were not sustained.

98. In August 2006, Worthy conducted a personnel investigation of a complaint alleging that TH was delinquent in submitting time reports. Worthy sustained the complaint and issued TH a written reprimand.

99. In November 2006, Worthy conducted a personnel investigation of a complaint alleging that DR missed court. Worthy sustained the complaint and issued a verbal reprimand.

100. In January 2007, Worthy investigated a complaint alleging that BF acted inappropriately during a traffic stop. During the investigation process, Worthy notified Lieutenant Evans and Inspector Hershman that the complainant said he was a friend of Captain Gregg. Worthy sought feedback during the investigation process and with the report writing. After Captain Gregg heard about the investigation, he told Worthy to carry on with the process. Worthy decided to not sustain the allegations.

#### Sergeant Dale Young

101. Dale Young was promoted to sergeant in 2005. He has investigated four to six use-of-force incidents and a number of personnel complaints. Young does not believe he has the authority to terminate an employee.

102. In June 2006, Young investigated an incident in which PA used his patrol car to stop another vehicle. Young determined it was a justified Level 6 use of force. When Captain Curths asked Lieutenant Peterson for more information, Peterson told Curths that he agreed with Young's decision. However, Curths believed that the incident was a Level 7 use of force. Curths asked Sergeant Michael Stupfel, a collision reconstruction specialist, to do an accident reconstruction and determine the level of the incident. Stupfel determined that the impact between the cars was avoidable and that the incident was a Level 7. Young agreed with Stupfel's conclusion that the incident was a Level 7, but disagreed that the use of force was not justified. Curths then conducted a personnel investigation and issued PA a one-step, six-month salary reduction. This is the only use-of-force incident that Curths has overturned in three years. This is Young's only investigation decision that has been overturned. Lieutenant Peterson later sent Young a letter indicating that Young's original decision was not appropriate. After the Association filed a grievance over PA's discipline, Major Durbin reduced the pay reduction to a verbal reprimand.

### Discharge

103. From 2002 through November 1, 2007, the Department dismissed eight sworn represented employees.

104. In 1996, Sergeant Rutledge took over a personnel investigation concerning PM after another sergeant left. Rutledge interviewed witnesses and PM, developed findings, and concluded that PM lied during the investigation. Rutledge decided PM should be terminated because the superintendent had previously issued a memorandum stating that all employees must be honest at all times, especially during the investigation of a personnel complaint. Rutledge discussed the circumstances of the investigation and why he felt termination was appropriate with his lieutenant, commander, OPS, and the Attorney General's office. Rutledge felt the decision to discharge PM was his decision and that he was not pressured about making the decision.

105. Brent Seaholm was promoted to sergeant in 1997. Two months after he became a sergeant, Seaholm investigated a personnel complaint concerning serious allegations against LJ. Since Seaholm had never processed a personnel complaint, he asked OPS for a roadmap of the process, and consulted with them on a weekly and sometimes bi-weekly basis. Seaholm conducted the investigation and prepared the findings. He felt from the beginning that the employee should be dismissed and OPS agreed with him that dismissal was appropriate. Seaholm prepared the dismissal decision using examples provided by OPS and with OPS's assistance. LJ was later reinstated during the grievance process.

106. In 1999, Sergeant Shortt took over the processing of a personnel complaint against BL after BL's sergeant became ill. Shortt reviewed the criminal investigation materials and the portions of the personnel investigation that had been completed. He contacted OPS for clarification, got some guidance from his lieutenant, and then decided that dismissal was appropriate. Shortt's lieutenant provided him assistance in drafting the dismissal letter. Shortt believes that he does not currently have the same latitude to make discipline decisions that he did then. Shortt has not dealt with another dismissal situation.

107. In 2001 or 2002, Sergeant Scroup conducted an investigation into whether DC was reporting for work. During the investigation, Sergeant Scroup issued DC directives that he did not obey. This resulted in a second complaint regarding DC's alleged insubordination to which Scroup was a fact witness. Sergeant Scroup worked with Lieutenant Lane and OPS during a nearly two-year investigation process. OPS drafted the findings with Scroup's assistance. Scroup was also consulted regarding the letters that were prepared and delivered to DC. In January 2003, Lieutenant Lane prepared and issued a letter dismissing DC for insubordination. The dismissal was issued while Scroup was on vacation. Based on Scroup's experience with DC's dismissal, he does not believe that he has the authority to terminate an employee.

108. In 2005, Sergeant Dingeman learned that TA had been arrested while off work. After notifying his lieutenant and OPS, Dingeman was assigned to investigate the incident. Dingeman obtained the arrest report, conducted interviews, prepared the findings, and sustained the complaint. Dingeman determined that dismissal was appropriate, after consulting with his lieutenant and OPS about similar situations, and the probability that a dismissal would survive arbitration. Dingeman felt he had the authority to dismiss; however, he did not make the decision alone, but only after getting feedback from others.

109. Lieutenants and captains have also made decisions to discipline or dismiss sworn represented employees. In January 2005, Captain Curths investigated and issued a written reprimand regarding a complaint alleging that HM had refused an order given to him by his sergeant and lieutenant. Curths investigated the complaint because Sergeant Judah and Lieutenant Mark Cotter were fact witnesses. In May 2007, Lieutenant Steiner issued a dismissal decision to employee KC.

### CONCLUSIONS OF LAW

I. This Board has jurisdiction over the parties and subject matter of this dispute.

2. There has been no significant change in circumstances since this Board determined in *OSP II* that the sergeants are supervisors. Therefore, the petition is dismissed.

### DISCUSSION

This is the third time this Board has considered the supervisory status of Department sergeants. In 1990, this Board found that the majority of the sergeants were not supervisors and included them in the Association bargaining unit. In 1995, the Department sought a determination that the sergeants were supervisory employees and excluded from the Association bargaining unit. Normally, this Board does not reconsider its decisions concerning the supervisory status of employees. "Once a decision about public employee status for a particular group has been made, we typically will not reconsider that issue absent a showing that there has been a significant change in circumstances since the prior decision." *OSP II*, 16 PECBR at 859. The threshold issue in *OSP II* was whether such a change had occurred. This Board concluded that the legislature's amendment of the Public Employee Collective Bargaining Act's definition of a supervisor after its decision in *OSP I* constituted a significant change in circumstances which made reconsideration appropriate.<sup>5</sup>

On the merits of the supervisory issue in *OSP II*, this Board determined that the sergeants were supervisors under the new statutory definition and thus excluded from the Association bargaining unit. We concluded: "in exercising disciplinary authority, sergeants are supervisory employees, especially in light of their extensive independent authority to assign and direct troopers." *OSP II*, 16 PECBR at 866.<sup>6</sup> In reaching this conclusion, this Board recognized that the Department was "in the transition to a system in which sergeants take significant responsibility for disciplining subordinates." *OSP II*, 16 PECBR at 865 n 19. The Association now asks us to reconsider that decision, asserting that the sergeants' authority in general, and disciplinary authority in particular, has not expanded as predicted and that the sergeants now have little or no independent authority.

---

<sup>5</sup>While this Board relied on the statutory change as the basis for reconsideration, it also referred to the evolution of the Department's disciplinary procedures in reaching its decision. *OSP II*, 16 PECBR at 859 n 13.

<sup>6</sup>The evidence of the sergeants' exercise of disciplinary authority in *OSP II* covered a period from approximately 1993 through 1995. Prior to June 1995, a sergeant's authority was limited to imposing economic sanctions. After June 1995, the sergeants' authority was expanded to all disciplinary decisions, up to and through discharge. The hearing in *OSP II* was held in March 1996.

ORS 243.650(23) defines “Supervisory employee” in pertinent part as:

“any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.”

The parties stipulated that sergeants do not exercise supervisory authority in the areas of hiring, layoff and recall, or the adjustment of grievances. The parties focused on the sergeants’ authority to discipline and to assign and direct work, two of the main areas of focus in *OSP II*. We review the record in those areas to determine whether there has been a change in circumstances so significant that it justifies our re-examination of the 1996 order in *OSP II* which concluded that the Department’s sergeants were supervisors under the statute. Absent such a change, we will adhere to our prior decision excluding sergeants from the Association’s bargaining unit.

We emphasize that any change in circumstances must be significant. We will not reconsider our prior determinations every time there is a minor change in job duties. Allowing constant challenges to the composition of the bargaining unit would not promote labor relations stability. Further, it would impose unnecessary expense on the parties and tax the limited resources of this agency. This case, for example, consumed nine days of hearing. Labor peace is best achieved when time-consuming litigation over trivialities does not crowd the docket and slow access to this Board for other parties who have legitimate disputes that need to be resolved.

### Disciplinary Authority

In *OSP II*, this Board concluded that the Department’s sergeants exercised disciplinary authority. We explained:

“Sergeants initiate and investigate potential disciplinary circumstances without any review by higher ranking officials. After completing an investigation, the sergeant is expected to decide whether the complaint against an officer is substantiated. Assuming the conduct is deemed

blameworthy, the sergeant must determine the appropriate level of discipline. \* \* \* Once a decision has been made about the appropriate discipline, it is up to the sergeant to impose the discipline. At each stage of this process, a sergeant has considerable discretion. The level of responsibility extends beyond a routine or clerical function.” *OSP II*, 16 PECBR at 864.<sup>7</sup>

This is the standard against which the facts in this case will be measured to determine whether a significant change has occurred.

The parties presented extensive evidence regarding the sergeants’ exercise of disciplinary authority. Sergeants testified regarding their general understanding of their authority and their general practice in processing complaints. In addition, sergeants testified concerning approximately 200 investigations of personnel complaints or damage to state property incidents which occurred from 1996 through 2007. The evidence concerning the majority of these investigations indicated that the sergeants made decisions that were not changed by their superiors. The record contains a more comprehensive review of more than 60 of those investigations. After considering the overall pattern, we find that the current level of disciplinary authority exercised by the sergeants has not significantly changed from that exercised by the sergeants in *OSP II*.

In the vast majority of these cases, sergeants independently initiated and investigated potential disciplinary circumstances; prepared fact finding reports; determined whether the complaint should be sustained; determined the appropriate level of corrective action; and implemented the corrective action. Sergeants made decisions to sustain or not sustain complaints. Sergeants decided to issue oral counseling, letters of instruction, verbal reprimands, written reprimands, and economic sanctions. In a few cases, sergeants decided to dismiss an employee. As we found in *OSP II*, at each stage of the process sergeants exercised considerable discretion and responsibility, extending well beyond that of a routine or clerical function.

---

<sup>7</sup>This Board analyzed the five elements of disciplinary authority it identified in *OSP I*, including:

“\* \* \* (1) how the process is initiated; (2) who investigates the conduct in question; (3) who defines and determines culpability; (4) how and by whom the type and severity of discipline is determined; and (5) who imposes the discipline and in what manner. *OSP I*, 12 PECBR at 603-608.” *OSP II*, 16 PECBR at 863.

Sergeants frequently consult with their lieutenant, other superior officers, or OPS during the investigation and discipline process. This is not a significant change in circumstances. In *OSP II*, sergeants also consulted with their lieutenants and OPS during the discipline process. For instance, in *OSP II*, three sergeants testified that they would not discipline troopers “without reviewing the situation with their lieutenants and would not impose certain discipline over their lieutenants’ objections.” 16 PECBR at 853. In addition, most sergeants who consulted with their lieutenants in this case still believed that the final fact-finding report was their work product and resulted from their independent decision.

The Association correctly observes that the Department requires sergeants to contact OPS to initiate a formal complaint, and when the complaint is sustained, to select the appropriate discipline from a range provided by OPS. This is not a significant change in circumstances. First, the requirement that sergeants obtain a tracking number from OPS to commence an investigation is purely an administrative operation and does not effect their discretion. Second, sergeants continue to have discretion when choosing within the range of disciplinary options presented by OPS. For instance, Sergeants Scholten and Pearce both selected discipline from within the range provided by OPS, but the option they selected was not the one suggested by OPS. Third, sergeants in *OSP II* also consulted with OPS prior to issuing discipline to ensure it “would be consistent with discipline imposed throughout the Department for similar infractions.” 16 PECBR at 854. As we explained in that case:

“The parties presented extensive evidence about how a sergeant, after determining culpability, is expected to confer with PSS<sup>8</sup> (and may also confer with a superior officer, such as a lieutenant, or with fellow sergeants) to assure that the sanction to be imposed is consistent with prior discipline. The fact that an individual *confers* with others about potential discipline does not automatically mean that the individual is not a supervisor. The Department has a legitimate desire for consistency—a necessary element of just cause—in discipline. A supervisor must necessarily obtain information about past discipline in order to achieve that consistency.” *OSP II*, 16 PECBR at 864 (emphasis in original).

---

<sup>8</sup>OPS previously was called the Professional Standards Section or PPS.

A number of the instances presented by the Association showed no actual or ongoing interference with the sergeants' supervisory authority. Sergeant Gilbert's belief that his captain required him to issue a verbal reprimand to employees who missed court was an aberration, and was later corrected after he had a new captain and consulted with OPS. Sergeant Brewster was directed to conduct a formal investigation after handling a matter informally. However, Brewster admitted that this was the only time that OPS had told him what to do. Sergeant Cotter, who also was told to process a complaint formally, testified that after receiving training, she understood the need for the formal process.

In a few cases, superior officers did interfere with a sergeant's discretion in exercising supervisory authority or changed a sergeant's decision. Examples include the reinvestigation of the two use-of-force incidents under the supervision of Sergeant Fenner and Sergeant Young; the four cases in which sergeants felt either compelled to change their findings or someone else changed the findings;<sup>9</sup> and the case in which Captain Curths directed Sergeant Lucas to issue discipline with which Lucas disagreed. However, these are just a few instances out of hundreds of cases where no change or interference occurred. We base our decision regarding the supervisory status of employees on a pattern of decision-making, not a few cases.<sup>10</sup> As we previously stated,

“\* \* \* In general, our decisions of petitions involving a large number of allegedly supervisory personnel—such as in this case—do not turn on an analysis of the treatment of one bargaining unit member. Instead, we make a *global* determination of the *pattern* of effectiveness of the allegedly supervisory employees' recommendations regarding decisions listed in ORS 243 650(23).” *OSP II*, 16 PECBR at 865 (emphasis in original; footnote omitted).

In some cases, superior officers or OPS issued an administrative insight or counseling regarding a sergeant's complaint process or decision. For example, Sergeant

---

<sup>9</sup>Sergeants Gilbert, Lorimor, Shortt, and Scroup changed their decision that damage to state property was not preventable to preventable at the request or direction of their lieutenants.

<sup>10</sup>We also note that the exercise of effective supervisory authority does not mean that discipline decisions can never be reviewed, reinvestigated, or changed. Such a possibility is inherent in a chain of command or other multi-level management structure, such as the paramilitary structure of OSP. The determinative factors in such cases are the circumstances and frequency of such changes.

Fenner was counseled after his captain disagreed with his finding that an accident was not preventable. Sergeant Gilbert was counseled after his lieutenant investigated a complaint filed against him regarding Gilbert's failure to appropriately investigate a prior complaint.<sup>11</sup> Sergeant Worthy sustained a complaint after he was told that he would be issued an administrative insight if the complaint was not sustained.

This is not, however, a change from 1996. Administrative insights were also provided for in the manual at the time of our decision in *OSP II*. In addition, our conclusion in *OSP II* that sergeants exercised independent disciplinary authority did not mean that their actions were never reviewed by their superiors. As some sergeants recognized, they do not work in a vacuum, but as first-line supervisors in a large organization that operates under a comprehensive discipline process, the goal of which is to implement discipline fairly and consistently throughout the organization. Administrative insights and counseling are effective tools for improving a sergeant's work performance consistent with this goal.

Sergeants Shortt, Gilbert, Lucas, and Scroup believe that their level of disciplinary authority has changed since *OSP II*. However, there is no evidence of a specific change in practice or policy to support this belief. In addition, Sergeant Shortt admitted that he made a dismissal decision in 1999, and that he has conducted more than 30 investigations, only one of which was overturned. Sergeant Gilbert testified that he had processed 15 to 17 personnel complaints, none of which had been reversed. Gilbert also admitted that Inspector Hershman neither usurps his authority nor tells him what to do. Sergeant Lucas has been involved in few discipline matters; in two of these matters, his recommendation for corrective action was outside of the range provided by OPS. Lucas' belief is also based on his loss of authority to make general office purchases. However, the authority to make such purchases was not a basis of this Board's decision in *OSP II*, and does not impact a sergeant's authority to discipline troopers. Finally, the hundreds of discipline decisions made by sergeants stand in direct contradiction to Lucas' belief.

#### Authority to Assign and Direct

In *OSP II*, this Board concluded that sergeants had independent authority to assign and direct employees. We relied on evidence that “[s]ergeants routinely grant time off, assign duties, direct the day-to-day activities of bargaining unit employees, and authorize overtime, and—in doing so—exercise independent judgment.”<sup>16</sup> PECBR

---

<sup>11</sup>The Department obviously had an obligation to investigate this complaint in the same manner it would investigate any other complaint filed against a Department employee

at 858. There was no evidence here that the sergeants' current ability to assign and direct employees has changed except that sergeants no longer grant time off. While some assignments made by sergeants are routine, others require independent judgment. Sergeants continue to oversee the troopers' day-to-day activities and authorize overtime. Therefore, we do not find a significant change in the authority of the sergeants to assign and direct employees.

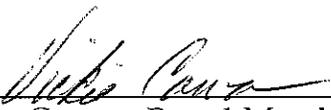
In conclusion, we find no significant change of circumstances in the areas of discipline and assignment since our 1996 decision. Therefore, we will not reconsider our prior decision that the sergeants are supervisory employees who are excluded from the Association bargaining unit.

ORDER

The petition is dismissed.

DATED this 23<sup>rd</sup> day of October 2008.

  
\_\_\_\_\_  
Paul B. Gamson, Chair

  
\_\_\_\_\_  
Vickie Cowan, Board Member

  
\_\_\_\_\_  
Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.