STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
	CASE NO. 4945-E-83-904
KITSAP COUNTY EMPLOYEES ASSOCIATION	DECISION NO. 2116 - PECB
Involving certain employees of:	ORDER OF DISMISSAL
KITSAP COUNTY	

Gary H. Sexton, Attorney at Law, appeared on behalf of the petitioner.

C. Danny Clem, Prosecuting Attorney, by Ronald A. Franz, Deputy Prosecuting Attorney, appeared on behalf of the employer.

Hafer, Price, Rinehart and Schwerin, by Pamela G. Bradburn, Attorney at Law, appeared on behalf of the intervenor, American Federation of State, County and Municipal Employees, Local 120K.

On October 31, 1983, Carol Belas filed a petition with the Public Employment Relations Commission on behalf of the Kitsap County Employees Association, seeking investigation pursuant to Chapter 391-25 WAC, purporting to raise a question concerning representation of certain employees of Kitsap County. American Federation of State, County and Municipal Employees, Local 120K was granted intervention in the proceedings on the basis of its status as the incumbent exclusive bargaining representative of the petitioned-for employees under a collective bargaining agreement expiring December 31, 1983. A pre-hearing conference was held on January 6, 1984. A hearing was held on May 22, 1984 at Port Orchard, Washington, before Hearing Officer Ronald L. Meeker. Post-hearing briefs were filed.[1/]

ISSUES AND POSITIONS OF THE PARTIES

An issue was framed at the pre-hearing conference as to whether the petitioner, Kitsap County Employees Association, is a labor organization qualified for certification as exclusive bargaining representative of public employees under Chapter 41.56 RCW. The petitioner contends that it meets the

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1/ Companion cases to the instant case are: Kitsap County, Decision 2117 (PECB, 1984), involving central communications operations, and Kitsap County, Decision 2118 (PECB, 1984), involving waste water treatment operations.

requirements of the statute. Local 120K declined to stipulate the point, and argues in post-hearing brief that the procedures followed in the formation of the organization and the definition of its membership were so ephemeral as to require a conclusion that the Association fails to meet the requirements of the statute. The county took no position on this issue.

Issues were framed at the pre-hearing conference as to whether the position of "administrator - special programs" in the county assessor's office is to be included in the bargaining unit, and as to whether Carol Belas (the incumbent of the disputed position) is to be an eligible voter in any representation election which may be directed by the Commission. The import of that pair of related issues is that Belas signed the petition to initiate the proceedings in this case, leading to the question of whether a petition signed by a supervisor and/or confidential employee is sufficient to invoke the jurisdiction of the Commission under Chapter 391-25 WAC for a bargaining unit of non-supervisory employees which includes subordinates of the claimed supervisor. The petitioner claims that Belas is properly included in the bargaining unit, but it also offered following the pre-hearing conference to substitute a different individual as its person to contact for purposes of these proceedings. Local 120K and the employer both contend that the position was and should continue to be excluded from the bargaining unit. The ultimate issue is one of contract bar.

At the pre-hearing conference, the parties stipulated the propriety of a bargaining unit identical to that represented by Local 120K. The petitioner thereafter moved to amend its petition to enlarge the bargaining unit to include certain historically unrepresented positions within the county's Department of Community Development. Other employees in that department have historically been included in the bargaining unit represented by Local 120K. Local 120K and the employer oppose the expansion of the unit, on both procedural and substantive grounds.

DISCUSSION

The "Labor Organization" Issue

The record reflects that the current president pro-tem of the Kitsap County Employees Association was approached by a "couple" of other county employees, reminding him as the statutory contract bar window approached in 1983 that "there had been a lot of support among the membership from (sic) withdrawing from" Local 120K. See: Transcript, page 24. Authorization cards were obtained, and the petition was filed to initate this proceeding. The petition lists the name of the petitioner as "Kitsap County Employees Associa." The petition was supported by a showing of interest. As part of the administrative determination of the sufficiency of a showing of interest, authorization cards are examined to determine whether they

indicate support for a particular organization (or, in appropriate cases, for decertification). The showing of interest filed in support of the petition in this case was administratively determined to be sufficient in number to support the continued processing of the case. The documents contain the following text:

LETTER IN SUPPORT
OF
REPRESENTATION PETITION

> I hereby state my desire to change the designation of exclusive representative and to designate the locally controlled KITSAP COUNTY EMPLOYEES ASSOCIATION as exclusive bargaining representative. The bargaining unit consists of the following classifications: Administrative Bldg., Assessor, Auditor, Central Communications, Clerk, Coop Extension, District Courts, Prosecutor, Treasurer, Public Works, Dept. of Internal Management, Dept. of Human Resources, Community Development, ER&R.

The early discussions about withdrawal from the incumbent evolved through a committee of employees into a named organization designated by a substantial number of employees to become their exclusive bargaining representative.

There is no requirement in Chapter 41.56 or in the rules of the Commission that a labor organization have a constitution, bylaws, or any particular level of formality to achieve the statutory definition qualifying it for certification as exclusive bargaining representative of public employees. The Kitsap County Employees Association held a meeting on January 19, 1984, at which time it adopted some bylaws. The procedures followed were somewhat informal, and subject to apt criticism as being ambiguous or confusing, but they do not nullify the fundamental fact that a group of public employees have taken steps to found an organization for the purposes of seeking certification as the exclusive bargaining representative of public employees for the purposes of collective bargaining under Chapter 41.56 RCW. See: Franklin Pierce School District, Decision 78-B, 78-D (PECB, 1977); Southwest Washington Health District, Decision 1304 (PECB, 1981). Even if the organization could only be described as "prospective" when the petition was filed, it is clear that an organization existed under the indicated name at the time the hearing was held, which is the critical point in time. A motion by Local 120K for re-opening of the hearing lacked specificity as to the nature of newly discovered evidence claimed, and was properly denied by the hearing officer.

The "Contract Bar" Issue

The 1981-83 collective bargaining agreement between the county and Local 120K purported to cover all of the employees in the county assessor's office, save only the "chief appraiser" and the elected assessor. That contract was signed on February 6, 1981. Carol Belas then held the position of

"administrative secretary" in the assessor's office, and was included in the bargaining unit. Belas later petitioned Local 120K for exclusion as a "confidential" employee, and the union approved that exclusion. Subsequently, her title was change to "administrative assistant", reflecting some change of her duties. The new position of "administrator special programs" was created thereafter, and Belas was appointed to that position effective April 1, 1983.

Belas now participates on the "management team" in the assessor's office. Working with the chief appraiser, she sets policy, makes decisions on office operations and acts on behalf of the elected assessor when he is not present. She makes hiring decisions concerning clerical employees in the assessor's office, has participated in management decision making concerning discipline and/or discharge of employees, has made recommendations on salaries for particular positions, and has participated in management discussions concerning the administration of merit pay policies. Belas is the direct supervisor of seven employees, and has indirect authority concerning two additional employees. She is paid on a management compensation program administered by the county for its "mid-level" management personnel.

A "confidential" employee within the meaning of RCW 41.56.030(2), as interpreted in IAFF v. City of Yakima, 91 Wn.2d 101 (1978), is not a public employee within the meaning of the Public Employees Collective Bargaining Act, and would have no standing to invoke the jurisdiction of the Public Employment Relations Commission. Accordingly, if Carol Belas were determined to have been a "confidential" employee when she filed the petition to initiate these proceedings, it would necessarily follow that the petition was a nullity. Although Belas and perhaps even Local 120K have termed her a "confidential" employee, as does the employer, she does not have access to or participate in management decision making on labor relations, which she described as the responsibility of the county commissioners. The record does not support a conclusion that she has an intimate fiduciary relationship with the employer on matters of labor relations policy.

The record does support the conclusion that, on the date the petition was filed and for some time previously, Belas was a supervisor of employees in the petitioned-for bargaining unit. Supervisors are public employees within the meaning of Chapter 41.56 RCW, METRO v. L&I, 88 Wn.2d 925 (1977), but the analysis cannot end there. The best-case examples for the petitioner of case law under the National Labor Relations Act would necessarily come from the pre-1947 era, when the NLRA did not expressly exclude supervisors from the coverage of the Act. Even during that era, the NLRB struck down as tainted representation efforts intiated or led by supervisors. See: Douglas Aircraft Co., Inc., 53 NLRB 486 (1943). The question of supervisor involvement with the collective bargaining affairs of their subordinates was addressed under Chapter 41.56 RCW in City of Richland, Decision 1519, 1519-A

(PECB, 1983), where it was concluded that the overall public policy of the statute and the protection of the rights of rank-and-file employees precluded certification of an organization led by supervisors to represent their subordinates. The cry may arise that the facts are distinguishable here, that the association was organized and led by rank-and-file employees who approached Belas out of fear of reprisals from Local 120K. Such a distinction has been considered and rejected. The unfair labor practice provisions of the act secure protections of public employees from interference by either union or management with their choice of bargaining representative. The unfair labor practice provisions of the act also prohibit employer domination of employee organizations. The unfounded and ill-advised quest for additional protection from reprisals does not warrant upset of established precedent on separation of supervisors from their subordinates. See, also: City of Richland, Decision 279, 279-A (PECB, 1978), aff. 29 Wn.App. 599 (Division III, 1981). The petition was, in fact, tainted and subject to dismissal when it was filed.

The petitioner offered up a rank-and-file employee as a substitute for Belas after the pre-hearing conference and the January 19, 1984 organizational meeting of the association. While such a move might be regarded as sufficient under other circumstances, it is found to have been untimely in this case under the contract bar provisions of the statute. The organizers of the petitioner were well aware that they were facing a time bar under the statute. They hurried to pull together a prospective bargaining representative to petition, and then would not seem to have paid much attention to the formality or mechanics of their organization until its status was questioned at the pre-hearing conference. The petitioner could not have supplemented the showing of interest after the close of the contract bar "window" in 1983 if it had fallen short of the required 30%. It could not have expanded the petition to pick up other organized departments under contracts of similar duration after the close of the contract bar "window" in 1983. While showing of interest and pre-hearing procedures dragged on, Local 120K was deprived of its opportunity to negotiate a successor agreement with the employer during November and December of 1983. It appears that the substitution of officers was not communicated to the Commission until received in letter form on March 2, 1984. A petition filed on March 2, 1984, or even on January 19, 1984, would have been filed in the context of a period in excess of two months during which Local 120K would have been free to exercise its best efforts to negotiate a new contract with the county free of any interference by an outside organization. To allow the Association to cure the defect after the fact would not put Local 120K back in the position it would have enjoyed.

Under these circumstances, the dismissal of the petition cannot invoke the one-year bar period which would flow from a certification. In order to restore Local 120K and the county to the bargaining positions they would have enjoyed had no petition been filed, representation petitions affecting

employees involved in this case will be barred for sixty (60) days following the date of which dismissal of this case becomes final. Such period will replicate the period of negotiations which would have been protected by the contract bar in November and December, 1983.

The Unit Determination Issue

Kitsap County has a total of approximately 530 persons on its payroll.

Kitsap County and Local 120K have had a bargaining relationship for many years, now covering the largest single group of county employees. The following excerpts from their latest collective bargaining agreement are instructive as to the origins and present scope of the group of employees covered by that contract:

> Section 2. Union Recognition. The Employer recognizes the Union as the exclusive bargaining representative for all full and part-time employees in the departments and classifications as set forth in Appendix A and B respectively.
>
> Section 3. Union Security.
>
> a. All employees in the departments as listed in Appendix A are represented by the Union and shall, as a condition of employment, becomes and remain members of the Union; Provided, no employee, as a condition of employment, must join the Union unless and until the Union can show more than fifty percent (50%) of Union membership of eligible employees within a department. All employees in the classifications listed in Appendix B who are members on the effective date of this Agreement or become members after the effective date of this Agreement, shall maintain such membership for the term of this Agreement. An employee who is not a public employee as defined in R.C.W. 41.56.030, may voluntarily join and remain a member of the Union, but such employee, shall not participate on behalf of the Union in any matters pertaining to labor relations with the Employer, and shall not be represented by the Union in collective bargaining.
>
> b. Whenever the County creates a new department, the following shall apply:
>
> 1. If the department is a union department and is divided into separate departments, they shall all remain union departments and shall be added to Appendix A.
>
> 2. If a union department is merged with a nonunion department, the majority rule shall apply. Determination of union members and eligible department employees shall be made by the County and the Union within 15 days of the official merger date.
>
> 3. If an entirely new department is created, the majority rule shall apply 60 days after the department has been officially established by resolution.
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> 4. In the case of any of the above, the Union and the Employer shall meet within 30 days to negotiate exempt positions.

APPENDIX A

ADMIN. BLDG.
Facilities Engineer

ASSESSOR
Chief Appraiser

AUDITOR
Fiscal Officer
Internal Auditor

CENTRAL COMMUNICATIONS
Director
Secretary

CLERK
Chief Deputy

CO-OP EXTENSION
Agents
Ext. Asst.-Horticulture
Agent, Chairman

DISTRICT COURT II
Court Administrator
Protem Judge(s)

PROSECUTOR
Sr. Chief Counsel to Prosecutor
Deputy Prosecutor III
Deputy Prosecutor II
Chief Criminal Deputy
Chief Civil Deputy
Deputy Prosecutor/Special Crimes
Deputy Prosecutor I
Prosecutor's Investigator
Office Administrator

TREASURER
Chief Deputy

PUBLIC WORKS
Superintendent
Operations Supervisor
Supervisor/Line Maintenance & Inspection
Maintenance Supervisor

DEPT. OF INTERNAL MANAGEMENT
Director
Risk Manager
Secretary/Clerk I
Data Processing Manager
Budget Technician

DEPT. OF HUMAN RESOURCES
Director

APPENDIX B

These job classifications (by Department) are subject to the provisions of this Collective Bargaining Agreement:

DISTRICT COURT I
Clerk II

COMMUNITY DEVELOPMENT
Administrator (Court & Office)
Building Inspector I
Engineering Aide
Fire Inspector II
Project Planner II, III, IV
Recording Secretary III
Shorelines Administrator

E R & R
Clerk II

During the thirteen or more years the relationship has been in existence, the "fifty percent" provision has been utilized from time to time to add groups of employees to the coverage of the collective bargaining agreements between the parties.

The employer has a separate bargaining relationship with a joint council of unions (Teamsters, Laborers, Machinists and Operating Engineers unions) covering employees in its road department, in its equipment rental and revolving fund department and in divisions of its public works department other than the waste water division. As of the time of the hearing in this matter, there were approximately 100 employees within the scope of that relationship.

Notice is taken of the docket records of the Public Employment Relations Commission, which indicate that, subsequent to the hearing in the instant matter, the Commission has certified Office and Professional Employees International Union, Local 11, as the exclusive bargaining representative in each of three separate bargaining units in the sheriff's department of Kitsap County, as follows: A unit of nonsupervisory uniformed personnel (Kitsap County, Decision 1970 (PECB, 1984), involving approximately 42 employees); a unit of non-uniformed personnel (Kitsap County, Decision 1971 (PECB, 1984) involving approximately 28 employees); and a unit of supervisory uniformed personnel (Kitsap County, Decision 1972 (PECB, 1984) involving approximately 8 employees). At the time of the hearing in the instant matter and prior thereto, all of the employees in the sheriff's department had been represented in a single bargaining unit by the Kitsap County Sheriff's Association. The restructure of bargaining units was at least in part in response to the enactment of amendments to RCW 41.56.030(6), which will extend the interest arbitration procedures of RCW 41.56.430, et. seq. to only the "uniformed" law enforcement personnel of the employer.

The record also discloses that, in addition to the employees organized into the bargaining units indicated above and the management personnel excluded from those bargaining units, the employer has a number of pockets of unrepresented employees within its table of organization, as follows: Superior Court; Juvenile operations; the Board of County Commissioners office; the Coroner's office; the Emergency Services office; the County Fair; the Kitsap County Alcohol Recovery Program; the County Parks department; the Office of Assigned Counsel; the Village Greens Golf Course and a number of positions in the Department of Community Development.

The petitioner in the instant case initially sought a bargaining unit as described by the appendices to the Local 120K contract. The parties stipulated at the pre-hearing conference that the unit as set forth in the appendices to the Local 120K contract was an appropriate unit for the purposes of collective bargaining. This was reflected in the statements of results of the pre-hearing conference issued by the hearing officer.

On March 2, 1984, the petitioner advised the hearing officer of its desire to amend the petition to describe the bargaining unit to include all of the employees in the Department of Community Development. This proposed

amendment was acknowledged by counsel for Local 120K in a letter filed March 29, 1984. The employer also became aware of the proposed expansion of the bargaining unit, and it supplied a list on May 8, 1984 containing the names and titles of the incumbents of the additional positions in the Department of Community Development. Both the employer and Local 120K opposed amendment of the petition during the course of the hearing held on May 22, 1984 and in their post-hearing briefs. Their frustration with a change of direction by the petitioner after the pre-hearing conference is understandable. Better practice would have been to make the proposed amendment at or before the time of the pre-hearing conference and, if necessary, to have the unit determination issue listed as an issue for hearing. On the other hand, WAC 391-25-150 permits amendment of representation petitions under such conditions as the agency may impose.

The employer's arguments based on the fact that it had granted a pay increase to the employees affected by the proposed amendment are not persuasive. At the time the wage increases were granted, there was no claim of representation as to those employees and the employer was under no impediment precluding it from granting the increases. Unrepresented employees are not precluded, however, from organizing merely because their employer has granted them a unilateral pay increase for the year.

An organization seeking certification as the exclusive bargaining representative of employees already represented in one or more bargaining units is not limited to the bargaining unit structure then in existence. To the contrary, as demonstrated by Wahkiakum County, Decision 1876 (PECB, 1984), representation proceedings provide the opportunity to perfect a unit structure, eliminating fragmentation or loopholes created by previous recognition agreements and/or historical accidents. The petitioner was not precluded from petitioning at the outset for a broader unit than that represented by Local 120K. Its proposed amendment had the same effect. The substantial change of direction by the petitioner gave rise to a renewed opportunity for the employer and the incumbent to be heard on the issue of bargaining unit description. The employer and Local 120K had notice of the proposed amendment well in advance of the hearing, and so were not in a position to claim surprise. The issue was fully litigated at the hearing. It is thus concluded that rejection of the proposed amendment on procedural grounds is unwarranted and contrary to the direction provided in previous cases indicating that representation proceedings are the appropriate forum to clean up unit problems.

Turning to the merits of the unit determination issue, the petitioner does not fare so well. The existing bargaining unit undoubtedly grew along lines of extent of organization, but the case presents facts which are quite different than those encountered in Pierce County, Decision 1039 (PECB, 1980). There, similar "50%" rules had operated to divide classifications and

generic employee types into a highly fragmented unit structure involving no less than three labor organizations, and it was concluded that the group represented by one of the organizations was an amalgam of separate units rather than a single unit. Here, as in Yelm School District, Decision 704-A (PECB, 1980), the county and Local 120K have, by a series of separate recognition agreements, come very close to creation of a relationship which covers all of the clerical, technical and related employees of the employer. No other organization is substantially involved with representation of similar classes of employees, and there is a history of bargaining which is entitled to consideration under RCW 41.56.060. The proposed amendment would address the most visible anomaly in the existing unit structure, under which the Department of Community Development is split among represented and unrepresented classes, but it would also have the effect of increasing the isolation of the employees in the residual unrepresented departments, some of which have workforces too small to reasonably constitute independent bargaining units. Thus, the situation is also distinguished from Wahkiakum County, supra, where the restructuring of bargaining unit eliminated all residual situations. The exclusion of Superior Court and juvenile department employees may present little problem as, under Zylstra v. Piva, 85 Wn.2d 743 (1975) and Pierce County, Decision 1845 (PECB, 1984), they may be employees of a joint employer for which a separate unit structure would be indicated. The other exclusions remain unexplained. This suggests that, while the enlarged unit structure sought by the petitioner in this case would move some distance towards an "all employees" bargaining unit with appropriate exclusions for elected officials, confidential employees and supervisors, it would in fact merely substitute one slightly fragmented unit structure for the one historically existing. This conclusion provides no support for the proposition that the history of bargaining in the existing bargaining unit previously stipulated an appropriate should be ignored. Were the petition properly and timely filed, it would nevertheless be concluded that the petitioned-for bargaining unit is not appropriate within the meaning of RCW 41.56.060.

FINDINGS OF FACT

1. Kitsap County is a political subdivision of the State of Washington and a public employer within the meaning of RCW 41.56.030(1).

2. Kitsap County Employees Association is an orgnization of employees, whose stated purpose is to represent public employees in their employment relationship with their employer.

3. Carol Belas filed a petition with the Public Employment Relations Commission on October 31, 1983, purporting to initiate representation proceedings on behalf of the Kitsap County Employees Association involving employees of Kitsap County including non-supervisory employees

in the county assessor's office. As administrator of special programs in the county assessor's office, Belas exercises substantial authority in the name and interest of the employer concerning hiring, discipline, discharge, promotion of and assignment of work to non-supervisory employees in the county assessor's office.

4. American Federation of State, County and Municipal Employees, Local 120K, a "bargaining representative" within the meaning of RCW 41.56.030(3), timely moved for intervention in these proceedings as the incumbent exclusive bargaining representative of the employees involved in these proceedings. Kitsap County and Local 120K were parties to a collective bargaining agreement effective through December 31, 1983.

5. Kitsap County conducts its operations through a number of departments supervised by elected officials or department heads appointed by the board of county commissioners. Local 120K has been recognized by the county as the exclusive bargaining representative for most of the clerical, technical and related employees of the employer. All parties stipulated during the course of these proceedings that the existing bargaining unit is appropriate for the purpose of collective bargaining. That unit has historically included some, but not all, of the employees in the department of community development. In addition, there exists a residual group of unrepresented county employees assigned to as many as eight other county departments in addition to the superior court and juvenile department.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The Kitsap County Employees Association is a bargaining representative within the meaning of RCW 41.56.030(3).

3. Carol Belas is a supervisor of employees in the petitioned-for bargaining unit, such that her inclusion in the bargaining unit would constitute a potential conflict of interest infringing on the collective bargaining rights of non-supervisory employees, and is inappropriate under RCW 41.56.060.

4. The petition in this proceeding is procedurally defective, having been initiated by a supervisor of employees in the petitioned-for bargaining unit. Substitution of a non-supervisory employee as signatory on behalf of the petitioner was precluded by RCW 41.56.070 on and after sixty days prior to December 31, 1983.

5. The bargaining unit sought by the petition as amended would continue to leave fragmented residual groups of unrepresented employees within the employer's overall workforce and would not, in view of the history of bargaining in the existing bargaining unit previously stipulated to be appropriate, constitute an appropriate bargaining unit within the meaning of RCW 41.56.060.

ORDER

1. The petition for investigation of a question concerning representation is DISMISSED.

2. Filing of a petition for investigation of a question concerning representation involving employees involved in these proceedings shall be barred for sixty (60) days following the date on which the dismissal of this proceeding becomes final.

DATED at Olympia, Washington, this 6th day of December, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.