Port of Seattle, Decision 6672 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON STATE COUNCIL OF COUNTY & CITY EMPLOYEES, AFSCME, AFL-CIO	)	CASE 13730-E-98-2292
	)	
Involving certain employees of:	)	DECISION 6672 - PECB
	)	
PORT OF SEATTLE	)	DIRECTION OF CROSS-CHECK
	)	

John F. Cole, Director for Staff Services, appeared on behalf of the petitioner.

Herman L. Wacker, Attorney at Law, appeared on behalf of the employer.

On February 20, 1998, the Washington State Council of County & City Employees, AFSCME, AFL-CIO, filed a petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the Port of Seattle. A hearing was held on June 24, 1998, before Hearing Officer Martha M. Nicoloff. The parties filed briefs.

A statement of results of investigation conference issued March 25, 1998, indicated the parties agreed on all issues except whether the petitioned-for bargaining unit was appropriate. The employer proposed accretion of the petitioned-for employees to an existing bargaining unit represented by another organization, but that organization did not intervene or otherwise participate in this proceeding. On the basis of the evidence and arguments presented, the Executive Director rules that the petitioned-for unit is appropriate, and a cross-check is directed.

BACKGROUND

The Port of Seattle (employer), established under Title 53 RCW, operates a major commercial airport located between Seattle and Tacoma, Washington. Since 1996, airport operations have been divided among separate "lines of business" (such as air terminal and ground access) and functional departments supporting all lines of business (such as maintenance and police). The employer has collective bargaining relationships with several organizations. At the outset of this proceeding, about 60 percent of the approximately 700 Port of Seattle employees at the airport were organized in at least 14 different bargaining units.

Employees working under the maintenance duty officer (MDO) title handle preventive maintenance of, and watch for failures in, various systems at the airport terminal. When they notice disruptions, or are informed of disruptions, MDOs dispatch appropriate trade and crafts personnel to repair the systems. The maintenance duty officers were unrepresented when this petition was filed.

Other employees who perform "dispatching" functions at the airport are currently included in bargaining units, as follows:

- The International Longshore and Warehouse Union, Local 9 (ILWU) represents a recently-merged bargaining unit which encompasses employees working under "senior operations controller", "ID monitor", "ramp controller", and "senior ramp controller" titles;[1] and

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[1] The history by which separately-organized bargaining units were merged in this bargaining unit is detailed in Port of Seattle, Decision 6103 (PECB, 1997), where an attempt to sever part of the merged unit for purposes of decertification was rejected.

- Teamsters Union, Local 117, represents certain employees performing dispatching functions, particularly those associated with the employer's Police Department.

The Washington State Council of County and City Employees (WSCCCE) filed its petition in this case on February 20, 1998. It seeks a bargaining unit described as:

> All full-time and regular part-time maintenance duty officers of the Port of Seattle, excluding supervisors, confidential employees, and all other employees.

For a time, the petitioned-for employees were represented by the ILWU in a separate bargaining unit. Neither the employer nor the ILWU sought to include the MDOs in any unit already represented by the ILWU.[2] Local 9 disclaimed the MDO unit on February 2, 1998, and did not seek to participate in this proceeding.

On April 23, 1998, Teamsters Local 117 moved to intervene in this case, based on a claim that the employer's plans to consolidate all dispatcher positions in one location by the year 2001 gave it an interest in the present dispute. That motion was withdrawn on May 26, 1998.

POSITIONS OF THE PARTIES

The WSCCCE contends that the MDOs constitute an appropriate unit, based on their unique duties and on their history of representation

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[2] Notice is taken of the Commission's docket records for Case 12115-E-95-2003. The ILWU was certified as exclusive bargaining representative on December 26, 1995. Port of Seattle, Decision 5393 (PECB, 1995).

as a separate unit. Responding to the employer's arguments, the WSCCCE argues that unit placement issues are not determined by future plans, but must be decided based upon the present situation.

The employer asserts that the MDOs should be accreted to the recently-merged unit represented by the ILWU. The employer contends such an accretion is supported by similarities of the monitor survey and dispatch functions, and of the working conditions of employees in the existing and proposed units. The employer also cited its planned relocation of the MDO duty station to the same location where the senior operations controllers work. At the hearing, the employer also cited its plan to consolidate all dispatch functions in a central communications center by the year 2001, but that argument was not mentioned in the employer's brief.

DISCUSSION

Applicable Legal Standard

The General Rule -

The determination of appropriate bargaining units is a function delegated by the Legislature to the Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). In making such determinations, the Commission must consider:

> [T]he duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.

RCW 41.56.060.

Unit determinations are made on a case-by-case basis, starting from the unit structure proposed by the petitioning union in a representation case under Chapter 391-25 WAC .[3] A unit can be certified if it is an appropriate unit; it ***need not be the most appropriate unit.*** The four factors listed in RCW 41.56.060 have not been prioritized; the circumstances of each case determine whether each factor applies and which factor(s) predominate(s) in reaching a decision. Okanogan School District, Decision 5394-A (PECB, 1997).

The Accretion Exception -

RCW 41.56.040 generally guarantees public employees a voice in the selection of their exclusive bargaining representative. Positions may be accreted to an existing bargaining unit, but only where the positions involved can neither stand on their own as a separate unit nor properly be added to any other bargaining unit. The party proposing accretion has the burden of establishing that those conditions are met. In the absence of circumstances which warrant depriving the affected employees of their voice on their representation, an accretion must be denied under Chapter 391-35 WAC, and a question concerning representation will exist under Chapter 391-25 WAC. See, Pierce County, Decision 6051-A (PECB, 1998) and cases cited therein. See, also, City of Vancouver, Decision 3160 (PECB, 1989), rejecting arguments similar to those advanced by the employer in this case.

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[3] Under RCW 41.56.070 and WAC 391-25-110, the price of admission for a petitioning organization is that it have the support of at least 30 percent of the employees in the petitioned-for bargaining unit. Under WAC 391-25-190, for an intervening organization other than an incumbent exclusive bargaining representative to argue for any different unit, that intervenor must have the support of at least 30 percent of the employees in that different unit.

Application of the Legal Standard

Because the employer contends the MDOs should be accreted to the bargaining unit represented by the ILWU, the statutory factors are discussed here for both of those groups.

Duties, Skills, and Working Conditions -
The MDOs are responsible for keeping the various electric and mechanical systems in the airport terminal running 24 hours a day. These systems include the unmanned subway trains linking the main terminal with the satellite terminals, the baggage handling system, and the heating, ventilation, and air conditioning systems. The malfunctions dealt with vary in severity from simple spillage of water on a floor to jammed baggage conveyors, leaking sewer lines, or asbestos exposure at a passenger security checkpoint after a cart drove through a glass wall. The MDOs use remote control cameras to monitor systems, and also receive information from other people.

When a malfunction occurs, MDOs gather information by questioning people or by personally inspecting the problem site, whichever seems best to them. MDOs then dispatch appropriate craftspeople to fix the problem, by contacting the appropriate craft foreman, asking a particular craft employee to do the work, or choosing an outside contractor from the employer's approved list for specialized work (such as handling hazardous material). If fixing the problem requires overtime work, MDOs can authorize it for themselves or for craftspeople. MDOs also make a record in the maintenance duty log of the problem and its solution.

MDO candidates must have at least two years of college level courses in mechanical engineering, three years of experience in

equipment and facilities maintenance, and a working knowledge of electrical, mechanical, and heating/ventilation/air conditioning systems.

At the time of the hearing, the MDOs worked in or out of a space on the third floor of the old main terminal building. They were under the immediate supervision of the air terminal supervisors, who in turn report to air terminal General Manager Mike Ehl.

Because of the pending representation petition, MDOs were still being paid at the 1997 range of $15.23 to $22.84 per hour. MDOs have the same health insurance and pension benefits as positions in the ILWU unit.

The Senior Operations Controllers represented by the ILWU provide three separate functions: (1) They receive fire and medical emergency calls, and dispatch the appropriate personnel; (2) they observe the subway trains by electronic means, and attempt to remedy any problems by manipulation of electronic controls; and (3) they control signs that notify passengers of departure and arrival gates, and of the carousel where inbound baggage will be available. Although these employees may also alert maintenance people about problems with the subway system, there is no evidence that they exercise independent choice or judgment in calling a person from the list, or that they can authorize overtime for themselves or anyone else. Also different from the MDOs, these employees do not leave their work station unless specifically directed by a supervisor to do so. The record lacks evidence on the skills required for these positions. At the time of the hearing, these employees worked in a communication center on the fourth floor of the airport parking garage. Their 1998 hourly rate was $18.54,

which was higher than the 1997 minimum for the MDOs, but still nearly 20 percent below the 1997 maximum for the MDOs.

The ID Monitors represented by the ILWU watch screens and listen for audible alarms which indicate that a door to the airport operations area has been opened by an unauthorized person. When a security breach is detected, they alert others, including MDOs. The record lacks evidence about the skills, training, and experience required to qualify for these positions. ID monitors worked in the same location as senior operations controllers until February of 1998, when their work station was moved to the third floor of the old main terminal. Their 1998 hourly wage rate of $14.66 is less than even the 1997 minimum for the MDOs.

Interchange or interaction between employees in a petitioned-for unit and other employees can be a basis for finding a similarity of duties, skills and working conditions, and a community of interest, but the evidence is not compelling in this case. Another MDO fills in when an MDO is absent, so there is no record of substitution by employees in other classifications. There was discussion of the employer's long-term goal of consolidating all dispatch functions in 2001 during the two years that the ILWU represented the MDOs, but it is noteworthy that there was no discussion in that period about cross-training of the MDOs and other ILWU-represented employees. While a senior management official testified about the prospect for having all employees involved in dispatch and communications coalesce and work on teams in emergencies, his examples involved interactions of exempt airfield supervisors with MDOs, and of the same airfield supervisors with ILWU-represented employees. This does not establish any direct interaction or cooperation between MDOs and the ILWU-represented employees. Other evidence of interaction include MDOs simply giving notice of

malfunctions that would interfere with passenger traffic through the terminal, or of responding when a door opened by wind appeared on a screen monitored by an ID monitor. Rather than evidencing a commonality between the employee groups, these are examples of sequential, or cause-and-effect, transactions similar to those that routinely occur between the MDOs and the employees of airlines or private janitorial contractors. The record is devoid of any evidence of promotions, or of any career ladder relationships, between the ILWU-represented positions and the MDOs. The record certainly does not show the regularity and depth of interchange and interaction required to justify accreting the MDOs to the ILWU unit. See, City of Seattle, Decision 6145 (PECB, 1997).[4]

The conclusion from the foregoing is that the petitioned-for employees have many duties, skills and working conditions that are distinct from those of the employees represented by the ILWU. The MDOs are responsible for many more systems, work much more independently, and exercise much greater judgment in diagnosing and responding to problems. The MDOs are highly-skilled diagnosticians and technicians, and the potential consequences of any errors on their part appear to be very serious.

Insurance and pension are working conditions, but the fact the MDOs are provided with benefits similar to those of the ILWU-represented

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[4] In Seattle, a position that handled purchase and maintenance of equipment for police dispatchers was removed from a bargaining unit to which it had been assigned by the employer and allocated to the dispatcher unit, because the incumbent had daily interaction with the department head and two senior dispatchers; familiarity with dispatch functions was essential to the incumbent's functioning; the incumbent helped train dispatchers on the equipment; and the two senior dispatchers filled in when the incumbent was absent and occasionally handled some of the incumbent's work.

employees is of interest, but is not compelling. Apparently the employer and ILWU have negotiated coverage similar to that made available to the employer's unrepresented employees.

Work locations are also a working condition, but the employer's plan to move the MDOs to the work location now used by the senior operations controllers is also not compelling. The union correctly asserts that unit determinations must be made on the basis of the facts as they now exist.

> The Commission has refused to exclude employees from the coverage of Chapter 41.56 RCW based on speculation about future assignments of labor relations-related duties. City of Seattle, Decision 689 (PECB, 1979).

Colville School District, Decision 5319-A (PECB, 1996).

Even if the employer's long-range plans are implemented as currently envisioned, its various dispatching functions would not be combined (or even co-located) for 20 months or more from now. If the MDOs are to have any meaningful input on any decisions that are mandatory subjects of collective bargaining, or even on the effects of entrepreneurial decisions on their wages, hours and working conditions, they must take steps to organize before those decisions are made.[5]

If a reorganization implemented in the future raises issues as to the ongoing propriety of this or any other bargaining unit, or question(s) concerning representation, the parties to any such

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[5] See, for example, King County, Decisions 5910 and 5910-A (PECB, 1997), where a proposed bargaining unit structured along lines of a supplanted table of organization was found inappropriate. Those employees had waited too long to organize, and so lost their opportunity for input on the reorganization.

dispute will be entitled to invoke the unit clarification procedures of Chapter 391-35 WAC and/or the representation procedures of Chapter 391-25 WAC at that time.

History of Collective Bargaining -

The MDO positions have existed since at least 1980, and were left unrepresented when various segments of the current ILWU unit were organized, by classification, during the 1992-1993 period. Those facts virtually preclude any possibility of an accretion.

The MDOs were left out again, when the employer and the ILWU took steps to merge other classification-based bargaining units in 1995. In fact, the evidence indicates the employer did not even propose accreting the MDOs to the merged unit when the ILWU filed a petition for a separate MDO unit during the same timeframe when the other bargaining units were being merged.

Finally, the ILWU disclaimed the separate MDO bargaining unit in early 1998, for reasons that are neither at issue here nor explained in this record. Thus, the only history of bargaining for the MDOs is one of separate representation.

Extent of Organization -

This element of the statutory unit determination criteria compares a petitioned-for unit to the whole of the employer's operations, and thus provides the toe-hold for "fragmentation" and "table of organization" arguments. It is necessarily applied, however, in the context of any bargaining unit structures already existing within the employer's workforce.

In this case, the employer urges that a significant change occurred on February 20, 1998, when the direction of the MDOs was changed

from Aviation Maintenance Head Larry Stevenson (who reported to an Aviation, Development and Maintenance Director who, in turn, reported to the Aviation Division Director) to the air terminal line of business, under the immediate supervision of air terminal supervisors (who reported to the Airport Communications Center Manager who, in turn, reported to the Air Terminal General Manager, who reported to the Director of Business Operations who, finally, reported to the Aviation Division Director). While this transfer placed the MDOs in the same chain of command as the senior operations controllers now represented by the ILWU, it also increased the number of managerial layers between the MDOs and the airport's ultimate manager. Moreover, the employer did not file a unit clarification petition questioning the propriety of the separate unit of MDOs which still existed at that time, or seeking their accretion to the merged unit represented by the ILWU.

With the failure to act in a timely manner after the change of circumstances, and then the disclaimer of the MDO unit by the ILWU, the employer is left with a relatively small pocket of unrepresented employees within its workforce. The decision in City of Auburn, Decision 5775 (PECB, 1996), is instructive:

> [N]either the petitioner, the employer nor [an intervening union] has a right to dictate the choice of bargaining representative for the employees at issue in this proceeding. The employer's arguments favoring accretion of the petitioned-for positions to [an existing unit] in this case are essentially the same as those which were advanced and rejected in City of Vancouver, Decision 3160 (PECB, 1989), where historically unrepresented employees were given the opportunity to vote on representation. No provision within Chapter 41.56 RCW provides a reward in heaven for employers who manage to preserve one or more pockets of unrepresented employees within their work-

> forces, and the specter of "skimming" issues should fuel employer concerns about excessive fragmentation of units. The comeuppance for employers that do manage to have pockets of unrepresented employees tends to occur when the employees in one or more such stranded groups exercise their statutory right to organize for the purposes of collective bargaining.

See, also, Cusick School District, Decision 2946 (PECB, 1988).

The employer's concerns about fragmentation do not override the MDOs' history of separate representation, particularly where the MDOs have distinct duties and skills, there is little actual interchange, and commonalities of working conditions are either prospective or system-wide. The employer foresees problems with separate representation cutting across a group of employees who may eventually be working more closely than in the past, but the fact remains that the employer already has approximately 420 employees in its airport operations divided among at least 14 bargaining units. While the merger of already-existing bargaining units was endorsed and protected in Port of Seattle, Decision 6103, supra, that is not a basis for depriving the MDOs of their statutory right to a representative of their own choosing.

The addition of another bargaining unit to the employer's already-complex labor relations situation will marginally increase burdens on the employer's labor relations personnel, and its air terminal supervisors will have to administer another collective bargaining agreement if the MDOs actually choose the WSCCCE as their exclusive bargaining representative, but nothing in RCW 41.56.060, or in any other provision of Chapter 41.56 RCW, would elevate such concerns over the statutory right of employees, under RCW 41.56.040, to have representation of their own choosing. Moreover, the evidence in

this case indicates that supervisors in the employer's police department work with six different bargaining units, and that the maintenance department (which included the MDOs until 1998) manages to function with three bargaining units, so that this kind of supervisory load is not unusual for this employer.

Finally, it is difficult to foresee a potential for substantial "unit work" issues where the responsibilities of MDOs and those of the ILWU-represented employees are so markedly different. The fact that both groups use monitors and screens to keep track of systems does not provide basis for an inference that the MDOs will become involved with 9-1-1 calls, or with gate and baggage carousel announcements, or provide basis for an inference that the ILWU unit will become involved, even tangentially, with assessing the proper crafts to call out for malfunctions in complex systems.

Desires of the Employees -

This element of the statutory unit determination criteria only comes into operation where two or more appropriate unit configurations are sought by organizations that provide the requisite showing of interest. No such circumstances exist in this case.

Conclusion

The employer has failed to carry the heavy burden that is required to warrant an accretion. The evidence establishes that the MDOs have been, and can again be, represented in their own, separate unit. The petition filed by the WSCCCE is supported by more than 70 percent of the employees in the petitioned-for bargaining unit, so that the cross-check methodology is available to effect a speedy determination of this question concerning representation. See, WAC 391-25-391(1).

FINDINGS OF FACT

1. The Port of Seattle is a municipal corporation of the state of Washington organized under Title 53 RCW, and is both a public employer within the meaning of RCW 41.56.030(1) and a port district within the meaning of Chapter 53.18 RCW. The employer operates a major commercial airport located between Seattle and Tacoma, Washington.

2. The Washington State Council of County & City Employees, AFSCME, AFL-CIO, a bargaining representative within the meaning of RCW 41.56.030(3), timely filed a petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of:

> All full-time and regular part-time maintenance duty officers of the Port of Seattle, excluding supervisors, confidential employees, and all other employees.

That petition was supported by a showing of interest indicating that the WSCCCE has the support of more than 70 percent of the employees in the petitioned-for unit.

3. The maintenance duty officers are responsible for assuring the continued functioning of mechanical and electrical systems in the airport terminal, including baggage handling systems, a subway train system, and heating/ventilation/air conditioning systems. They have a regular preventive maintenance program. When they learn of problems through their own observation of monitors or from others' reports, they diagnose the problem, may visit the site of the malfunction, and dispatch appropriate trades and crafts personnel. The maintenance duty

officers can authorize overtime for other employees and for themselves.

4. Maintenance duty officers must have at least two years of college level mechanical engineering courses, three years of experience in equipment and facilities maintenance, and a working knowledge of the electrical, mechanical, and heating/ventilation/air conditioning systems of the airport.

5. The maintenance duty officers worked in the Maintenance Department until February of 1998. They have worked under the supervision of the air terminal supervisors since that time, but that administrative change has neither altered the independence of the maintenance duty officers, nor subjected them to any closer supervision.

6. The maintenance duty officers have been unrepresented except for a period between December 26, 1995 and February 2, 1998, when they were represented in a single-classification bargaining unit by International Longshore and Warehouse Union, Local 9. During the representation proceedings leading to the creation of that bargaining relationship, and while it remained in existence, neither the employer nor the ILWU proposed adding the maintenance duty officers to an ILWU-represented bargaining unit which includes senior operations controller and ID monitor positions.

7. The senior operations controllers receive fire and medical emergency calls and dispatch personnel, they electronically observe the subway trains, and they control displays which inform passengers of arrival/departure gates and where their luggage can be found. When the subway trains malfunction,

their direct intervention is limited to manipulation of electronic controls or calling maintenance people from an established list. These employees cannot leave their work station without approval, and cannot authorize overtime for themselves or others. The record lacks evidence of the training, experience, and knowledge required to work as a senior operations controller. The senior operations controllers have been represented by the ILWU since 1993, originally in their own unit and since 1995 in a merged unit where they are combined with three other classifications.

8. The ID monitors observe screens and audible signals that indicate unauthorized entry into the airport operations area. The record lacks evidence concerning the skills, training and experience required to perform this work.

9. There is no day-to-day interchange of duties or substitution between the maintenance duty officers, senior operations controllers, and ID monitors. These groups interact only to the extent required to perform their separate responsibilities. The record lacks any evidence of promotions, or career ladder relationships, among these classifications.

10. The employer has approximately 420 organized employees in its airport workforce, and they are currently represented in at least 14 bargaining units. Supervisors in various departments may administer two or more collective bargaining agreements.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. The petitioned-for unit described in paragraph 2 of the foregoing Findings of Fact is an appropriate unit for the purposes of collective bargaining, within the meaning of RCW 41.56.060, and a question concerning representation presently exists in that bargaining unit.

3. A cross-check of records is the appropriate method, under RCW 41.56.060 and WAC 391-25-391, for determination of the question concerning representation in this matter.

DIRECTION OF CROSS-CHECK

1. The Port of Seattle shall immediately supply the Commission with copies of documents in its employment records which bear the signatures of the employees involved in this proceeding.

2. A cross-check of records shall be made under the direction of the Public Employment Relations Commission in the bargaining unit described in paragraph 2 of the foregoing conclusions of law, to determine whether a majority of the employees in that bargaining unit have authorized the Washington State Council of County and City Employees to represent them for the purposes of collective bargaining.

Issued at Olympia, Washington, on the 28th day of April, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order may be appealed to the Commission by filing objections under WAC 391-25-590.