

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
CLARK COUNTY CORRECTIONS GUILD) CASE 15293-E-00-2553
Involving certain employees of:) DECISION 7386 - PECB
CLARK COUNTY) ORDER OF DISMISSAL
_____)

Garretson, Goldberg, Fenrich & Makler, by *Diana L. Moffat*, Attorney at Law, represented the petitioner.

Steve Foster, Human Resources Director, represented the employer.

Michael J. Wynne, Attorney at Law, represented the intervenor, Office and Professional Employees International Union, Local 11.

On July 7, 2000, the Clark County Corrections Guild (CCCG) filed a representation petition with the Public Employment Relations Commission under Chapter 391-25 WAC, involving certain employees of Clark County (employer). Office and Professional Employees International Union, Local 11, intervened as the incumbent exclusive bargaining representative of a larger bargaining unit that includes the disputed employees. A hearing was held on November 2 and 3, 2000, before Hearing Officer Pamela G. Bradburn. Briefs were filed on January 22, 2001.

Based on the evidence, the parties' arguments, and Commission precedents, the Executive Director rules that the proposed unit is inappropriate for severance. The petition is dismissed.

BACKGROUND

The employer provides the customary range of county services, including criminal justice functions. Since 1989, Senior Human Resources Representative Carol Chislett has represented the employer in collective bargaining, contract enforcement, training, and classification compensation studies for the employees involved in this case.

There are about 60 employees in the proposed bargaining unit. They perform clerical, accounting, and technical functions involving sentenced offenders who are on probation. Pam Foister has managed the disputed employees since about 1995. Until 1999, they were constituted as a separate department reporting to the County Executive. Since a reorganization in 1999, they have been part of a Community Services and Corrections Department.

Since at least 1972, Local 11 has been the exclusive bargaining representative of Clark County employees in a variety of classifications and departments. The disputed employees were added to that bargaining unit during or about 1978. The unit represented by Local 11 now includes more than 330 employees. Some of the classifications in that unit, including some of the classifications involved in this proceeding, appear in more than one department. Michael Richards has been the union representative for that unit since 1995 or 1996.

During the preliminary processing of this case and at the hearing, the issues to be decided were narrowed to the following:

1. Whether the proposed unit is appropriate for severance from the historical bargaining unit?
2. If so, whether the office-clerical classifications and "department information systems coordinator" (DISC) position that

have counterparts in other departments should remain in the bargaining unit represented by Local 11?

POSITIONS OF THE PARTIES

The CCCG argues the proposed unit, which it describes as "all county employees working with out-of-custody offenders," is entitled to separate representation under the criteria the Commission applies in severance situations. The CCCG contends the addition of a 12th bargaining unit is too small a burden on the employer to affect the outcome of this case. It argues that the proposed unit functioned separately from other county departments when it stood alone, and that it functions separately from the Community Services Division since the merger. The CCCG asserts the disputed positions lack integration into the rest of the employer's operations, and that the number of employees in the proposed unit has grown significantly since it was swept into the existing unit. The CCCG contends most of the disputed employees are in classifications unique to their division. Finally, the CCCG asserts dissatisfaction among the employees has caused them to seek separate representation a number of times, and that the law firm representing the CCCG represents other units of similar employees.

The employer asserts the proposed unit is inappropriate under the Commission's severance criteria. It contends that providing services to out-of-custody offenders is not a recognized craft function, and that no tradition of separate representation exists for such employees. The employer argues that the long history of including the disputed employees in the much broader unit represented by Local 11 weighs against separate representation. The employer asserts the proposed severance would excessively fragment its workforce, and would create jurisdictional disputes within the

Community Service and Corrections department. In the alternative, if the Commission finds a separate unit could be appropriate, the employer urges that the office-clerical and DISC classifications which exist in other departments should nevertheless be excluded from the proposed unit.

Local 11 contends its long history of representing the disputed employees as part of a larger bargaining unit requires dismissal of the petition. It argues the disputed employees lack status as skilled craftspersons, and that they interact with employees represented by Local 11 in other departments. Local 11 asserts the severance would interfere with, rather than promote, labor stability by permitting different wages and benefits for employees in the same classification, depending on the department where they work.

DISCUSSION

Applicable Standards

The Legislature has delegated responsibility for "determining, modifying or combining" appropriate bargaining units to the Commission. RCW 41.56.060. Employers and unions are free to create and modify bargaining units by agreement, although agreed unit configurations are not binding on the Commission. *Port of Vancouver*, Decision 6979 (PECB, 2000).

The statutory unit determination criteria include, "duties, skills and working conditions, history of bargaining, extent of organization, and desires of employees." The "history of bargaining" component takes on particular significance where an organization seeks to represent only a portion of an existing bargaining unit. The Commission then applies the following "severance" criteria:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of *skilled journeymen craftsmen* performing the functions of their craft on a nonrepetitive basis, or of *employees constituting a functionally distinct department*, working in trades or operations for which a tradition of separate representation exists.

2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.

3. The extent to which the *employees in the proposed unit have established and maintained their separate identity* during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.

4. The history and pattern of collective bargaining in the industry involved.

5. The degree of *integration of the employer's production processes*, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.

6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

Clover Park School District, Decision 7052 at 6 (PECB, 2000).¹

¹ The private sector flavor of the severance criteria reflects the Commission's quotation of them from the National Labor Relations Board (NLRB) decision in *Malinckrodt Chemical Works*, 162 NLRB 387 (1966).

The severance criteria will sometimes cause rejection of a unit that could have been found appropriate in initial organizing. See *Yelm School District*, Decision 704-A (PECB, 1980).

Application of Standards

The unit proposed by the CCCG fails to meet the criteria for severance from the larger unit represented by Local 11.

Skilled Crafts, Traditional Trades -

The Commission's discussion of this factor in *Yelm School District*, *supra*, demonstrates that its focus was on the skilled crafts or trades (e.g., carpenters, plumbers, electricians) which have long traditions in the private sector. Employees in those occupations had been organized by separate unions that came together to form the American Federation of Labor (AFofL) long before there was a National Labor Relations Act, an NLRB, so-called "industrial" unions, or the Congress of Industrial Organizations (CIO), let alone the current AFL-CIO. Employees performing similar craft functions for a public employer can invoke the same considerations.

None of the disputed employees work in any of the crafts or trades traditionally represented separately:

- The disputed employees: Perform general office-clerical functions; interview offenders in custody for admission to probation and to various programs; handle administrative details of probation; track probationers' compliance with conditions of their probation; initiate penalties for violations of probation conditions; maintain computer software; arrange for and monitor electronic home confinement; lead work crews of probationers; and teach various job skills to probationers.

- The prior experience requirements for the disputed positions bear no resemblance to the apprenticeship programs for the traditional crafts, where "journeyman" status is attained only after several years of classes taught under the oversight of an apprenticeship council and work under the close oversight of skilled craftspersons:
 - ▶ Division Manager Pamela Foister testified that no law enforcement experience is required for the office-clerical employees; instead she looks for experience with the public and certain clerical skills. Moreover, an experienced office-clerical worker became proficient in the substance of her job in two weeks to a month.
 - ▶ The "offender industries technician" classifications require experience with "difficult client populations, preferably clients involved in the criminal justice system" and other disputed positions require some experience with the criminal justice system, but the job descriptions for those professional and technical positions are typical for a public entity, and lack any references to journeyman status.
 - ▶ Classifications grouped in several series are distinguished from each other by variations in the education and experience requirements, not by periods of time in which to improve skills at the particular type of work from entry level to journeyman level.

Rather than constituting a homogenous craft or trade, the disputed employees more closely resemble the amalgamations of classifications found in the "industrial" units once targeted by the CIO, where variously-skilled employees work together to create or process a product.

Separate Department -

The CCCG argues that the proposed unit includes all Clark County employees who work with offenders on probation, but the record lacks any evidence supporting or controverting that assertion. Even if a "vertical" unit might have been appropriate in initial organizing,² the reference to "functionally distinct department" in the severance precedents is not a guarantee of success for severance petitioners. Precedents such as *Yelm School District, supra*, where the Commission rejected a severance of bus drivers who were the only employees transporting students to and from school, weigh against a finding that the employees at issue here constitute a functionally distinct department. Additionally, the evidence concerning the merger of departments which occurred in 1999 weighs against the CCCG's argument.

Stability of Labor Relations -

At the time of the hearing, this employer dealt with organizations representing 11 separate bargaining units organized among its employees. Some of those are necessitated by the availability of interest arbitration for certain law enforcement and corrections employees,³ and none of them is a truly "vertical" unit covering all of the public employees in a single department. For example: One unit includes engineering employees in the Public Works Department and Community Development Department; a unit limited to appraisers in the Assessment and GIS Department excludes other employees in that department.

² A "vertical" bargaining unit typically encompasses all of the employees in a separate department, division or other branch of the employer's table of organization.

³ Under long-standing Commission precedents and WAC 391-35-310, employees eligible for interest arbitration must be placed in units separate and apart from employees who lack eligibility for interest arbitration.

The bargaining unit historically represented by Local 11 is a multi-department unit consisting of office-clerical, technical, and professional employees. That unit has been expanded by agreement of the employer and Local 11 since it was first created in 1972: Six departments or divisions were added to that unit in a collective bargaining agreement covering 1975 and 1976; the disputed employees were added to that unit in a collective bargaining agreement covering 1978 through 1980; certain "corrections counselor" classifications were added to that unit in a collective bargaining agreement covering 1986 through 1988; the Community Services Department was added in a collective bargaining agreement covering 1992 through 1994. The record demonstrates that the employer and Local 11 have had a stable bargaining relationship since 1972. Removing the disputed positions from the unit represented by Local 11 would be inconsistent with the history of labor relations at this employer, and would disturb a 23-year bargaining relationship.

History of Separate Identity or Representation -

There is no evidence that the disputed employees had any history of bargaining prior to 1978, when they were included in the bargaining unit represented by Local 11. The record also lacks any evidence that the disputed employees have maintained a separate identity while represented by Local 11. Even when Local 11 and other unions bargained jointly with the employer for a master agreement accompanied by separate addendums establishing wages and working conditions for their respective units, nothing in the addenda applying to Local 11 suggests that the disputed employees were treated as a separate group within the unit represented by Local 11. Rather than being proof of a separate identity, evidence of occasional meetings where Local 11 representative Richards and employer representative Chislett discussed concerns of employees in

the proposed unit are normal interactions of an employer and exclusive bargaining representative.

No Industry Pattern -

The record lacks any evidence that would establish a pattern of separate collective bargaining or representation for employees in the probation services field.

Integration into Productive Process -

In addition to the Community Services and Corrections Department where this dispute arose, employees represented by Local 11 perform office-clerical, technical, and professional functions in the following departments: Auditor, Clerk, Treasurer, District Court, Assessment and GIS, Prosecutor, and General Services. The record demonstrates that disputed employees interact on a regular basis with employees outside of the proposed unit but within the unit historically represented by Local 11, so that the proposed unit is integrated into the employer's processes rather than providing a distinct service by itself. Examples of work interactions between the employees in the Community Services and Corrections Department and other employees represented by Local 11 are:

- Disputed employees working under a "corrections program assistant" title oversee work done by offenders on probation in the Animal Control Section of the Community Development Department;
- Employees in the proposed unit contact the Auditor's staff with questions about paychecks;
- Disputed employees working under "corrections program assistant," "office assistant," and "corrections counselor" titles contact the Clerk's staff daily, to obtain paperwork used in their duties or to submit corrected information;

- The disputed employee working in the DISC position occasionally interacts with counterparts in other departments, and does limited work for Community Services Division of the Department of Community Services and Corrections;
- Disputed employees working under "corrections counselor," "corrections program assistant," and "office assistant" titles contact the district court and superior court staffs daily, to check on paperwork and court schedules, to arrange pretrial releases, to testify in cases involving offenders who have violated terms of their probation, and to get the names of offenders to be interviewed in the jail;
- Disputed employees get order forms and order supplies from General Services;
- Disputed employees occasionally contact employees working under "legal secretary" and "victim advocate" titles on the Prosecutor's staff;
- Disputed employees transfer any money they collect to the Treasurer's staff daily, and obtain receipts for those deposits.

The record establishes that several employees who have worked on the Prosecutor's staff have applied for promotions to positions in the proposed bargaining unit.⁴ Conversely, one of the employees now working under an "office assistant" title elsewhere in the unit represented by Local 11 obtained that position by a lateral transfer from the proposed unit.

⁴ Although no such transfer applicants have been selected to date, it appears that other applicants had better credentials.

Qualifications of the Petitioner -

The petitioner appears to be an independent organization which only represents employees of this employer and is not affiliated with any state or national labor organization. The fact that the petitioning organization uses the same law firm as similar independent organizations representing other bargaining units of Clark County employees is irrelevant under the *Mallinckrodt Chemical Works* criteria. This is clearly not a traditional "craft" union. Regardless of how many or what labor organizations it might represent, a law firm is not and cannot be a "bargaining representative" under RCW 41.56.030(3). Thus, the petitioner has no particular qualifications to represent the proposed unit.

FINDINGS OF FACT

1. Clark County is a political subdivision of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).
2. The Clark County Corrections Guild, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of a proposed unit of about 60 Clark County employees working in the Corrections Division of the Community Services and Corrections Department.
3. Office and Professional Employees International Union, Local 11, a bargaining representative within the meaning of RCW 41.56.030(3), has timely intervened as the incumbent exclusive bargaining representative of an existing bargaining unit of Clark County employees which includes all employees in the proposed unit.

4. The bargaining relationship between the employer and Local 11 has existed since 1972, and the bargaining unit was expanded on several occasions between 1975 and 1992. That bargaining unit currently encompasses more than 330 employees who perform office-clerical, technical, and professional services in at least the following departments: Auditor, Clerk, Treasurer, District Court, Assessment and GIS, Prosecutor, General Services, and Community Services and Corrections.
5. The employees in the proposed unit provide office-clerical, technical, and professional services involving sentenced offenders on probation. The disputed employees ceased to be identified as a separate department in 1999, when a merger created the Community Services and Corrections Department.
6. The disputed employees had no history of separate representation or bargaining prior to 1978, when they were added to the bargaining unit described in Finding of Fact 4 by agreement of the employer and Local 11. The disputed employees have not maintained their identity as a separate group within the bargaining unit described in Finding of Fact 4.
7. The disputed employees do not work in a traditional "skilled craft" or "trade" and have not completed an apprenticeship or similar program to achieve journeyman status.
8. Employees in the proposed unit interact daily in their work with employees in the existing bargaining unit represented by Local 11, including: Overseeing probationers working in the Animal Control Department; contacting the Clerk's staff to obtain paperwork and correct information; contacting the District and Superior court staffs to check on paperwork and court schedules, arranging pretrial releases, testifying in

the courts when probationers have violated probation terms, and obtaining the names of prisoners to be interviewed; and depositing money with the Treasurer's staff and getting receipts.

9. There is evidence of attempted and actual mobility between the proposed unit and the existing bargaining unit represented by Local 11, including: Employees within the existing unit but outside the proposed unit have applied for promotions to positions in the proposed unit; and an employee transferred from the proposed unit to a position elsewhere in the bargaining unit represented by Local 11.
10. The disputed employees constitute an amalgamation of classifications of the type traditionally found in "industrial" units, and the evidence does not support a conclusion that there is a pattern of separate representation for employees in the probation services field.
11. The Clark County Corrections Guild has no particular qualifications to represent the employees in the proposed unit.
12. A severance of the proposed unit from the existing bargaining unit represented by Local 11 would upset a stable, 23-year bargaining relationship.

CONCLUSIONS OF LAW

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

2. The bargaining unit proposed for severance from the existing unit historically represented by OPEIU, Local 11, is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

ORDER

The petition for investigation of a question concerning representation filed in the above-captioned matter is hereby DISMISSED.

Issued at Olympia, Washington, on 3rd day of May, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.