

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
GENERAL TEAMSTERS LOCAL 589)	CASE NO. 5140-E-84-923
)	DECISION NO. 2118 - PECB
Involving certain employees of:)	
KITSAP COUNTY)	DIRECTION OF ELECTION

Davies, Roberts, Reid, Anderson and Wacker, by Herman L. Wacker, Attorney at Law, appeared on behalf of the petitioner.

C. Danny Clem, Prosecuting Attorney, by Ronald L. 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 intervenor American Federation of State, County and Municipal Employees, Local 120K.

Gary H. Sexton, Attorney at Law, appeared on behalf of intervenor Kitsap County Employees Association.

On March 1, 1984, General Teamsters Local Union No. 589 (Teamsters) filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation of certain employees of Kitsap County. This petition seeks to carve out a unit of employees of the waste water division of the public works department from the group of employees presently represented by American Federation of State, County and Municipal Employees, Local 120K.^{1/} The incumbent exclusive bargaining representative was granted intervention in the proceedings. Kitsap County Employees Association was granted intervention based on its motion and administrative determination of the adequacy of the showing of interest filed in support of its petition in the proceedings leading to Kitsap County, Decision 2116 (PECB, 1984).

A hearing was held on May 21, 1984 at Port Orchard, Washington, before Hearing Officer, Ronald L. Meeker. Local 120K filed a post-hearing brief. Teamsters Local 589 filed a letter relying on the argument advanced in its brief on the central communications case.

^{1/} Companion cases to the instant case are: Kitsap County, Decision 2116 (PECB, 1984), involving all of the employees represented by Local 120K, and Kitsap County, Decision 2117 (PECB, 1984), involving central communications operations.

BACKGROUND

The Kitsap County Public Works Department consists of four divisions: roads, solid waste, E.R.& R. and waste water. The operations and maintenance employees in the roads, E.R.& R. and solid waste divisions are represented by a joint council of unions consisting of Teamsters, Laborers, Operating Engineers and Machinists. The clerical employees in the E.R.&R. division and the employees in the waste water division have been included in a multi-department group of county employees represented by Local 120K. The latest labor agreement between the county and Local 120K was effective from January 1, 1981 through December 31, 1983.

The waste water division of public works department has a workforce consisting of 18 employees who work in one or more offices, a laboratory, four different treatment plants, one dump and about 40 pumping stations. Shifts worked are 7:30 AM to 4:00 PM or 4:30 PM and 3:30 PM to 12:00 midnight, with one employee assigned "on call" from midnight to 7:30 AM. Equipment used in the waste water division consists of dump trucks, tanker trucks, a boom truck, a chlorine truck, back hoe excavators, bulldozers, and several smaller trucks. There are two computers in the division, one in the office and the other in the laboratory. Classifications of employment include: clerk I, secretary clerk III, treatment plant laboratory technician, maintenance worker/mechanic I and II, maintenance worker, maintenance worker/electrician I and II, inspector I, and treatment plant operator I and II.

POSITIONS OF THE PARTIES

The petitioner contends that the employees in the waste water division are predominantly engaged in work of a physical or technical nature, which distinguishes them from the primarily clerical occupations found in the departments represented by Local 120K. Accordingly, it contends that a separate community of interest exists and that an election should be directed.

As the incumbent exclusive bargaining representative, Local 120K contends that there are many similar functions to be found when comparing the waste water division to the other departments covered by its contract, that there has been no history of separate representation of the waste water division, that Local 120K presently represents an appropriate bargaining unit, and that severance principles should be applied in this case. The application of severance principles should, according to Local 120K, lead to dismissal of the petition in this case.

The employer took a position at the hearing that the petitioned-for bargaining unit was "not inappropriate".

The Kitsap County Employees Association did not take a position on the propriety of the petitioned-for bargaining unit.

DISCUSSION

In making a decision as to whether or not a petitioned-for unit is appropriate for the purposes of collective bargaining, the Commission is required to follow the criteria set forth in RCW 41.56.060:

... the duties, skills, and working conditions of the public employees, the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desires of the public employees.

In Yelm School District, Decision No. 704-A (PECB, 1980), the Commission affirmed dismissal of a petition seeking to sever a unit of bus drivers from a district-wide bargaining unit (excluding clerical). Various groups of employees had been organized at different times, but they shared a common history of collective bargaining for more than three years prior to the filing of the petition. The Commission was guided in its decision in that case by the principles set forth in the decision of the National Labor Relations Board in Mallinckrodt Chemical Works, 162 NLRB 387 (1966). Numerous subsequent cases have followed the precedent that, where severance criteria are applicable, severances are neither impossible nor lightly granted.

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, become 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.
 - 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

TREASURER
Chief Deputy

ASSESSOR
Chief Appraiser

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

AUDITOR
Fiscal Officer
Internal Auditor

CENTRAL COMMUNICATIONS
Director
Secretary

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

CLERK
Chief Deputy

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

DEPT. OF HUMAN RESOURCES
Director

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

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.

In Pierce County, Decision 1039 (PECB, 1980), a similar "50%" rule 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. In each of the companion cases to the present case, it is noted that 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; and that no other organization is substantially involved with representation of similar classes of employees. The facts are different as to the "blue collar" employees of the waste water division. The operations and maintenance employees of the public works department are fragmented between two separate bargaining structures and a multiplicity of labor organizations. The primary, if not exclusive, link between the operations and maintenance employees of the waste water division and the other employees represented by Local 120K is the circumstance of extent of organization. It is thus concluded that the waste water division falls under the rule of Pierce County, supra, and that severance principles are inapplicable as to them.

The clerical and technical employees of the waste water division are properly included in the multi-department bargaining unit represented by Local 120K and are, therefore, not to be eligible voters in the representation election directed herein.

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. General Teamsters Local 589, a labor organization and 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 the exclusive bargaining representative of all full-time and regular part-time employees of Kitsap County employed in the waste water division of the public works department, excluding the department head and supervisors.
3. American Federation of State, County and Municipal Employees, Local 120K, a labor organization and bargaining representative within the meaning of RCW 41.56.030(3), timely moved for intervention in the matter on the basis of its status as the exclusive bargaining representative for the petitioned-for employees as part of a larger bargaining unit.
4. Kitsap County Employees Association, a labor organization and bargaining representative within the meaning of RCW 41.56.030(3), timely moved for intervention in the matter and supplied a showing of interest demonstrating that it has the support of at least ten percent (10%) of the employees in the petitioned-for bargaining unit.
5. The employees in the petitioned-for bargaining unit were added to the coverage of the collective bargaining agreement between the employer and Local 120K as the result of recognition occurring more than six years ago along lines of extent of organization.
6. There is a history of bargaining between the employer and Local 120K which covers most of the clerical and technical employees of the employer, including clerical and technical employees in the public works department.
7. The operations and maintenance employees in the waste water division of the public works department maintain sewer lines, pump stations and maintain and operate sewage treatment plants and haul sludge. They are the only substantial group of employees within the group presently represented by Local 120K who work with heavy equipment, vehicles and related mechanical work.

8. Operations and maintenance employees of public works divisions other than the waste water division and operations and maintenance employees of the fair and parks department are either separately represented or are unrepresented.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of this matter pursuant to Chapter 41.56 RCW.
2. A unit composed of all full-time and regular part-time operations and maintenance employees of the waste water division of the public works department of Kitsap County, excluding supervisors, confidential employees, clerical employees and technical employees and all other employees of the employer, 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 unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission among all full-time and regular part-time operations and maintenance employees of the waste water division of the public works department of Kitsap County, excluding supervisors, confidential employees, clerical employees and technical employees and all other employees of the employer, for the purpose of determining whether a majority of such employees desire to be represented for the purposes of collective bargaining by Washington State Council of County and City Employees, Local 120K, or by General Teamsters Local 589, or by Kitsap County Employees Association, or by no representative.

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 a petition for review with the Commission pursuant to WAC 391-25-590(2).