

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WHAT-COMM DISPATCHERS GUILD	)	CASE 14834-E-99-2470
	)	
Involving certain employees of:	)	DECISION 7322-A - PECB
	)	
CITY OF BELLINGHAM	)	DIRECTION OF ELECTION
	)	
	)	

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Cline and Associates, by *Karyl Elinski*, Labor Consultant,  
for the petitioner.

*Kathryn Hanowell*, Human Resources Manager, for the  
employer.

*David Kanigal*, Attorney at Law, for the incumbent  
intervener, WSCCCE Local 114.

On October 22, 1999, the What-Comm Dispatchers Guild (WCDG) filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of "dispatchers in the police department through the rank of shift supervisor" employed by City of Bellingham (employer). The petition identified the Washington State Council of County and City Employees (WSCCCE) as the incumbent exclusive bargaining representative of a larger bargaining unit which includes the petitioned-for employees, and that organization moved for intervention in the proceedings.

A letter was directed to the parties under date of November 4, 1999, pointing out that a petition seeking to sever dispatchers from a city-wide bargaining unit represented by the WSCCCE had been

dismissed in *City of Bellingham*, Decision 792 (PECB, 1979). The parties were notified that a similar dismissal of this petition would be required, unless good cause was shown on or before November 15, 1999. The WCDG filed a response to the "show cause" directive on November 16, 1999,<sup>1</sup> and served a copy of that response on the other parties. It asserted that: (1) The res judicata doctrine is inapplicable to this case, (2) RCW 41.56.060 entitles the WCDG to a hearing prior to a determination on whether the unit it proposes is an appropriate unit, (3) the community of interest factors support the petitioned-for unit, and (4) substantial changes have occurred in the bargaining unit since Decision 792 was issued in 1979.

Further processing of this representation case was "blocked" for an extended period under WAC 391-25-370, due to the pendency of unfair labor practice cases in which an individual employee alleged that the employer and WSCCCE had each violated her rights under Chapter 41.56 RCW. See *City of Bellingham*, Decision 7040 (PECB, 2000). That controversy ended in November 2000, after which Hearing Officer J. Martin Smith resumed the processing of this case.

The WSCCCE had filed a motion for dismissal on December 6, 1999, citing that the WCDG response to the show cause directive was filed one day late. On January 16, 2001, the Hearing Officer set a time for the parties to file written arguments on that issue. The WSCCCE filed its response on January 24, 2001; the WCDG filed its response on January 26, 2001; there was no response from the employer. On March 20, 2001, the Executive Director ruled that:

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<sup>1</sup> The union sent its response to the Commission by telefacsimile transmission (fax) on November 15, 1999, but the language of WAC 391-08-120 in effect at that time did not allow filing of documents by fax.

(1) The motion for dismissal was denied; and (2) a hearing was necessary on the merits of this case.

Hearing Officer Smith conducted a hearing on July 19, 2001. The parties filed post-hearing briefs.

The Executive Director concludes that there has been a substantial change of circumstances since the issuance of *City of Bellingham*, Decision 792 (PECB, 1979), and particularly since the dispatch function formerly operated by the employer was expanded to operate as a regional communications center. A unit determination election is directed; a representation election is directed conditionally, based upon the result of the unit determination election.

#### BACKGROUND

The City of Bellingham provides the customary types of municipal services, including law enforcement and fire protection. Bellingham is also the county seat of Whatcom County.

The WSCCCE has represented various employees of the City of Bellingham since 1935. An effort to have police dispatchers moved to a unit which included the non-commissioned employees in the Police Department was dismissed as untimely in *City of Bellingham*, Decision 109 (PECB, 1976), based upon the existence of a contract between the employer and the WSCCCE. The WSCCCE retained its status as exclusive bargaining representative of an "all non-uniformed employees of the employer" bargaining unit in *City of Bellingham*, Decision 144 (PECB, 1976), following a representation election in which the WSCCCE competed with Teamsters Local 231 and the Washington Public Employees Association (WPEA) for the right to

represent that unit. The petition dismissed in *City of Bellingham*, Decision 792, *supra*, was also filed by Teamsters Local 231, which sought to represent a unit of non-uniformed employees within the employer's police department. That petition was dismissed as an inappropriate severance from the city-wide bargaining unit. The bargaining relationship between the employer and WSCCCE currently covers approximately 375 employees.

The "Central Dispatch" Operation -

In 1979, the dispatch operation that historically served only the employer's police department was replaced with a "central dispatch" operation receiving emergency calls and dispatching both police and fire calls in Bellingham and the surrounding area. Initially, the dispatchers working in that operation were housed at both City of Bellingham and Whatcom County facilities. The City of Bellingham continued to act as the employer of all of the dispatch employees even after the operation was consolidated to the basement of the county courthouse, and former Whatcom County employees who had been represented by Teamsters Local 231 were accreted to the bargaining unit of City of Bellingham employees represented by WSCCCE.

Employer-prepared job descriptions for two "public safety dispatcher" classifications and a "public safety dispatcher lead" classification were adopted in 1980. Employees in the entry-level class received calls until they advanced to dispatching after two years. In the original operation, the employees who answered the telephone wrote information on 3" x 5" index cards used as incident slips, and passed them to a dispatcher. Then, the appropriate emergency services department, including units in Everson and Ferndale, were dispatched to render assistance.

Under the WSCCCE contract, employees established bidding rights to shifts and vacations choices, based upon seniority. More senior

dispatch personnel served in the "lead" classification, and may even have filled in as the supervisor of the operation.<sup>2</sup>

Changes of the Dispatch Operation -

The technology used in the dispatch operation has changed since 1979, including replacement of pen-and-paper method for recording information to a computerized system, and replacement of seven-digit dialing of emergency calls to a "9-1-1" format (in 1983). The office-clerical duties performed by the dispatch personnel were reduced, while the number of dispatch personnel increased.

The WhatComm Operation -

The central dispatch operation became WhatComm in 1987. The City of Bellingham continued to hire the employees, but two boards were created to guide the operation. An administrative board included the county executive and the sheriff of Whatcom County, the chairperson of the Whatcom County Council finance committee, the mayor of Bellingham, a representative from among the fire commissioners elected within Whatcom County, and other officials from the area served. An executive board included the police chief and fire chief from Bellingham, the sheriff, a fire chief from another fire department in the county, and a police chief from one of the smaller cities in the county. Job descriptions dated 1987 reflected the new name of the operation.

The dispatching operation was relocated from the county courthouse to a separate facility on Alabama Street in Bellingham. Addition-

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<sup>2</sup> The dispatch operation within the employer's police department had been supervised by a law enforcement officer, but supervision of the central dispatch operation was by a communications center director. The first "civilian" director, Clay Durbin, was followed by Wayne Jackson and Polly Keith.

ally, a two-month training regimen was established for new employees and an "enhanced 9-1-1" system was installed.<sup>3</sup> The role of the "lead" classification appears to have diminished during this period, when a "team" approach was installed. The supervision of WhatComm was changed again, with a commissioned law enforcement officer put in charge of the operation.

#### Removal of Fire Dispatch Function -

Effective April 1, 1999, ten of the WhatComm dispatchers were re-assigned to handle fire and emergency medical service (EMS) calls separately for the Bellingham Fire Department. Those positions were relocated to a fire station,<sup>4</sup> while the WhatComm operation remained at the Alabama Street facility.

#### Current WhatComm Operations -

The systems currently in use at WhatComm utilize computer terminals and a software system that automatically notifies the dispatcher of outstanding warrants and other information based on the names entered into the system. The normal staffing is to have four employees working per 8-hour shift, answering 10 separate telephone

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<sup>3</sup> Statutory history and technological details about "enhanced 9-1-1" dispatch operations are described in *City of Anacortes*, Decision 6830 (PECB, 1999).

<sup>4</sup> The removal of those employees from the historical bargaining unit is not disputed, and appears to have been a logical application of WAC 391-35-310, which reads:

Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration.

Both fire fighters (RCW 41.56.030(7)(e)) and dispatchers employed within fire departments (RCW 41.56.030(7)(g)) are eligible for interest arbitration.

lines. At the time of the hearing, it was anticipated that the staffing would soon be increased to five employees per shift.

#### POSITIONS OF THE PARTIES

WCDG alleges that a change of circumstances has taken place since 1979, with respect to the "wall-to-wall" bargaining unit at the City of Bellingham. It points out that "desk dispatchers" have been replaced with "9-1-1 emergency dispatch" personnel who have more formal training. It urges that a severance of the dispatch personnel from the city-wide unit of non-uniformed employees should be permitted to go forward.

Employer officials participated in the hearing in this matter, but the employer has not filed a brief or otherwise taken a position on the merits of this case.

The WSCCCE points out that the bargaining unit it represents has been in existence for many years. It urges that the dispatch personnel ought to remain in that bargaining unit.

#### DISCUSSION

##### The Applicable Standards

##### Unit Determination, Generally -

The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. In making unit determinations, the Commission applies the community of interest criteria set forth in RCW 41.56.060, as follows:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT-BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider 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 desire of the public employees. . . .

Units encompassing "all non-supervisory employees of the employer" are generally considered appropriate, as it is generally accepted that all such employees will share a community of interest in dealing with their common employer concerning their wages, hours, and working conditions.<sup>5</sup> Units that are less than employer-wide have been found appropriate where they encompass all of the employees within a generic occupational type (a "horizontal" unit), or where they encompass all of the employees with a branch of the employer's table of organization (a "vertical" unit).

Caution is indicated throughout the unit determination process, because the configurations implemented often outlast the individuals who participate in their creation. At the same time, Commission precedent recognizes the need to alter unit configurations on the basis of changed circumstances, and Chapter 391-35 WAC

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<sup>5</sup> This general rule is subject to some exceptions that have no application in this case:

1. Under WAC 391-35-310, employees eligible for interest arbitration are not mixed with employees who are not eligible for that procedure; and
2. Under WAC 391-35-330, a one-person bargaining unit cannot be considered appropriate.



establishes procedures for such situations. In particular, WAC 391-35-020(3) provides: "Disputes concerning the allocation of employees or positions between two or more bargaining units may be filed at any time." See *Grant County*, Decision 6704 (PECB, 1999).

#### Severances -

Under *Yelm School District*, Decision 704-A (PECB, 1980), the "history of bargaining" component of the statutory unit determination criteria weighs heavily against (but does not altogether preclude) the "severance" of employees from an appropriate bargaining unit at the behest of a union seeking certification to represent a smaller bargaining unit.

Where units proposed for "severance" from larger existing units have been found appropriate by application of the unit determination criteria other than "desires of the employees," the Commission has used unit determination elections under WAC 391-25-420(1) to obtain the preferences of the employees involved. See *Riverside School District*, Decision 7098 (PECB, 2000); *King County*, Decision 6696 (PECB, 1999); *Seattle School District*, Decision 4869 (1994); *Ephrata School District*, 4675-A (PECB, 1995). Such unit determination elections give the employees an opportunity to overrule their history of bargaining. See *Mukilteo School District*, Decision 1008 (PECB, 1980); *City of Marysville*, Decision 4854 (PECB, 1994); *Quincy School District*, Decision 3962 (PECB, 1993), *aff'd* Decision 3962-A (PECB, 1994), 77 Wn. App. 741 (1995), *review denied*, 127 Wn.2d 1019 (1995).

#### Joint Operations -

Where two or more public entities have banded together to form a joint operation separate and apart from the workforces and operations of the participating entities, the Commission has

created separate bargaining units which give effect to the realities of such situations. See *City of Lacey*, Decision 396 (PECB, 1978)[joint animal control operation formed by a county and several included cities]; *SnoIsle Vocational Skills Center*, Decision 841 (EDUC, 1980) and *Kitsap Peninsula Vocational Skills Center*, Decision 838-A (EDUC, 1981) [vocational education operations formed by neighboring school districts]. See also *Clark County*, Decision 7233-34 (PECB, 2000).

#### Application of Standards

The application of "severance" criteria in *City of Bellingham*, Decision 792 (PECB, 1979) led to dismissal of a petition seeking removal of the dispatchers from the employer-wide non-uniformed bargaining unit represented by WSCCCE. The issue in this case is whether changes of circumstances since 1979 warrant a different result. The evidence establishes that there have been numerous technological changes, at least two organizational changes (first from a city-only operation to the central dispatch operation, and then from the central dispatch operation to WhatComm), and the injection of two joint boards into the management of the dispatch operation.

#### Changes of Duties, Skills and Working Conditions -

The dispatcher and receptionist positions that existed in 1979 have been replaced by positions that require more formal training, involve more use of technology, and have little or no duties of an office-clerical nature. A reclassification study conducted in 1999 appears to have redefined the tasks that the employees involved are obligated to perform. These facts suggest the existence of substantial changes of circumstances warranting reconsideration of the configuration of bargaining units. See *City*

of Richland, Decision 279-A, (PECB, 1978); Pasco School District, Decision 5016-A (PECB, 1995).

The WSCCCE claims the petitioned-for employees have far more contact with other City of Bellingham employees than with the boards that manage WhatComm, but that is not persuasive. The employees in the WhatComm operation provide a much broader function than did the dispatchers at issue in Decision 792, *supra*, and they must respond to stakeholders far beyond the senior officials of the City of Bellingham. The impact of having both the administrative board of elected officials and the executive board of fire and police officials from throughout Whatcom County cannot be ignored. Even if the individual employees do not interact with those boards often, or at all, the employees play to a different audience than the other employees in the bargaining unit represented by the WSCCCE.

The City of Bellingham has continued to be the "of record" employer of the WhatComm employees, and will presumably continue to bargain collectively with any union that represents them, but the evidence does not establish working relationships so close as to exclude any unit configuration other than that which now exists. The work site of the petitioned-for employees has shifted from the employer's police department to the basement of the county courthouse and then to the separate facility on Alabama Street. Whatever interchange existed between the petitioned-for employees and other employees represented by the WSCCCE prior to 1979 was severely impacted by those relocations of the work site.

The WSCCCE offered up magazine articles and City of Bellingham web-site materials concerning both office-clerical positions and dispatcher positions, as evidence that both jobs belong in the same unit, but the evidence and argument are not persuasive. The

significant change of training requirements for the dispatchers and a reduction of their office-clerical duties increase the identification of the dispatchers as a separate occupational group.

Determining the "Desires of Employees" -

The Commission has directed unit determination elections where more than one configuration of bargaining units could be appropriate under RCW 41.56.060, so that the "desire of the employees" can then be assessed by means of the secret ballot process. In this case, the WSCCCE continues to be a viable organization that desires to represent the petitioned-for employees, the WCDG has filed a timely and properly supported petition under Chapter 391-25 WAC, and no dispute has been litigated as to whether the WCDG is an organization qualified for certification as an exclusive bargaining representative. Thus, the circumstances for conducting a unit determination election are present in this case.

FINDINGS OF FACT

1. The City of Bellingham is a municipal corporation of the state of Washington, and is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).
2. The What-Comm Dispatchers 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 separate bargaining unit of employees in the WhatComm operation.
3. Washington State Council of County and City Employee, Local 114, is the incumbent exclusive bargaining representative of all non-supervisory, non-uniformed employees of the City of

Bellingham. That bargaining unit historically included all employees performing emergency service dispatching functions, and continues to include some employees performing emergency service dispatching functions.

4. Beginning in 1979, the City of Bellingham provided emergency services dispatching as a "central dispatch" for the employer's police and fire departments, for Whatcom County, and for other municipalities in the area. The City of Bellingham continued to be the employer of the employees in that operation, but the employees were housed in a facility located within the Whatcom County Courthouse.
5. In 1987, the City of Bellingham, Whatcom County, and other municipalities in the area formed WhatComm as a county-wide or regional dispatch center. The City of Bellingham continued to be the employer of-record of the employees in the WhatComm operation. An administrative board and an executive board consisting of officials from the jurisdictions served oversee the operations of WhatComm, including establishing policy for the WhatComm operation, determining the funding for the WhatComm operation, and otherwise exercising governance authority concerning the emergency dispatch operation.
6. The dispatch operation was moved from the Whatcom County Courthouse to a facility separate and apart from other City of Bellingham employees, located on Alabama Street in Bellingham. Numerous technological and operational changes have occurred in the operation since 1979, including a change from seven-digit dialing to "9-1-1" access, substitution of computers for the pen-and-paper methods previously used, and installation of "enhanced 9-1-1" capabilities. The WhatComm dispatchers now

receive, record and transmit data from all Whatcom County police agencies to all such agencies.

7. Since 1979, the number of employees in the emergency services dispatching operation has been increased, the training provided to the employees has substantially increased, a "team" approach has been implemented together with alterations of the management structure, and the office-clerical tasks performed by the dispatchers have been reduced.
8. In 1999, some of the employees and dispatching functions that had been part of the central dispatch and WhatComm operations after 1979 were transferred to a separate dispatching operation within the employer's fire department, whereupon it was no longer appropriate for the employees performing those dispatch functions to be included in the bargaining unit represented by the WSCCCE.
9. Based on their separate duties, skills and working conditions, the non-supervisory employees of the WhatComm dispatching operation could have a separate community of interest among themselves.
10. Based on the history of bargaining which includes the present fragmentation of the overall workforce performing emergency dispatching functions into two bargaining units, the non-supervisory employees of the WhatComm dispatching operation could have a separate community of interest among themselves.
11. The overall extent of organization would not be altered by the creation of a separate bargaining unit limited to the WhatComm dispatching operation, and the unit petitioned-for in this proceeding would not strand any employees without access to

their statutory collective bargaining rights, so that the non-supervisory employees of the WhatComm dispatching operation could have a separate community of interest among themselves.

#### 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 existing bargaining unit consisting of all non-supervisory, non-uniformed employees of the City of Bellingham currently represented by the Washington State Council of County and City Employees is and remains an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.
3. A separate bargaining unit limited to: All non-supervisory employees of the WhatComm emergency dispatch operation, excluding elected officials, appointed members of boards, the executive head of the bargaining unit, confidential employees, supervisors, and all other employees of the City of Bellingham, could be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, if the desires of the employees in that unit so indicate.

#### DIRECTION OF ELECTIONS

1. A unit determination election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the voting group described in paragraph 3 of the foregoing Conclusions of Law, for the purpose of determining whether a majority of the employees eligible to vote desire to constitute themselves as a separate bargaining unit.

2. A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission in the appropriate bargaining unit described in paragraph 3 of the foregoing Conclusions of Law, for the purpose of determining whether a majority of the employees in such unit desire to be represented for the purposes of collective bargaining by WSCCCE Local 114 or by the What-Comm Dispatchers Guild or by no representative. The conduct of this representation election is conditioned upon the validation of the propriety of the bargaining unit in the unit determination election directed herein, and the representation election ballots shall be impounded in the event that the unit determination election fails to validate the propriety of the bargaining unit.

Issued at Olympia, Washington, on the 4<sup>th</sup> day of December, 2001.

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.