STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925	)	CASE 16976-E-02-2794
	)	DECISION 8392 - PSRA
Involving certain employees of:	)	
	)	
UNIVERSITY OF WASHINGTON	)	DIRECTION OF ELECTION
	)	
	)	

Douglas, Drachler & McKee, LLP, by *Paul Drachler*, Attorney at Law, for the union.

Kirsten Morrison, Labor Relations Specialist, for employer.

On December 2, 2002, Service Employees International Union, Local 925 (union) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the University of Washington (employer). At an investigation conference held on January 21, 2003, the parties framed issues that required a hearing and resolution prior to determining a question concerning representation. A hearing date was set, but that hearing was postponed when the union amended its petition. At a second investigation conference held on May 29, 2003, the parties again framed issues requiring a hearing. A hearing was held on October 1, 2003, before Hearing Officer Karl Nagel. At the hearing, the parties tendered stipulations on some of the issues framed in the second Investigation Statement. Evidence was received and the parties filed post-hearing briefs.

Based on the evidence and arguments advanced by the parties, the Executive Director concludes that one bargaining unit is appropriate. A representation election is directed.

BACKGROUND

The employer is the largest of the institutions of higher education operated by the state of Washington, with a main campus on the near-north side of Seattle and branch campuses in Tacoma and Bothell, and a total enrollment of about 40,000 students. It operates under the general policy direction of a board of regents appointed by the Governor. That board appoints a president who has overall responsibility for day-to-day management of the institution, including financial affairs, program administration, and personnel matters.

The union already represents a large number of employees of this employer in several bargaining units. The parties thus have an ongoing bargaining relationship, with several collective bargaining agreements in effect.

The Employees Involved

Among the various activities conducted in support of its primary educational mission, the employer staffs and operates the University of Washington Medical Center on its main campus (UWMC) and the Harborview Medical Center near downtown Seattle (Harborview), as well as medical clinics at other locations. The two hospitals are headed by executive directors who report to a vice-president for medical affairs. The current vice-president for medical affairs is also the dean of the employer's School of Medicine. A Department of Laboratory Medicine is one of several branches of the employer's table of organization within the School of Medicine. The hospitals

and the Department of Laboratory Medicine have separate budget codes within the employer's financial reports and payroll systems.

Under its amended petition in this case, the union seeks to represent nearly 700 employees who work in about 60 classifications at the various hospitals and clinics operated by the employer.[1] Some of the employees are associated with the Department of Laboratory Medicine, even though they physically work at one of the hospitals or clinics.

Many of the employees added to this proceeding by the amended petition had previously been represented by United Food and Commercial Workers, AFL-CIO, Local 1001 (UFCW).[2] The bargaining unit represented by the UFCW had primarily consisted of employees working at the UWMC, but also included employees working in the Department of Laboratory Medicine at Harborview and various clinic facilities, as well as some employees in a Division of Animal Medicine within the employer's School of Medicine. The UFCW disclaimed that bargaining unit on May 8, 2003, while this case was already pending before the Commission.

Issues and Stipulations

At the hearing, the parties confirmed stipulations they made during the preliminary processing of this case, including:

---

[1] The bargaining unit initially sought by the union would have encompassed about 280 employees in 42 separate classifications, all at the UWMC. The union's amended petition encompasses about 407 additional employees and about 18 additional classifications.

[2] There had been a 20-year bargaining history in that bargaining unit until the UFCW disclaimed the unit.

1. The Public Employment Relations Commission has jurisdiction in this matter.

2. SEIU Local 925 is a lawful labor organization qualified to act as bargaining representative under state law.

3. A question concerning representation exists as to the employees involved in this proceeding.

Additionally, no issue has been framed as to the timeliness of the petition and no pending unfair labor practice proceeding has been identified as "blocking" the processing of this case.

In the Investigation Statement issued on May 29, 2003, an issue remained as to whether messenger drivers should be included in this bargaining unit. At the outset of the hearing, the parties stipulated the exclusion of the messenger drivers from the unit(s) in this proceeding.

The Investigation Statement issued on May 29, 2003, had framed an issue as to whether certain employees with histology-related titles should be included in this proceeding. At the outset of the hearing, the parties stipulated the inclusion of the histology employees in the unit(s) in this proceeding.

The Investigation Statement issued on May 29, 2003, had framed an issue as to whether certain additional classifications (some historically included in other bargaining units) should be included in this proceeding. At the outset of the hearing, the employer dropped its arguments concerning other bargaining units and the parties stipulated the exclusion of the employees who had been at issue from the unit(s) in this proceeding.

Thus, the hearing was limited to the issue framed in the Investigation Statement issued on May 29, 2003, as follows:

> The employer questioned the appropriateness of the unit stating that it would be more appropriate to have two units, a laboratory unit and a unit of technical employees at the medical center of University of Washington.

The union continued to seek one bargaining unit, while the employer continued to seek two separate units.

ANALYSIS

Applicable Legal Standards

All of the employees at issue in this proceeding are covered by the State Civil Service Law, Chapter 41.06 RCW, and will be covered by the new collective bargaining system created by the Personnel System Reform Act of 2002 (PSRA) when it fully takes effect on July 1, 2004. One PSRA provision that is already in effect is RCW 41.80.070, which provides:

> In determining the new units or modifications of existing units, the commission shall consider: The *duties, skills, and working conditions of the employees;* the history of collective bargaining; the *extent of organization* among the employees; the desires of the employees; and the *avoidance of excessive fragmentation*.

(emphasis added). With the exception of an explicit "avoidance of excessive fragmentation" that aligns with Commission precedent, those criteria are the same "community of interest" criteria that the Commission has been applying for many years to bargaining units under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. See, in particular, RCW 41.56.060.[3]

---

[3] Other statutes administered by the Commission effectively require employer-wide bargaining unit configurations. See RCW 28B.52.030; 41.59.080(1); 41.76.005(11).

In applying the "community of interest" criteria under Chapter 41.56 RCW, the Commission has described the purpose of unit determination as:

> [T]o group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. The statute does not require determination of the "most" appropriate bargaining unit. It is only necessary that the petitioned-for unit be an appropriate unit. Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require setting aside a unit determination.

City of Winslow, Decision 3520-A (PECB, 1990). Commission precedents thus generally support creation of either "wall-to-wall" units (encompassing all of the eligible employees of the employer) or "vertical" units (encompassing all of the employees in some particular department or branch of the employer's table of organization) or "horizontal" units (cutting across departmental lines to encompass all of the employees in a specific occupational type). *City of Centralia*, Decision 3495-A (PECB, 1990).

The starting point for analysis of the unit determination criteria is always the unit sought by the petitioning union. *Forks Community Hospital*, Decision 4187 (PECB, 1992); *Snohomish Public Hospital District 2*, Decision 6687 (PECB, 1999); *Grant County Public Hospital District*, Decision 7558 (PECB, 2001); *Affiliated Health Services (Skagit Public Hospital District 1/304)*, Decision 7785 (PECB, 2002); and cases cited therein.

Normal Commission practice is: (1) to avoid use of job titles in bargaining unit descriptions; and (2) to strongly prefer to use generic terms designed to ensure, insofar as possible, that the nature of the work performed by the employees within the bargaining unit are clear. *City of Milton*, Decision 5202-B (PECB, 1995); *City*

of Tacoma, Decision 5634 (PECB, 1996). That practice exists in the context of a long line of precedents dating back to *South Kitsap School District*, Decision 472 (PECB, 1978), in which the Commission has enforced the duty to bargain as to transfers of bargaining unit work to employees outside of an existing bargaining unit.[4] The use of generic terms also avoids the need to revisit and revise bargaining unit descriptions just because job titles are changed or new job titles are added within the same occupational type.

Application of Standards

At the hearing, the union continued to support a single bargaining unit, described as:

> All full-time and regular part-time . . . technical employees employed by the University of Washington at the . . . University of Washington Medical Center, and the School of Medicine, including the Department of Laboratory medicine.

The union also asked that any unit description address the status of part-time and temporary employees.

The first of the bargaining units supported by the employer would be described as:

> All unrepresented classified staff in the classifications listed below that are employed by the University Medical Center, the School of Medicine or the Department of Laboratory Medicine (which includes UWMC, School of

---

[4] The term "skimming" is used for situations where work historically performed by bargaining unit employees is transferred to other employees of the same employer; the term "contracting out" is generally used to describe situations where work historically performed by bargaining unit employees is transferred to the employees of another employer.

> Medicine and Harborview). The list of classifications included would be: Central processing technician 1; central processing technician 2; clinical lab technician 1; clinical lab technician 2; phlebotomist; phlebotomist lead; clinical technician 1; clinical technician 2; and clinical technician lead.

The employer proposed describing a second bargaining unit as follows:

> All unrepresented classified staff employed by the University of Washington Medical Center and School of Medicine in the following classifications: Anatomic Pathology Technician; Anatomic Pathology Technician Trainee; Anatomic Pathology Technologist; Anesthesiology Technician 2; Cardiac Monitor Technician; Cardiac Sonographer 1; Cardiac Sonographer Specialist; Clinic Cytogenetic Technologist; Clinic Cytogenetic Technologist Trainee; Dental Hygienist; Dental Laboratory Technician 3; Diagnostic Medical Sonographer; Diagnostic Medical Sonographer Lead; Diagnostic Medical Sonographer Specialist; Electrocardiograph Technician 2; Electrocardiograph Technician Lead; Electroneurodiagnostic Technologist 2; Electroneurodiagnostic Technologist 3; Imaging Technologist 1; Imaging Technologist 2; Imaging Technologist-Angiography; Imaging Technologist-Computed Tomography and Mammography; Imaging Technologist Lead; Imaging Technologist-Magnetic Resonance Imaging; Nuclear Medical P.E.T. Technician; Nuclear Medical Technologist 1; Nuclear Medical Technologist Lead; Nuclear Medical Technologist 2; Occupational Therapy Assistant 2; Ophthalmic Technician 3; Oral Maxillo Facial Surgery Technician; Orthopaedic Technician II; Pharmacy Technician 1; Pharmacy Technician 2; Pharmacy Technician Lead; Physical Therapy Assistant 2; Pulmonary Function Technologist 2; Radiation Therapy Dosimetrist; Radiation Therapy Specialist; Radiation Therapy Technologist; Radiation Therapy Technologist Lead; Respiratory Care Assistant; Respiratory Care Lead; Respiratory Care Practitioner; Respiratory Care Specialist; Social Work Assistant 2; Surgical Technologist; Therapeutic Recreator 1; Therapeutic Recreator 2; and Vascular Technologist.

Taken together, the two separate bargaining units supported by the employer include all of the employees that the union seeks to represent in this case.

Duties, Skills and Working Conditions -
All of the employees at issue in this proceeding perform technical and laboratory functions related to healthcare. They are employed in a wide range of medical specialties, but they all work in the employer's hospitals, clinics and School of Medicine.

The units proposed by the employer are not "vertical" in that the employees involved work in 46 different departments spread throughout the employer's table of organization. About half of the employees involved work in the Department of Laboratory Medicine, which provides laboratory services for all of the employer's healthcare services. Even within the Department of Laboratory Medicine, the employees involved here would not constitute a vertical unit: Apart from exempt employees and others who would remain unrepresented, three other existing bargaining units include employees of that department.

The unit proposed by the union is "horizontal" by reason of encompassing employees who perform medical laboratory and technical work throughout the employer's medical facilities. While there are undoubtedly differences as to details, there are also fundamental similarities among their tasks. For example, phlebotomists in the Department of Laboratory Medicine perform "collect blood specimens and perform laboratory procedures" tasks,[5] while Anatomic Pathology Technicians that the employer would place in a different bargaining unit "acquire, examine and prepare specimens for analysis" and perform "examination by microscope, instrumentation and computer" tasks.[6] Application of the "duties" and "skills" component of the community of interest criteria is not limited to the discrete job classifications created by an employer, and employees are routinely

---

[5] Exhibit 5, Page EE, Class Specification for Phlebotomist.

[6] Exhibit 5, Page S, Class Specification for Anatomic Pathology Technician.

placed in broader occupational groupings without regard to the particular details of the work performed or the customers served.

The working conditions of all of the employees involved share many similarities. The employees all work in the hospitals and other medical facilities operated by the employer; they have different first-level and second-level supervisors as would be expected in an organization as large as this employer, but they are ultimately under the direction of a vice-president who doubles as the dean of the School of Medicine, the president of the institution, and the regents appointed by the Governor. The parties stipulated that all of the employees involved in this proceeding are subject to the same rules, policies, and procedures that are applicable to other employees of this employer. While the 46 separate departments touched by these bargaining units do their own scheduling and may have separate departmental rules, it is clear that departmental rules or actions cannot conflict with the employer-wide rules. Of particular interest for purposes of the collective bargaining process, hiring, evaluation, and discipline are subject to the employer-wide rules.

The employer's structure is not among the statutory criteria that the Legislature has directed the Commission to consider in making unit determinations. Nevertheless, this employer has contended here that its Department of Laboratory Medicine is distinct from the other branches of its table of organization where other employees involved in this case work. That distinction is evidenced by the use of different budget codes in many of the exhibits admitted in evidence in this record, but that is not persuasive. The Commission has consistently rejected arguments that employees working in state-funded, federally-funded, grant-funded, or other "soft money" positions should be separated from the employees with which they have a community of interest by

application of wall-to-wall, vertical or horizontal grouping principles. *Clover Park School District*, Decision 7052 (PECB, 2000). Further, many decisions have noted that "source of funding" is not listed among the unit determination criteria of any of the statutes administered by the Commission. Decisions stating and restating that principle under Chapter 41.56 RCW include: *City of Chewelah*, Decision 3103 (PECB, 1989); *Grant County*, Decision 6704 (PECB, 1989); *Kitsap County*, Decision 4314 (PECB, 1993); *Seattle School District*, Decision 7564 (PECB, 2001); *Benton County*, Decision 7651 (PECB, 2002); *Coupeville School District*, Decision 7652 (PECB, 2002); *Benton-Franklin Human Services*, Decision 7847 (PECB, 2002). Decisions applying the same principle under other statutes include: *Lower Columbia College*, Decision 3987 (PECB, 1992); *Green River Community College*, Decision 4491 (PECB, 1993); *Lake Washington School District* Decision 1550 (PECB, 1982). There is no reason to have a different outcome under RCW 541.80.070.

The employer's proposed use of specific job titles in the description of the unit(s) in this proceeding is clearly contrary to Commission practice, as described above. The union's proposed "technical employees" terminology is much closer to the type of generic terminology preferred under Commission practice.

History of Collective Bargaining -

This component of the community of interest criteria does not operate in every case. The unit determination criteria now in effect must also be fully applied in this proceeding.[7] It is true that some of the employees involved here had a history of bargaining while they were represented by the UFCW, but any history of bargaining in that unit was truncated by the disclaimer.

---

[7] The first sentence of RCW 41.80.070 preserves units that were created under different unit determination criteria or policies prior to June 13, 2002, but the protections of that sentence ceased with the disclaimer.

There would have been, in fact, serious problems with the fitting historical bargaining unit configuration, as created and modified by the Washington Personnel Resources Board (WPRB) or its predecessors, into the current statutory criteria:

1. The historical unit included some Department of Laboratory Medicine employees no matter where they were physically assigned to work, so there would have been an ongoing potential for work jurisdiction conflicts between that unit and the unit initially sought by the union in this case.

2. The historical unit included UWMC employees in some classifications while excluding others who worked in the same classification at other medical facilities, so there would have been an ongoing potential for work jurisdiction conflicts between that unit and the unit initially sought by the union in this case.

3. The historical unit had included non-technical (or potentially supervisory) classifications that were eventually carved out by the WPRB and accreted to other units appropriate for their generic occupational type.

4. The historical unit included employees that were not employed within the Department of Laboratory Medicine, so that it could not have been justified as a "vertical" unit limited to one branch of the employer's table of organization.

Consequently, not even the truncated history of bargaining is of assistance to the employer in this case.

Extent of Organization -

This is another component of the community of interest criteria that does not operate in every case. It has been explained by the Commission as follows:

> The "extent of organization" . . . particularly comes into operation where sheer numbers (i.e., the size and complexity of an employer's workforce or operations) would frustrate attempts to organize an "all employees" unit, a "vertical" unit, or a "horizontal" unit. Thus, even smaller subdivisions of a workforce may be necessary if employees are to implement their statutory bargaining rights: The principal purpose of the Act was and is to protect workers who want to organize for collective bargaining. . . . The Commission has, however, rejected units that are justified only on "extent of organization" grounds. . . .

King County, Decision 5018 (PECB, 1995) (internal citations omitted).

This is not a situation in which a union is seeking to Balkanize an employer's workforce to carve out a winnable unit. Instead, the union has proposed a "horizontal" unit of medical technicians and it is the employer that desires to superimpose its table of organization on the bargaining unit configuration. Repeating a point made above (without the associated citations of authority), consideration of the employer's structure is not expressly required by the statutory unit determination criteria. Thus, the extent of organization has little or no actual applicability in this case.

Desires of the Employees -

The Commission does not take testimony from employees on their desires concerning bargaining unit configurations. WAC 391-25-420. Under the same rule, the Commission will conduct a unit determination election to determine the desires of the employees where two or more appropriate unit configurations are sought by petitioning unions.

In this case, only one union is involved and it has proposed a single bargaining unit. It is the employer that would have the unit sought by the union divided into two, and that does not

provide basis for conducting a unit determination. The "desire of the employer" is not among the statutory criteria.

Avoidance of Excessive Fragmentation -

The community of interest criteria in RCW 41.80.070 include an admonition against fragmentation that has not been directly interpreted or applied by the Commission. At the same time, the concern of the Legislature about fragmentation comports with a long line of Commission precedents interpreting other statutes. The Commission has generally resisted fragmentation in applying the "extent of organization" component, particularly to avoid stranding employees without access to collective bargaining rights and/or small units that are not conducive to effective collective bargaining. *See for example Forks Community Hospital,* Decision 4187 (PECB, 1992)(proposed clerical/service/maintenance/technical unit in a relatively small facility would have stranded other technical positions within the facility); *City of Vancouver,* Decision 3160 (PECB, 1989)(proposed unit would have stranded other employees in units too small for them to ever implement their statutory bargaining rights). The avoidance of fragmentation is often thought of as protecting employers from having to deal with multiple bargaining units whose interests are not that divergent. *Auburn School District,* Decision 2710-A (PECB, 1987).[8]

In this case, it is the employer that would fragment its workforce. *South Kitsap School District,* Decision 1541 (PECB, 1983) presents an example of the type of work jurisdiction conflicts that can develop when the border between two separate bargaining units is not clearly visible and easy to apply. Just as two different units

---

[8] Fragmentation arguments are often advanced by employers opposing petitions to carve out a group of employees from a larger wall-to-wall unit. *Spokane County Health District,* Decision 3515 (PECB, 1990); *City of Vancouver,* Decision 3160 (PECB, 1989).

of office-clerical employees within the same school district collided in that case, there would be an ongoing potential for the two separate units proposed by this employer to collide. The unit proposed by the union in this case is occupationally-related, and creation of a similar unit in a hospital was explained as follows:

> [T]he NLRB has generally found units mixing various technical classifications to be appropriate, notwithstanding that such employees often work in different departments with virtually no regular contact between them and little or no potential for job transfers between classifications. In *Barnert*, 217 NLRB 775, the NLRB defined "technical employees" as having specialized post-high school training, skills and education, usually acquired in colleges, technical schools or through special courses. Before being eligible to work, technical employees often serve an internship or externship and their positions often require certification, licensure, or registration by a governmental agency or a private organization. Their work usually requires the exercise of independent judgment, but they generally serve in a support role in patient care or patient services as opposed to being the primary health care provider.

Island Hospital (Skagit County Public Hospital District 2), Decision 8027 (PECB, 2002) [internal footnote omitted].

Inclusion of Employees Working Less than Full-time -

On October 21, 2003, the WPRB adopted a permanent rule that took effect on January 1, 2004. WAC 251-04-035(2)(d)(i) provides:

> Employees who are either exempt under WAC 251-04-035(2)(d) or exceptions authorized under WAC 251-19-120(8), and who work more than three hundred fifty hours in any twelve consecutive month period from the original date of hire or January 1, 2004, whichever is later, exclusive of overtime or time worked under subsection (2)(a) of this subsection, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the Public Employment Relations Commission.

The Commission had previously announced its intention to conform eligibility for inclusion in bargaining units under Chapter 41.80 RCW to the rules of the WPRB regulating eligibility for coverage under the State Civil Service Law, Chapter 41.06 RCW. The Commission's rule thus provides:

> WAC 391-35-356 SPECIAL PROVISION -- STATE CIVIL SERVICE EMPLOYEES. (1) For employees covered by chapter 41.06 RCW who work less than full-time, it shall be presumptively appropriate to include those employees in the same bargaining unit with full-time employees performing similar work.
>
> (2) The presumption set forth in this section is intended to avoid excessive fragmentation and a potential for conflicting work jurisdiction claims which would otherwise exist in separate units of full-time and less than full-time employees.
>
> (3) The presumption set forth in this section shall be subject to modification by adjudication.

The employer has not provided any compelling evidence which would justify a modification of or exception from the presumption set forth in that rule. The unit description in this case thus includes regular part-time employees.

CONCLUSION

The bargaining unit proposed by the union is an appropriate unit under RCW 41.80.070. As noted above, the unit configuration sought by the union is the starting point for this unit determination proceeding, and the Commission need not rule that the unit sought by the union is the "most appropriate" configuration possible. Even if the evidence here might support a conclusion that the two units supported by the employer *could be appropriate*, the employer would have needed to show that the configuration sought by the union was *inappropriate* in order to prevail in this case. It has not met that burden.

FINDINGS OF FACT

1. The University of Washington is an institution of higher education of the state of Washington within the meaning of RCW 41.80.005(10).

2. Service Employees International Union, Local 925, an employee organization within the meaning of RCW 41.80.005(7), has filed a timely and properly supported petition and amended petition, each seeking certification as exclusive bargaining representative of certain medical laboratory employees of the employer.

3. The employer operates two hospitals and a number of medical clinics where health care services are provided to patients.

4. When the amended petition was filed in this proceeding, the employer had about 700 unrepresented technical employees working in about 60 job titles relating to laboratory services in the employer facilities described in paragraph 3 of these findings of fact.

5. By its amended petition in this proceeding, the union has sought to represent a single occupational-generic bargaining unit encompassing all of the employees described in paragraph 4 of these findings of fact. No other organization has intervened with a claim to represent any of those employees in any different bargaining unit configuration.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-25 WAC.

2. A bargaining unit consisting of all full-time and regular part-time unrepresented non-supervisory laboratory technical employees employed by the University of Washington in hospitals and clinics operated by the University of Washington, excluding confidential employees, supervisors, internal auditors, and employees in other bargaining units, is an appropriate unit for the purposes of collective bargaining under RCW 41.06.340 and 41.80.070.

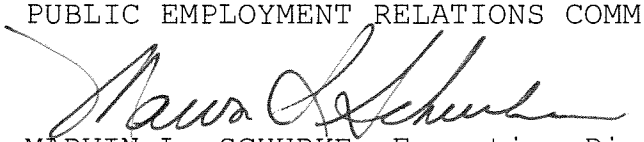
3. A question concerning representation presently exists, under RCW 41.06.340, in the bargaining unit described in paragraph 2 of these conclusions of law.

DIRECTION OF ELECTION

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 2 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Service Employees International Union, Local 925, or by no representative.

DATED at Olympia, Washington, this 10th day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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