

City of Kent, Decision 6611 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CITY OF KENT)	CASE 13277-C-97-841
)	
For clarification of existing)	DECISION 6611 - PECB
bargaining units represented by:)	
)	
INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS, LOCAL 117,)	
)	
and)	ORDER CLARIFYING
)	BARGAINING UNIT
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES, LOCAL 2617)	
)	
)	

On July 2, 1997, the City of Kent (employer) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. The employer asked the Commission to clarify the bargaining unit status of two facilities maintenance workers which were claimed by both Teamsters Union, Local 117 (Teamsters), and Washington State Council of County and City Employees, Local 2617 (WSCCCE).

Based on the procedural history and stipulations described below, the Executive Director allocates the disputed positions to the bargaining unit represented by Local 117.

PROCEDURAL HISTORY

A hearing on this matter was delayed for a time, while the parties were reportedly attempting to stipulate the facts.

The processing of this case was then held in abeyance for an additional period of time, based on the May 13, 1998, filing of a representation case under Chapter 391-25 WAC, involving some of the same employees. Case 13910-E-98-2327. The Commission adopted the unit clarification procedures set forth in Chapter 391-35 WAC to resolve unit questions which do not call the status of any exclusive bargaining representative into question, and a unit clarification petition cannot be processed where a question concerning representation is in existence. Thus, the parties were informed that this unit clarification case would be held in abeyance while the representation case was being processed.

In Case 13910-E-98-2327, the WSCCCE sought certification as exclusive bargaining representative of a bargaining unit which appeared to include all of the facilities maintenance workers historically represented by the Teamsters. The Teamsters had anticipated the filing of such a representation petition, and asserted in a letter filed on May 12, 1998, that the petition was untimely because the employees were then covered by a collective bargaining agreement.

The representation petition in Case 13910-E-98-2327 was dismissed as untimely on June 12, 1998. That dismissal was not appealed to the Commission under WAC 391-25-390, and the processing of this unit clarification case was thus resumed. Notices were issued to the employer and both of the unions involved, setting a hearing for November 17, 1998.

On October 29, 1998, WSCCCE Staff Representative Rob M. Sprague filed a letter with the Commission, as follows:

This letter shall serve as official notice that the Washington State Council of County and City Employees shall not be appearing in the above-referenced case. It is our understanding that a hearing will be conducted on

November 17, 1998. Copies of this notice are being sent to all parties. Thank you.

Mr. Sprague subsequently indicated that the WSCCCE was not withdrawing its claim to two employees historically represented by that organization, but he simultaneously reiterated his intention to stay away from the hearing. The Hearing Officer granted a continuance of the hearing, at the request of the attorneys for the parties other than the WSCCCE.

On November 18, 1998, the employer and the Teamsters filed a stipulation of facts with the Hearing Officer, and requested that the case be decided on those facts without a hearing. The WSCCCE was served with the stipulation contemporaneous with its filing.

On November 24, 1998, the WSCCCE was given until December 9, 1998, to show cause why the matter should not be decided on the basis of the stipulated facts submitted by the employer and the Teamsters. Nothing further was heard from the WSCCCE on this matter.

STIPULATED FACTS

The stipulated facts submitted by the employer and the Teamsters are as follows:

1. The City of Kent is an employer subject to the Public Employment Relations Act.
2. The City has had a collective bargaining agreement with the American Federation of State, County and Municipal Employees, Local 2617 ("AFSCME"). The agreement, which was finalized in September 1998, expires on December 31, 2000 (Attachment A).
3. The City also has a collective bargaining agreement with Teamsters, Local 117. The

current Teamsters bargaining agreement expires on December 31, 1999 (Attachment B).

4. Historically, maintenance workers responsible for maintenance of facilities owned and operated by the City, excluding Fire Department facilities, have been members of the Teamsters bargaining unit, which currently consists of approximately 100 employees. There are currently seven employees in the Teamsters bargaining unit who perform facilities maintenance work. The name and job title held by each of those employees are contained on Attachment C.
5. Historically, the non-uniformed employees in the Fire Department who perform facilities maintenance work have been members of the AFSCME bargaining unit. These two employees reported to other members of the Fire Department, and ultimately were under the supervision of Fire Chief Norm Angelo. The name and job title of the two employees that currently hold AFSCME positions are contained on Attachment C.
6. Other than the maintenance work performed by the two AFSCME employees, employees in the Teamsters unit have performed all other facilities and maintenance work at the City.
7. Effective March 1, 1997, all City employees performing facilities maintenance work were consolidated into the Facilities Division, working under the supervision of the Facilities Manager, Charlie Lindsey. This reorganization did not result in a change of supervision for the Teamster employees, but did result in a change of supervision for the AFSCME employees. This move came as part of an effort by the City to consolidate all facilities and maintenance work. At the same time, the division was transferred from the Finance Department to the Parks Department, and became a division in the Parks Department. (The changes in the City's organization and in the supervi-

sion of the maintenance employees can be seen in the City's organization charts prepared for the 1997, 1998, and 1999 Budgets (Attachment D).

8. Since September of 1997, two additional full-time maintenance worker positions have been added to the Facilities Division. The City assigned these positions to the Teamsters bargaining unit. AFSCME did not contest these positions being placed in the Teamsters bargaining unit at that time because the unit clarification had already been filed regarding the eventual placement of this classification.
9. The tasks and duties performed by the two former Fire Department employees are the same as those performed by the other employees in the Facilities Division. The employees regularly work together, and otherwise share a community of interests.
10. Given the similarity of work responsibilities and the common supervision of employees within the Facilities Division, it is no longer appropriate to have these employees represented by two different unions. Both parties to this stipulation agree that the nine employees have a community of interest with each other, and should all be in the same bargaining unit.
11. The Teamsters is willing to represent the nine employees.
12. The Teamsters contend that the two AFSCME employees should be accreted into the Teamster unit. The Teamsters further contend that an election of the nine maintenance employees is inappropriate because the maintenance employees share a community of interest with the other employees in the Teamsters bargaining unit. The City's primary concern is that all of the employees be included in the same bargaining unit, but it also agrees that the nine maintenance employees share

a community of interest with the other employees represented by the Teamsters.

13. AFSCME has indicated that it does not intend to appear at the hearing on this matter, and therefore apparently takes no position on the outcome of this issue.

DISCUSSION

Failure of a Party to Participate in Proceedings

The failure or refusal of a party to participate in a hearing does not affect the jurisdiction of the Commission, or prevent the Commission from deciding the issues presented by a petition. The Public Employee's Collective Bargaining Act requires the submission of any dispute concerning representation to the Commission. RCW 41.56.050. The fact that the union involved chose not to participate in the hearing did not prevent the Commission from issuing its landmark unit determination decision in City of Richland, Decisions 279 and 279-A (PECB, 1978), affirmed 29 Wn.App.599 (Division III, 1981), review denied 96 Wn2d 1004 (1981).

In this case, the WSCCCE was named as a party, and was served with notice of the hearing. It remained a party to the proceedings after the other parties filed stipulated facts, and was offered an opportunity to object to those facts. Thus, the agency must proceed with the processing of the case.

Decision Based on Stipulated Facts

WAC 10-08-140(6) acknowledges the propriety of stipulations filed by parties in adjudicative proceedings under the Administrative Procedure Act, and the Commission can decide disputes on the basis of stipulated facts. Although the Commission reserves the right to schedule a hearing where stipulated facts prove to be insufficient,

there is no evident reason to reject the proposed stipulation in this case.

Allocation of Disputed Positions to Bargaining Unit

The determination of appropriate bargaining units is a function delegated by the Legislature to the Commission:

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. ...**

[Emphasis by **bold** supplied.]

Since the WSCCCE has not disclaimed the positions at issue, the employer and the Teamsters are entitled to a ruling on the matter.

In unit clarification proceedings under Chapter 391-35 WAC, the Commission takes the parties and disputed positions where it finds them, and makes rulings controlling the parties' future bargaining relationships. Unit clarification proceedings are not a forum for remedy of past wrongs. In this case, the stipulated facts depict a situation in which facilities maintenance functions were once the bargaining unit work of two different bargaining units. While the employer would have had a duty to bargain with the WSCCCE prior to "skimming" facilities maintenance work historically performed within the WSCCCE's bargaining unit, an unfair labor practice complaint challenging a unilateral change would need to have been

filed within six months after the transfer of the work. RCW 41.56.160. In this case, the stipulated facts indicate that the consolidation of facilities maintenance functions was implemented on March 1, 1997, so the last day for filing an unfair labor practice complaint would seemingly have been September 1, 1997. A review of the Commission's docket records fails to disclose any unfair labor practice complaint related to this transfer of work.

As presently structured, the employer has grouped all of its facilities maintenance functions under one supervisor. That commonality of duties and skills supports allocation of all facilities maintenance employees to one bargaining unit.

There has been a change of supervision and department for the positions historically represented by the WSCCCE. They have been added to the larger group of employees historically represented by the Teamsters. That change of circumstances provides additional support for re-allocation of the facilities maintenance positions historically represented by the WSCCCE to the bargaining unit represented by the Teamsters. The situation is comparable to that found in Pasco School District, Decision 5016-A (PECB, 1995), affirmed, WPERR CD-855 (Thurston County Superior Court, 1997), affirmed, 92 Wn.App. 1019 (Division II, 1998), where two employees performing similar work following a change of circumstances were allocated to the same bargaining unit.

FINDINGS OF FACT

1. The City of Kent is a public employer subject to the Public Employees' Collective Bargaining Act.
2. Washington State Council of County and City Employees, Local 2617, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of

certain employees of the City of Kent. The employer and Local 2617 are parties to a collective bargaining agreement which was finalized in September 1998, and which expires on December 31, 2000.

3. Teamsters Union, Local 117, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the City of Kent. The employer and Local 117 are parties to a collective bargaining agreement which expires on December 31, 1999.
4. Historically, non-uniformed employees performing facilities maintenance work in the employer's Fire Department have been represented by the WSCCCE. The two employees performing such facilities maintenance work reported to members of the Fire Department, and ultimately were under the supervision of the Fire Chief.
5. Historically, employees responsible for the maintenance of all facilities owned and operated by the employer, excluding Fire Department facilities, have been represented by Teamsters Local 117. The five employees performing such facilities maintenance worked under the supervision of Facilities Manager Charlie Lindsey.
6. Effective March 1, 1997, all of the employer's employees performing facilities maintenance work were consolidated into the Facilities Division, working under the supervision of Facilities Manager Charlie Lindsey. This reorganization resulted in a change of supervision for the employees historically represented by the WSCCCE. This came as part of an effort by the City to consolidate all facilities and maintenance work. At the same time, the division was transferred from the Finance Department to the Parks Department, and became a division in the Parks Department.

7. Since September of 1997, additional full-time maintenance worker positions added to the Facilities Division have been allocated to the bargaining unit represented by the Teamsters, without objection from the WSCCCE.
8. The tasks and duties performed by the two former Fire Department employees are the same as those performed by the other employees in the Facilities Division. The employees regularly work together, and otherwise share a community of interests.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The Petition for Clarification of Existing Bargaining Unit in this matter was timely under WAC 391-35-020, based on having been filed shortly following the March 1, 1997 implementation of a reorganization by which two non-uniformed employees historically assigned to the employer's Fire Department were transferred to the Facilities Division, constituting a significant change in circumstances for those employees.
3. The former Fire Department employees and the other employees in the Facilities Division share a community of interest, and are appropriately allocated to the same bargaining unit under RCW 41.56.060, based on regularly working together, having similar duties, skills and work responsibilities, and having common supervision.

ORDER CLARIFYING BARGAINING UNIT

1. The bargaining unit historically represented by Teamsters Union, Local 117, is clarified to include the facilities maintenance positions formerly assigned to the employer's Fire Department, based on their transfer to the Facilities Division.
2. The bargaining unit historically represented by Washington State Council of County and City Employees, Local 21-K, is clarified to exclude facilities maintenance employees, based on the consolidation of such functions in the Facilities Division.

Issued at Olympia, Washington, this 22nd day of February, 1999.

PUBLIC EMPLOYMENT RELATION 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 391-35-210.