

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SPOKANE PUBLIC LIBRARY	)	CASE 14439-C-99-930
	)	
For clarification of an existing	)	DECISION 7231 - PECB
bargaining unit represented by:	)	
	)	
WASHINGTON STATE COUNCIL OF	)	
COUNTY AND CITY EMPLOYEES	)	ORDER OF DISMISSAL
	)	
	)	

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Summit Law Group, by Otto G. Klein III, Attorney at Law, represented the Spokane Public Library.

Pat Dalton, Assistant City Attorney, represented the City of Spokane.

Audrie B. Eide, General Counsel, appeared on behalf of the union.

On March 8, 1999, the Spokane Public Library filed a petition with the Public Employment Relations Commission under Chapter 391-35 WAC, concerning an existing bargaining unit of employees represented by the Washington State Council of County and City Employees. A hearing was held on April 20, 2000, before Hearing Officer Katrina I. Boedecker. Briefs were filed, the last of which was received on June 27, 2000.

On the basis of the evidence and arguments presented at the hearing, and the legal arguments in the briefs, the Executive Director concludes the unit clarification procedures of Chapter 391-35 WAC are inapplicable to this case, which involves an attempt to withdraw from a multi-employer collective bargaining process.

BACKGROUND

The Spokane Public Library (Library) was established under Chapter 27.12 RCW. It is one of only five libraries in the state of Washington operating as a distinct statutory entity governed by a board of trustees, rather than by the city in which it is located.<sup>1</sup> The statute expressly vests the Library board with the authority to employ a library director, and Aubrey George has held that position since 1996. Six managers report to George, including Monica Fox, the manager of human resources.<sup>2</sup>

The City of Spokane (Spokane) provides the primary source of funding for the Library. Once funds are transferred, based upon the Library's projected budget, Spokane has no control over how the resources are allocated or utilized.<sup>3</sup>

The Library has approximately 120 employees in addition to the director and managers. The Library determines its own staffing levels, develops job descriptions for its own job classifications,<sup>4</sup> uses its own employment applications, advertises its own job openings, interviews candidates for hire, and makes its own hiring decisions, all without input or involvement from Spokane. The

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<sup>1</sup> The other libraries operating under RCW 27.12.190 are in the cities of Seattle, Tacoma, Renton, and Bellingham.

<sup>2</sup> The titles of the other positions reporting to George are: Deputy director, public services; deputy director, support services; business manager; manager of automation systems; and manager of community relations.

<sup>3</sup> Other sources of revenue include fines and fees, revenue from copy machines and a parking garage, rent from an espresso machine operator, and bequests from patrons.

<sup>4</sup> The job classifications used at the Library are separate and apart from those used by Spokane.

worksites of Library employees are separate from those of Spokane employees, and there is no interchange of employees between them.

### The Bargaining History

Since about 1940, Washington State Council of County and City Employees, Local 270, has represented a bargaining unit of Spokane employees.

Since 1977, when the Library board recognized Local 270 as the exclusive bargaining representative of Library employees,<sup>5</sup> the Library and Spokane have negotiated together. This relationship is memorialized in an "Addendum to Local 270 Contract":<sup>6</sup>

The Library Board shall be considered as the Administrative Body for carrying out all policy making functions of the Library. *The Library Board recognizes Local 270 as the bargaining agent for employees in classifications covered by the labor agreement. The Library Board shall select a negotiator to negotiate and administer the contract pertaining to said employees. The Library Board shall approve the part of the contract pertaining to said covered employees before the contract is presented to the City Council for approval. . . .*

(Emphasis supplied.)

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<sup>5</sup> A search of the Commission's docket records dating back to the onset of Commission operations in 1976 fails to disclose any representation proceeding involving these employees in 1977, or at any other time in the 1970's.

<sup>6</sup> Other sections of the addendum cover the Library director; Library rules and policies; hours of work; vacations; vacation times; employment; holidays; floating holidays; disciplinary action; union security; shift differential; library layoff and recall; position vacancies; substitutes; and medical and dental benefits.

That addendum is part of a "master" collective bargaining agreement in effect from January 1, 1999 through December 31, 2001.

The Library employees are the only group under the existing collective bargaining agreement that is separately represented at the bargaining table where the "master" contract is negotiated. Additionally, the Library and Local 270 have negotiated interim or supplemental agreements that only apply to Library employees. Consistent with the exclusion of Spokane officials from other aspects of employer/employee relationships at the Library, the Library also processes grievances filed by Library employees.

#### POSITIONS OF THE PARTIES

The Library argues that it is a separate and distinct entity from Spokane, and that it, rather than Spokane, is the actual employer of the Library employees. Therefore, it contends that its employees rightfully belong in a separate bargaining unit. The employer does not question the status of Local 270 as the exclusive bargaining representative of such a unit.

The City of Spokane did not advocate for any particular result on matters to be decided in this case.

The position of Local 270 is that the Library employees should remain in the current unit configuration. It argues that there have not been any changes in either the duties of the Library employees or the authority of the Library board. Local 270 also asserts that the Library employees have a community of interest with the rest of the bargaining unit and are, in fact, employees of the City of Spokane.

DISCUSSIONThe Determination of Appropriate Bargaining Units

RCW 41.56.060 both empowers and directs the Commission's actions in the unit determination arena:

The commission ... shall decide in each application for certification as an exclusive bargaining representative, *the unit appropriate for the purposes 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 added.)

Unit determinations are made on a case-by-case basis, starting from the unit structure proposed by the petitioning union in a representation case under Chapter 391-25 WAC. The Commission described the unit determination process in King County, Decision 5910-A (PECB, 1997), as follows:

The purpose is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. See, City of Pasco, Decision 2636-B (PECB, 1987); City of Centralia, Decision 3495-A (PECB, 1990); Quincy School District, Decision 3962-A (PECB, 1993), affirmed 77 Wn. App. 741 (Division III, 1995); and Ephrata School District, Decision 4675-A (PECB, 1995).

Any appropriate unit can be certified; it need not be the most appropriate unit configuration.

Commission precedent recognizes the need to alter unit configurations on the basis of changed circumstances, and Chapter 391-35 WAC establishes procedures for such situations.

### Multi-Employer Bargaining

The Library and Spokane have a 23-year history of bargaining together for a single "master" contract with Local 270. Regardless of how the bargaining relationship(s) originated, the employer's announced purpose in this case is to terminate the joint format for collective bargaining. However, such a result is not attainable through a unit clarification proceeding under Chapter 391-35 WAC.

The Commission's decision in City of Richland, Decision 279-A (PECB, 1978),<sup>7</sup> has often been cited for the dual propositions that unit determination is not a subject for bargaining in the usual mandatory/permissive/illegal sense, and that parties' agreements on unit matters do not bind the Commission. Richland inherently leaves room for parties to agree on unit matters and, while such an agreement does not guarantee that the configuration agreed upon is or will continue to be appropriate, the Commission will honor the parties' agreements on *appropriate* bargaining unit configurations, particularly during the term of a contract.<sup>8</sup>

In Spokane County, Decision 6708 (PECB, 1999), one of several local unions representing a multi-department bargaining unit alleged that the demand of one of those departments for separate bargaining was a "refusal to bargain" unfair labor practice under RCW 41.56.140-

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<sup>7</sup> The Commission's decision was affirmed in 29 Wn. App. 599 (1981), rev. denied 96 Wn.2d 1004 (1981).

<sup>8</sup> Where an agreed-upon unit configuration is appropriate, a relevant change of circumstances is required to warrant a change of the unit configuration. Richland, supra.

(4). The department seeking separate bargaining was the district court, where a joint-employer relationship existed under Grant County, Decision 2233-A (PECB, 1986). Citing Retail Associates, Inc., 120 NLRB 388 (1958), the decision in Spokane County stated:

Where parties have agreed to negotiate contracts covering multiple bargaining units or multiple employers, NLRB precedents honor such agreements to the extent of compelling the parties to continue with the agreed arrangement once negotiations have begun. Thus, *a party which has once agreed to participate in a multi-unit or a multi-employer bargaining process must give notice prior to the outset of negotiations on a successor contract, if it desires to extricate itself from that arrangement.*

(Emphasis added.)

Thus, a multi-employer or multi-unit bargaining process created by agreement of the participating employer(s) and union(s) is conditioned upon the parties' continued consent, not upon a unit determination under RCW 41.56.060.

The evidence in this case only establishes that the Library gave notice of its desire for separate negotiations *after the onset of the parties' negotiations for a successor contract* in 1998. The Library will need to co-exist with Spokane in the historical "master contract" arrangement unless and until it gives appropriate notice to terminate that arrangement prior to the start of negotiations for some successor contract.

#### Identity of Employer Not Controlling

Were this a representation case involving the initial organization of the Library employees, Commission precedent would support

placing the Library employees in a separate bargaining unit. Much as the union might wish it were otherwise, such a configuration would give effect to the realities of the legal situation. Much as the Library might wish it were otherwise, such a conclusion does not alter the agreed-upon bargaining format or its failure to extricate itself from that arrangement in a timely manner.

The Commission has created separate units in the past, 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. In a case where a union asserted that a county exerted sufficient control over community mental health services employees to create an employee/employer relationship for purposes of collective bargaining under Chapter 41.56 RCW, the Commission embraced principles similar to the "right of control" test set forth by the National Labor Relations Board (NLRB) in National Transportation Service, 240 NLRB 565 (1979). See Thurston-Mason Mental Health, Decision 5609 (PECB, 1996).<sup>9</sup> Of particular importance here:

- The Commission looks to who on the employer side of the bargaining relationship has or will have the final say with regard to most mandatory subjects of bargaining. In City of Lacey, Decision 396 (PECB, 1978), the "host" agency for a joint animal control operation implemented the directives of a board formed by a county and several included cities; in Sno-Isle Vocational Skills Center, Decision 841 (PECB, 1980) and Kitsap Peninsula Vocational Skills Center, Decision 838-A (1981), separate bargaining units were created for vocational education operations formed and operated jointly by several

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<sup>9</sup> The petition in Thurston-Mason was dismissed, based on a conclusion that the union failed to provide sufficient evidence that the county exercised rights of control.



school districts. In this case, the Library is a separate and distinct entity from Spokane under both the state statute and the city code,<sup>10</sup> with the Library board acting as the governing body for the Library. The Library has statutory authority to discharge employees for cause.<sup>11</sup> Spokane does not play a role in the hiring, supervision, or discipline of Library employees, or adjustment of their grievances.

- The Commission looks to how the collective bargaining agreement describes the employer, and who is signatory to the contract. In finding that a fire district participating in a joint operation was not an employer, in Snohomish County Fire District 1, Decision 6008 (PECB, 1997),<sup>12</sup> significance was attached to the fact that Article I of the applicable collective bargaining agreement listed the joint entity as the employer, the contract was signed by the chairman of the joint entity, and the contract did not mention the fire district "*in either of those areas critical to the formation of a contract.*" Snohomish 1 at page 16. In this case, the applicable contract expressly describes the Library as a participant in the bargaining relationship,<sup>13</sup> and the Library director signed the contract.
- The source of funds does not equate with the right of control when determining who is the employer. Many positions and

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<sup>10</sup> See Spokane Municipal Code (SMC) 07.06.095.

<sup>11</sup> See RCW 27.11.210.

<sup>12</sup> The Examiner's decision was affirmed by the Commission in Snohomish County Fire District 1, Decision 6008-A (PECB, 1998).

<sup>13</sup> The Library is described as the "Administrative Body for carrying out all policy making functions of the Library."

governmental programs at the local level are funded by grants from other governments, particularly federal and/or state dollars, but the employees remain "local" for collective bargaining purposes even where the grantor imposes some general rules governing their pay, benefits, and utilization. In Kent School District, Decision 2215 (PECB, 1985), the school districts who funded a joint operation argued that the Educational Service District for that region was the employer of employees working in a Head Start Program, but the "host" school district was found to have effective control of the wages, hours and working conditions of those employees, and was thus the employer under RCW 41.56.030. Spokane and the Library have a similar vertical funding arrangement followed up with separate control vested in the Library.

That said, nothing in this record provides basis to rule that the parties' past and present arrangement for collective bargaining is *inappropriate* under RCW 41.56.060, or that the collective bargaining agreement they have negotiated and signed is null and void.

WAC 391-35-020 Not Controlling

Where there is a valid collective bargaining agreement in effect, a petition for unit clarification is timely under WAC 391-35-020(2), only if:

(a) The petitioner can demonstrate, by specific evidence, substantial *changed circumstances during the term of the bargaining agreement* which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or

(b) The petitioner can demonstrate that, although it signed the current collective bargaining agreement covering the position or

class at issue in the unit clarification proceedings:

(i) It put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure; and

(ii) It filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.

(Emphasis added.)

The union aptly argues here that there have not been any significant changes of circumstances since the parties' current contract was signed, so that WAC 391-35-020(2)(a) is inapplicable here.

The employer gave notice of its desire to withdraw from the multi-employer bargaining process on December 18, 1998, during the negotiations for the current agreement, and then filed the petition to initiate this proceeding on March 8, 1999, before the current contract was signed. WAC 391-35-020 only operates, however, in the context of Chapter 391-35 WAC, where the focus is on the "status of each position, classification or group of employees" within an existing bargaining unit, not on the parties' entire bargaining relationship. WAC 391-35-190. The Library states here that it chose not to give notice in the manner prescribed by Retail Associates and Spokane County, because "such an approach would have likely provoked litigation."<sup>14</sup> Even if its action to give notice during the parties' negotiations for a successor contract may arguably comply with the time limitations set forth in WAC 391-35-

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<sup>14</sup> The wisdom of that reasoning is not apparent, as the Library instead initiated litigation under the Administrative Procedure Act, Chapter 34.05 RCW, in the form of this unit clarification proceeding.

020(2)(b), compliance with an inapposite time limitation does not create jurisdiction where none would exist for other reasons.

#### FINDINGS OF FACT

1. The City of Spokane, a public employer within the meaning of RCW 41.56.030(1), provides funding for the Spokane Public Library.
2. The Spokane Public Library, a public employer within the meaning of RCW 41.56.030(1), was established under authority of Chapter 27.12 RCW, and both has and exercises control over the wages, hours and working conditions of its employees.
3. Washington State Council of County and City Employees, Local 270, a bargaining representative within the meaning of RCW 41.56.030(3), has been the exclusive bargaining representative of certain employees of the City of Spokane since approximately 1940, and has been the exclusive bargaining representative of employees of the Spokane Public Library since approximately 1977.
4. Since 1977, the City of Spokane and the Spokane Public Library have negotiated together, and have negotiated and signed "master" collective bargaining agreements with Local 270 covering the employees of both employers.
5. The Spokane Public Library did not give timely notice, prior to the onset of negotiations for the parties' current "master" collective bargaining agreement, of its desire to withdraw from the bargaining process described in paragraph 4 of these Findings of Fact.

6. After the start of the parties' negotiations for their current "master" collective bargaining agreement, the Spokane Public Library sought to withdraw from the bargaining process described in paragraph 4 of these Findings of Fact.
7. The above-captioned proceeding was initiated by a petition for clarification of an existing bargaining unit filed by the Spokane Public Library on March 8, 1999.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over these parties pursuant to Chapter 41.56 RCW.
2. Unit clarification proceedings under Chapter 391-35 WAC are not an appropriate forum for the creation or termination of arrangements for collective bargaining on a multi-employer or multi-unit basis.

ORDERED

The petition for clarification of an existing bargaining unit filed in this case is DISMISSED as seeking relief not available through unit clarification proceedings under Chapter 391-35 WAC.

ISSUED at Olympia, Washington, this 8<sup>th</sup> day of December, 2000.

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 391-35-210.