Clark County, Decision 7233 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
CLARK COUNTY	)	CASE 14209-C-99-915
	)	
For clarification of an existing bargaining unit of employees represented by:	)	DECISION 7233 - PECB
	)	
CLARK COUNTY INFORMATION TECHNOLOGY GUILD	)	
	)	
In the matter of the petition of:	)	
	)	CASE 14588-C-99-937
CLARK COUNTY INFORMATION TECHNOLOGY GUILD	)	
	)	DECISION 7234 - PECB
For clarification of an existing bargaining unit of employees of:	)	ORDER CLARIFYING BARGAINING UNIT
	)	
CLARK COUNTY	)	
	)	

Steve Foster, Human Resources Director, represented the employer.

Garrettson, Goldberg, Fenrich & Makler, by Darryl Garrettson, Attorney at Law, represented the Clark County Information Technology Guild.

Michael L. Richards, Labor Relations Specialist / Organizer, represented the intervenor, Office and Professional Employees International Union, Local 11.

On October 26, 1998, Clark County filed a petition with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking reallocation of a position from an existing bargaining unit of its employees represented by the Clark County Information Technology Guild (CCITG) to an existing bargaining unit of its employees

represented by Office and Professional Employees International Union (OPEIU), Local 11. (Case 14209-C-99-937.)

On May 19, 1999, the CCITG filed a petition under Chapter 391-35 WAC, seeking an order reaffirming the allocation of the position at issue in Case 14209-C-99-937 to the existing bargaining unit that it represents. (Case 14588-C-99-937.)

The cases were consolidated for purposes of a hearing held at Vancouver, Washington, December 7, 1999, before Hearing Officer J. Martin Smith. Briefs were filed to complete the record.

Based on the evidence and arguments presented by the parties, the Executive Director rules that the bargaining unit status of the disputed position shall remain unchanged.

BACKGROUND

Clark County is among the larger counties in the state of Washington, with approximately 328,000 residents. An elected three-member board of commissioners governs the employer's operations.

The county seat of Clark County is at Vancouver, Washington.[1] Previous to the events relevant to this proceeding, Clark County and the City of Vancouver formed a combined information services (computer) operation referred to as the Joint Office of Information Technology (JOIT). Among the JOIT staff, four were regarded as City of Vancouver employees while the remaining five were regarded as Clark County employees.

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[1] Vancouver is among the largest cities in the state, with approximately 132,000 residents.

Bargaining History and Change of Employer

OPEIU Local 11 became the exclusive bargaining representative of the JOIT employees during or about 1994. After reaching a memorandum of understanding with the City of Vancouver, Clark County entered into collective bargaining negotiations with Local 11 for that unit. A collective bargaining agreement signed in 1995 was to remain in effect through June 30, 1997.

The JOIT employees formed the CCITG as an independent organization during or about 1997. On September 12, 1997, the CCITG filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking to replace Local 11 as exclusive bargaining representative of the JOIT employees. (Case 13403-E-97-2234.) During the processing of that case, a question arose as to the continued existence of the JOIT. On October 3, 1997, Clark County stated that it would be the sole employer of the JOIT employees after January 1, 1998. A pre-hearing conference was conducted, a statement of results of pre-hearing conference was issued, and the tally of ballots for an election by mail ballot was scheduled for November 26, 1997.

Local 11 filed objections to the stipulations set forth in the pre-hearing statement. The Commission thus impounded the ballots on November 26, 1997, pending clarification as to the identity of the employer. The objections filed by Local 11 were withdrawn after Clark County provided assurances about the future status of the employment relationship, and the impounded ballots were then counted. The CCITG prevailed by a vote of 23 to 1.

No further objections were filed in Case 13403-E-97-2234. The Commission issued a certification naming the CCITG as exclusive bargaining representative of a bargaining unit described as:

> All full time and regular part time employees in the Clark County Department of Information Technology and the Joint Office of Information Technology, excluding supervisors and confidential employees.

Clark County, Decision 6151-A (PECB, 1997).

That certification thus anticipated the transition from the JOIT to a new Clark County operation, the Department of Information Technology (DIT).[2] Clark County and the CCITG subsequently negotiated a collective bargaining agreement which is effective from 1999 through 2001, covering the employees in that unit.

The Disputed Position

Margaret Hunt holds the title of "office assistant II" and is the employee at issue in this proceeding. She came to her present position from the JOIT, where she started working in 1995. Prior to that, she was an accounting assistant in the City of Vancouver computer operation.

Hunt is the only office-clerical employee working in the DIT. The focus of her duties is on the acquisition of computers and hardware accessories, and ordering parts, software and repairs for computer operations. Hunt works under the supervision of Samantha Hatch, who is responsible for the business and personnel affairs of the employer's information technology operation.[3] Hunt's primary interactions are with other information services employees, and she has very little interaction with other Clark County employees.

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[2] The transition was completed, and the table of organization for the Clark County DIT now includes four main divisions reporting to a director.

[3] Like Hunt, Hatch continues to perform functions which she had before the transition from the JOIT to Clark County.

Other Employees

According to evidence provided by the employer: Clark County has approximately 127 employees in the "office assistant" job family; approximately 95 of those are included in a multi-department bargaining unit of office-clerical employees represented by Local 11; and approximately 25 are in a bargaining unit of public works employees. The employer has approximately 113 other office-clerical and technical employees who are not represented by any union or covered by any collective bargaining agreement.

POSITIONS OF THE PARTIES

The employer argues that the disputed position should be included in the generic bargaining unit of office-clerical employees represented by Local 11. It contends that an agreement it has negotiated with five unions (other than the CCITG) calls for the inclusion of all office-clerical employees within the bargaining unit represented by Local 11, including any office-clerical employees in the DIT. It also urges that the cited contract would be controlling, regardless of whether the "office assistant" or "accounting assistant" title is applicable to the position.

The CCITG urges that the disputed position should remain in the bargaining unit it represents. It asserts that a "vertical" unit configuration in the information technology department has been accepted by all parties. It also argues that office-clerical employees have been left in other departmental units, notwithstanding the existence of the generic bargaining unit represented by Local 11. Contending that only the title of the disputed position has been changed, the CCITG argues that no change in circumstances has been shown.

Local 11 contends that the disputed position should be included in the office-clerical bargaining unit that it represents. Local 11 asserts that the language of its contract with Clark County assured that office assistants working for JOIT would remain in the generic bargaining unit, that the disputed position is covered by the collective bargaining agreement applicable to that bargaining unit, and that it never relinquished the position when the CCITG was certified as exclusive bargaining representative.

DISCUSSION

Applicable Standards

The decision in Port of Vancouver, Decision 6979 (PECB, 2000) restated the long-standing principle that, while parties can agree on unit issues, such agreements are not binding on the Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn. App. 599 (Division III, 1981), rev. denied 96 Wn.2d 1004 (1981). RCW 41.56.060 directs the Commission in the unit determination arena:

> 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.

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. A unit can be certified if it is *an appropriate unit;* it need not be the most appropriate unit.

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).

Units consisting of "all of the employees of the employer" can be found appropriate under RCW 41.56.060, but Commission decisions have also affirmed the propriety of subdividing an employer's workforce into two or more bargaining units:

> Units smaller than employer-wide may also be appropriate, especially in larger work forces. The *employees in a separate department or division may share a community of interest separate and apart from other employees of the employer, based upon their commonality of function, duties, skills and supervision. Consequently, departmental (vertical) units have sometimes been found appropriate* when sought by a petitioning union. [Footnote omitted.] Alternately, employees of a separate occupational type may share a community of interest based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, occupational (horizontal) bargaining units have also been found appropriate, on occasion, when sought by a petitioning union. . . .

City of Centralia, Decision 3495-A (PECB, 1990) (emphasis added).

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]; and 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].

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 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).

Application of Standards

Job Title Not Controlling -

There is an undercurrent of debate about whether the disputed position should be classified as an "office assistant" or "accounting assistant".[4] For the purposes of this case, however, the debate about the proper job title yields a distinction without a difference. The propriety of the present unit placement of the

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[4] The accounting assistant II usually supervises accounting personnel at the I or II level; the office assistant II generally takes dictation, prepares correspondence, maintains subject matter files, and takes notes at meetings. Variances are wide-ranging, however. For example, an excluded "confidential employee" in the employer's budget office has an office assistant title.

disputed position must be resolved before looking into what (if any) bargaining unit would properly include the disputed position following its removal from its present bargaining unit. Thus, there is no occasion to decide whether the disputed position has the characteristics of an "office assistant" or of an "accounting assistant" in the absence of a pertinent change of circumstances.

History of Bargaining -

The history of bargaining for the unit now represented by the CCITG is brief, but is consistent with the Lacey, SnoIsle, and Kitsap precedents cited above. When it was first organized by Local 11, the creation of a "vertical" bargaining unit limited to (but encompassing all of) the employees in the joint operation was appropriate. Thus, the inclusion of the disputed position in that vertical unit, separate and apart from the employees of either the City of Vancouver or Clark County, was also appropriate unit when the existing bargaining unit was created.

The primary issue in this case is whether the transition from the JOIT to the DIT constituted a sufficient change of circumstances to warrant removal of the disputed position from the bargaining unit in which it has historically been included. Intervening events must be taken into consideration:

- When the CCITG filed its representation petition in 1997, the JOIT was still in operation. Even if merger of the JOIT into the Clark County DIT was being discussed, that did not eradicate the rights of those employees, or the interests of their exclusive bargaining representative.[5] Moreover, the

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[5] This situation is clearly distinguishable from King County, supra, where employees to be affected by a merger waited until the merger plan was already in place before they sought to organize, and so lost their opportunity to influence either the decision or its effects.

petition filed by the CCITG concerned only the separate bargaining unit already in existence at the JOIT.

- Clark County did not seek to obliterate the separate bargaining unit that had been represented by Local 11. Its only hesitation appears to have been about which employer was to be named in the certification.[6]

- OPEIU Local 11 did not seek to obliterate the separate bargaining unit at the JOIT when its incumbency was challenged by the CCITG.[7]

Even after the impending merger was announced, none of the parties to the representation proceedings in 1997 seriously questioned the ongoing propriety of the separate "vertical" bargaining unit of the JOIT employees. The resulting certification thus both affirmed the propriety of the separate unit and anticipated the merger of the JOIT into Clark County.

Duties, Skills and Working Conditions -

Without any doubt: (1) The disputed position is the only support position in the bargaining unit represented by the CCITG, which is otherwise composed of technical personnel; (2) Local 11 represents a multi-department bargaining unit of office-clerical employees; and (3) the employer and Local 11 negotiated the 1997-2000 contract

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[6] The employer urges its goal of designing occupational bargaining units, and avoiding fragmentation, but its silence in 1997 constitutes a critical opportunity lost. Its petition here was filed less than a year after issuance of the certification of the CCITG on December 23, 1997, and constitutes an improper collateral attack on the certification.

[7] Local 11 was the incumbent exclusive bargaining representative of the separate bargaining unit at JOIT, and was thus a necessary party to the representation proceeding in 1997.

which they both cite in this proceeding. Those facts are not conclusive, however.

The cited contract recognizes DIT employees as a part of the group represented by the OPEIU within the coalition. However:

- There is no evidence as to the derivation of the recognition clause contained in that agreement, other than that it was negotiated in common with a coalition of other unions.
- Because the Joint Labor Coalition was never certified as the exclusive bargaining representative of the JOIT employees, no "residual" recognition is appropriate under Port of Vancouver, supra and cases cited therein.
- Because the disputed position was considered to be a City of Vancouver employee at the JOIT, any reference to the position in a Clark County contract must be questioned.
- Because the relevant portion of the bargaining relationship between Local 11 and Clark County ended on December 23, 1997, when the CCITG was certified for the separate bargaining unit which includes the disputed position, any further reliance on the cited contract must be questioned.

Hence, reliance by Clark County and Local 11 on the coalition contract is misplaced.

The multi-department bargaining unit represented by Local 11 is not an occupationally-generic, employer-wide bargaining unit of office-clerical employees. Instead, the unit represented by Local 11 omits at least the office-clerical employees in the employer's Public Works Department and Sheriff's Department, who are represented by other unions in "vertical" bargaining units within those departments. The existence of a truly-horizontal unit might

provide strong support for reallocating the disputed position under City of Tacoma, Decision 204 (PECB, 1977) [where a truly employer-wide bargaining unit of office-clerical employees was created] and City of Bellingham, Decision 792 (PECB, 1979) [where a truly city-wide unit of office-clerical employees was preserved against an attempt to sever the office-clerical employees of a single department], but the facts of this case align with City of Seattle, Decision 140 (PECB, 1976) [where creation of a separate departmental unit was allowed based upon a conclusion that a purported city-wide unit omitted significant departments].

Desires of the Employees -

Where application of the other statutory criteria indicates that two or more appropriate bargaining unit structures are being sought by organizations under Chapter 391-25 WAC, the Commission can conduct a unit determination election to assess the desires of the employees. Clark County, Decision 290-A (PECB, 1977); Puyallup School District, Decision 5053-A (PECB, 1995). In this case, however, any expression of "desires" by the one and only employee involved would violate two well-established principles:

First, that employees will not be subjected to public disclosure of their unit determination preferences (which are closely tied to a choice of exclusive bargaining representative where they have the right to a secret ballot election or confidential cross-check);[8] and

Second, that votes are conducted and determined by majority rule in entire bargaining units, not in any portion of a bargaining unit.[9]

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[8] WAC 391-08-810(1); WAC 391-25-210; City of Redmond, Decision 1367-A (PECB, 1982); NLRB v Savair Mfg Co., 414 US 270 (1973).

[9] City of Seattle, Decision 2612 (PECB, 1987)

Extent of Organization -

The "extent of organization" compares the unit sought in a particular case to the whole of the employer's workforce, and is an operative factor where sheer numbers (i.e., the size and complexity of the employer's workforce or operations) would frustrate attempts to organize an "all employees", "vertical" or "horizontal" bargaining unit. Smaller divisions may then be necessary, if employees are to implement their statutory collective bargaining rights. At the same time, avoidance of unnecessary fragmentation reduces the potential for ongoing work jurisdiction conflicts.[10]

On the record made here, the "extent of organization" has no impact. Only the allocation of one employee to one of two existing bargaining unit is at issue; no employees would be stranded or jeopardized by either result. Quincy School District, Decision 3962 (PECB, 1992). There is no evidence of any crossover of functions between the disputed employee and either the office-clerical employees represented by Local 11 or other Clark County employees who are unrepresented or in other bargaining units.

Conclusion

The disputed office assistant has had, and continues to have, a community of interest with the Department of Information Technology

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[10] One of the key considerations in the unit determination process is that the certification of an exclusive bargaining representative gives rise to a right to protect the work jurisdiction of that bargaining unit. The employer must then give notice to the exclusive bargaining representative and provide opportunity for bargaining prior to transferring work historically performed in a bargaining unit to employees of another employer (contracting out) or to its own employees outside of the bargaining unit (skimming). See, South Kitsap School District, Decision 472 (PECB, 1978).

employees in the appropriate "vertical" bargaining unit represented by the CCITG. Even if the disputed employee could now theoretically have a community of interest with the larger bargaining unit represented by OPEIU Local 11, neither Local 11 nor Clark County raised such a claim in 1997, when both a question concerning representation and the change of employers were in the offing. The disputed employee was an eligible voter in the representation election conducted by the Commission in 1997, and has properly been included in that bargaining unit since the certification of the CCITG. There have been no further changes of circumstances sufficient to warrant a change of unit status under City of Richland, supra.

FINDINGS OF FACT

1. Clark County is a municipal corporation or political subdivision of the State of Washington, and is a public employer within the meaning of RCW 41.56.030(2).

2. The Clark County Information Technology Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the employer's Department of Information Technology, based on a certification issued by the Commission in 1997.

3. OPEIU Local 11, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit which includes some, but not all, of the employer's office-clerical employees.

4. Prior to January 1, 1998, certain computer and data retention services were provided by means of a Joint Office of Informa-

tion Technology (JOIT) operated by Clark County and the City of Vancouver.

5. During or about 1994, OPEIU Local 11 became the exclusive bargaining representative of a separate bargaining unit of JOIT employees which included both technical personnel and the one office-clerical employee working in the JOIT.

6. In 1997, following the expiration of the initial collective bargaining agreement covering that bargaining unit, the CCITG filed a petition for investigation of a question concerning representation under Chapter 391-25 WAC, seeking to replace Local 11 as exclusive bargaining representative of that unit. During the processing of that representation petition, neither Clark County nor Local 11 objected to the continued inclusion of the office-clerical employee in the separate bargaining unit at the JOIT. While Clark County indicated that the JOIT employees would become employees of Clark County, that was only to occur on and after January 1, 1998.

7. The JOIT employees, including the office-clerical employee, were eligible voters in a representation election conducted by the Commission in 1997. The employees in that separate bargaining unit voted in favor of the CCITG, and the CCITG was certified as their exclusive bargaining representative prior to the transfer of the JOIT employees to Clark County.

8. Except for the implementation of the change of employer entity described in Paragraph 6 of these Findings of Fact, there is no evidence of any change of circumstances affecting the separate bargaining unit now represented by the CCITG. The employee at issue in this proceeding continues to perform computer-related purchasing functions similar to those which

she performed prior to the transfer of the JOIT employees to Clark County.

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. Based on the history of bargaining, the separate bargaining unit of Department of Information Technology employees represented by the Clark County Information Technology Guild is, and continues to be, an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

3. The evidence in this proceeding fails to disclose any change of circumstances which warrants a change, under RCW 41.56.060 and Chapter 391-35 WAC, of the bargaining unit status of the office-clerical position historically included in the bargaining unit now represented by the CCITG.

ORDER CLARIFYING BARGAINING UNIT

The bargaining unit represented by the CCITG is clarified to include the office-clerical position at issue in this proceeding.

Issued at Olympia, Washington, on the 11th 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.