

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
SERVICE EMPLOYEES INTERNATIONAL )  
UNION, LOCAL 49 ) CASE 15415-C-00-992  
 )  
For clarification of an existing ) DECISION 7471 - PECB  
bargaining unit of employees of: )  
 )  
COWLITZ COUNTY ) ORDER CLARIFYING  
 ) BARGAINING UNIT  
 )  
\_\_\_\_\_ )

*Marcia Sutttenberg*, Special Projects Coordinator, for the union.

*Amburgey & Rubin*, by *Howard Rubin* and *J. Kent Pearson, Jr.*, for the employer.

On October 2, 2000, Service Employees International Union, Local 49 (union), filed a petition with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking clarification of a bargaining unit of employees of Cowlitz County (employer) following an alleged change of circumstances involving a change of work locations and a change of the employer's organizational structure. A hearing was held on March 27, 2001, before Hearing Officer Walter M. Stuteville. The parties filed briefs to complete the record.

The Executive Director rules that the union has not established a basis for the requested accretion of historically-unrepresented "human services" employees into the existing bargaining unit represented by the union, and that the petitioned-for employees could constitute an appropriate separate bargaining unit if they desired to do so.

BACKGROUNDThe Health Department

The employer has provided health and disease prevention services through the Cowlitz County Health Department since 1994.<sup>1</sup> The department has 25 employees in classifications such as public health nurse, environmental technician, social worker, outreach worker, and microbiologist, as well as office-clerical and support employees. The services include immunizations, screening and treatment for sexually-transmitted diseases, testing food handlers, inspecting food establishments and public water systems, and case management for AIDS patients. The department operates a needle exchange and other programs to reduce HIV and hepatitis infections, provides services for pregnant women and new mothers, and maintains vital records. Until late 1999, the Health Department was located in leased space at Saint John's Medical Center in Longview.

The union is the exclusive bargaining representative of a "vertical" bargaining unit encompassing all non-supervisory, non-confidential, professional, accounting and clerical/support employees of the Health Department. The union has represented these employees since 1987. The employer and union are parties to a collective bargaining agreement that was renegotiated between October 1999 and January 2000.

The Human Services Department

Completely separate and apart from the Health District or Health Department, the employer historically operated a Human Services

---

<sup>1</sup> Previously, services were provided by a Cowlitz County Health District under a different governance structure.

Department. The primary responsibilities and focus of the latter agency concern administration of state and federal grants for mental health services, substance abuse treatment and prevention, and services for the developmentally disabled. The department does not provide any direct services, and instead contracts for (and oversees) services provided by local for-profit and non-profit organizations. The service providers have historically included Saint John's Medical Center, the Lower Columbia Mental Health Center, the Drug Abuse Prevention Center, the Providence Addictions Recovery Center, and seven small providers of services for the developmentally disabled. Until late 1999, the Human Services Department was located in the county administration building and annex in Kelso.

There are approximately 10 employees in the Human Services Department, in classifications such as senior, assistant and associate planners, and a senior accounts clerk. Those employees have never been represented for purposes of collective bargaining.

#### Restructure

Leslie Bombardier has been director of the Human Services Department since 1977. She was given responsibility as director of the Health Department in December 1999, and now heads both departments.

The employer began looking for a new location for the Health Department in 1999, because of proposed rent increases for the leased space. It found a building for sale that would house both the Health Department and the Human Services Department at a savings of overhead costs, and would free up needed space in the administration building. Thus, the Health Department and the Human Services Department moved into the same building in August of 2000. The Human Services offices are located in one corner of the building, while the Health Department offices and laboratory occupy

the remainder of the building. The two departments now share a reception and waiting room, an employee break room, and a conference room. A sign on the front of the building reads, "Cowlitz County Health and Human Services Department." The two departments remained in that location at the time of the hearing. Notwithstanding that sign and the fact of having a common director, there was no evidence presented that the employer has taken any action to formally merge the two departments.

#### POSITIONS OF THE PARTIES

The union argues that, as a result of moving the two departments into one building and the consolidation of their administration and support functions, the employer has effectively merged functions between the two groups of employees. It notes that the professional staffs of both departments serve many of the same clients, such as the homeless, the HIV-infected, and victims of abuse. The union contends the duties and working conditions have been changed sufficiently to warrant accretion of the Human Services Department employees into the bargaining unit represented by the union.

The employer asserts that the facts do not support accretion of the Human Services employees into the Health Department bargaining unit. It contends the change of circumstances does not create a compelling community of interest between the two groups of employees, and claims the union's petition was not filed promptly after the change of circumstances.

#### DISCUSSION

The purpose of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is set forth in RCW 41.56.010, as follows:

[T]o promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees *to join labor organizations of their own choosing* and to be represented by such organizations in matters concerning their employment relations with public employers.

(emphasis added).

RCW 41.56.030(2) defines "public employee" as:

(2) *"Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (d) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.*

(emphasis added).

In structuring bargaining units, the Commission is guided by RCW 41.56.060, which states:

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.

The statutory criteria are applied on a case-by-case basis, to group employees according to communities of interest. The statute does not confine the Commission to deciding "the most appropriate unit" in each case; it is only necessary that a grouping be an appropriate unit. See *South Central School District*, Decision 5670-A (PECB, 1997), and *City of Centralia*, Decision 3495-A and 3496-A (PECB, 1990). While not expressly listed in RCW 41.56.060, similarities of pay and benefits are considered under the "working conditions" aspect of the statutory criteria, along with integration of managerial functions within an organization and interchange of job functions among employees.

The "history of bargaining" component of the statutory criteria will have no application where none of the employees are organized, but can present a major hurdle to altering the configuration of established bargaining units. The Commission has long held that the status of employees historically included or excluded from a bargaining unit will not be changed in the absence of changed circumstances. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn.App. 599 (Division III, 1981), *review denied*, 96 Wn.2d 1004 (1981). See also *Quillayute Valley School District*, Decision 2809-A (PECB, 1988); *Toppenish School District*, Decision 1143-A (PECB, 1981).

#### Timeliness of the Petition

The employer asserts that the petition should be dismissed on procedural grounds. It contends the union delayed filing its petition for too long after the change of circumstances and/or that

the union failed to raise the accretion issue during the parties' negotiations for their current contract and failed to file its petition prior to the conclusion of those negotiations.

At the time the petition in this case was filed,<sup>2</sup> the Commission's rules regulated the time for filing unit clarification petitions as follows:

WAC 391-35-020 Petition--Time for filing. (1) Disputes concerning status as a "confidential employee" may be filed at any time.

(2) Where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit filed by a party to the collective bargaining agreement will be considered timely only if:

(a) The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective 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.

(3) Disputes concerning the allocation of employees or positions between two or more bargaining units may be filed at any time.

---

<sup>2</sup> The Commission amended its rules in June 2001, and those amendments will be effective on August 1, 2001.

Paragraphs (1) and (3) of that rule are clearly inapplicable to this case, where there is no claim of "confidential" status and only one union and bargaining unit is involved.

Paragraph (2) (b) could be applicable here if the union were relying entirely on the change of circumstances in December of 1999, when Bombardier was named as director of both departments. The parties' negotiations for their current collective bargaining agreement took place between October 1999 and January 2000, with one bargaining session held after the announcement of the joint directorship. However, the union's failure to file this unit clarification petition prior to the conclusion of those negotiations is not fatal to its case. There was consistent testimony to the effect that there was no mention in that October to January period of implications of the two department having a common director.

The union's petition clearly conforms to the requirements of paragraph (2) (a) of the rule. Beyond the appointment of Bombardier as director of both departments, the union asserts changed circumstances with regard to the move of the two departments into a single building in August of 2000, the sharing of facilities by the department after that move, and the evolving impact that both the appointment and move eventually had on the work of the employees in both departments. Evidence could not have been developed on most of those impacts until the departments were together in the same building and new working relationships had been implemented. Therefore, the petition filed by the union on October 2, 2000, is deemed to be timely.

#### Accretion Criteria

The general rule is that employees are to have a voice in the selection of an exclusive bargaining representative. See RCW



41.56.040 and 41.56.060. Accretions involve placement of positions or classifications into an existing bargaining unit without a vote of the employees involved, and are inherently an exception to the general rule of employee free choice, but can be accomplished through unit clarification proceedings in appropriate circumstances. In particular, an accretion can be ordered where changed circumstances lead to the presence of positions which logically belong only in one existing bargaining unit, and the positions can neither stand on their own as a separate unit or be logically accreted to any other existing unit. See *City of Auburn*, Decision 4880-A (PECB, 1994), and *Ben Franklin Transit*, Decision 5249 (PECB, 1995). Conversely, accretion is unavailable where a question concerning representation exists. WAC 391-35-010. The party proposing an accretion always has the burden to show that the conditions for an accretion are present. See *Kitsap Transit Authority*, Decision 3104 (PECB, 1989), and *Seattle School District*, Decision 4868 (PECB, 1994).

#### Application of Standards

##### Comparison of Duties -

In this case, the bargaining unit historically represented by the union is composed of a mixture of office-clerical, accounting, technical and professional employees who provide or support direct services to members of the general public. The majority of those employees have direct contact with clients of the department, either in the department office or in the field. In contrast, the record indicates that the duties of the historically-unrepresented Human Services employees are quite different from those of the Health Department employees. In particular, the direct clients of the Human Services Department are the service providers who sign the contracts administered and monitored by the petitioned-for employees, rather than the persons who ultimately receive services.

In fact, the Human Services employees appear to have little or no direct contact with either the persons who receive the contracted services or the general public. Thus, the job duties and responsibilities of the two groups do not closely interrelate, even though some of the programs may ultimately touch some of the same groups within the overall population.

Skills -

The simple fact that employees in both departments have bachelor degrees does not establish common duties or working conditions between the employee of the two departments and is not persuasive in determining community of interest.

Working Conditions -

The testimony in this case indicates that the wages for the Health employees are based on an eight hour day, an 11-step increment plan for the professional staff, and a three-step increment plan for the office-clerical employees. In contrast, the wages for the Human Services employees are based upon a seven and one-half hour day and a three step increment plan. This produces a wage differential of approximately 6.5% between the groups.

The two groups clearly do not share job titles or job descriptions. Personnel from the two departments now interact occasionally because they work in the same building, but the fact of their co-location is not compelling. With few exceptions, the record indicates that the two groups do not interrelate on work matters or substitute for one another. Apart from Bombardier and other employees excluded from the bargaining unit as confidential employees, as supervisors, or a person who provides "backup" for a supervisor, the record only describes a few examples of cross-over or exchange of work between the two groups:

- Accounting work for the two historical departments continues to be done separately, although the two accounting clerks now share an office space and may assist one another on specific occasions;
- A microbiologist who came from the Health Department handles some "building" issues for both departments;
- A senior account clerk who came from Human Services now takes notes for Health Department meetings;
- A senior planner who came from Human Services now coordinates computers for both departments;
- Two senior office assistants from the Health Department now serve as receptionist for both departments; and
- An assistant planner from Human Services now does some scheduling and minutes for both departments.

The sign on the building notwithstanding, the evidence clearly does not support a conclusion that there has been a functional or operational merger of the two departments. The shared work clearly does not represent a merger of the major functions of most employees. Further, it is important to note that most of the cited "shared work" concerns relatively minor support functions that result from the two departments sharing the same building, and has been assigned because the particular employee has a relevant skill or interest.<sup>3</sup> The numbers also weigh against the union's quest for an accretion here: Only two of 10 Human Services employees arguably cross over to do work that impacts the Health Department, but there was no evidence that those particular assignments have any

---

<sup>3</sup> Examples are the microbiologist being involved in "building" issues and the planner being involved in "computer" issues, each of which appears to be outside of their normal job duties.

direct relationship to their responsibilities as a planner. With the exception of the employees who now serve as receptionists for both departments (and who are already in the bargaining unit represented by the union), there was no evidence that any of the alleged cross-over tasks occupy the full time, or even a significant portion of the work time, of the assigned employee.

History of Bargaining -

If there was no history of bargaining, and the union was seeking to organize a new bargaining unit encompassing all of the employees who work under the sign on the building and the direction of Bombardier, the common location and common supervision might well support finding a community of interest for such a bargaining unit. However, there is a history of bargaining here for the Health Department employees as a separate bargaining unit, as well as a history of "no representation" for the Human Services employees. In light of the fact that most of the alleged cross over work is being done *for* the employees, rather than *by* them, the change of circumstances is insufficient to warrant depriving the Human Services employees of their statutory right to a voice in the selection of their exclusive bargaining representative (if any).

Extent of Organization -

As was said in *Port of Vancouver*, Decision 6979 (PECB, 2000), quoting from *City of Auburn*, Decision 5775 (PECB, 1996),

[N]either the petitioner, the employer nor [an intervening union] has a right to dictate the choice of bargaining representative for the employees at issue in this proceeding. The employer's arguments favoring accretion of the petitioned-for positions to [an existing unit] in this case are essentially the same as those which were advanced and rejected in *City of Vancouver*, Decision 3160 (PECB, 1989), where historically unrepresented employees were

given the opportunity to vote on representation. . . .

*See also Cusick School District*, Decision 2946 (PECB, 1988), where an employer's concerns about fragmentation did not override the historical absence of union representation for the petitioned-for employees, particularly where they had duties and skills distinct from those of the other employees. The union has not made a compelling case that the Human Services employees could not stand alone as a separate bargaining unit.

In conclusion, the duties, skills, and working conditions of the unrepresented positions do not have a sufficient degree of commonality with bargaining unit positions to support their inclusion in the unit.

#### Desire of Employees -

Where two or more potentially-appropriate bargaining unit configurations are sought by petitioning organizations in a single proceeding, the Commission determines the desires of employees by conducting a unit determination election. No "desires" issue is present in this proceeding, where there is only one union involved and only one bargaining unit configuration has been proposed.

#### Conclusions

The expansion of Bombardier's responsibilities to encompass two departments and the move of both departments into a single building clearly altered the management structure, but did not blur the lines between the separate functions of the two departments and did not merge the staffs of the two departments to a sufficient degree to support a conclusion that a single bargaining unit is the only appropriate configuration for bargaining. While there has

undoubtedly been some change of circumstances, it does not support an accretion of the historically-unrepresented employees at issue in this case.

In both its opening statement and in its brief, the union relied upon the Commission's decision in *Pierce County*, Decision 6051-A (PECB, 1998). However, the union places more weight on that precedent than it will bear.

First and foremost, there are substantial factual distinctions: The *Pierce County* case arose from a formal merger of two historically-separate departments, unlike the mere appointment of a common director and building sign in this case; the Commission specifically found that the duties, skills and working conditions of the unrepresented employees in *Pierce County* were *closely interrelated* with the work of the bargaining unit members, unlike the ongoing separation of functions evidenced in this case; the employees in *Pierce County* shared job titles and job descriptions, unlike the substantial differences evidenced here; and the employees in *Pierce County* interacted on work matters and substituted for one another, unlike the fundamental differences of clientele evidenced here.

Second, the scope of the bargaining unit resulting from the *Pierce County* decision remains unsettled, and is again in the hearing process following the Commission's reversal of an order dismissing a decertification petition. See *Pierce County*, Decision 7018-A (PECB, 2001).

#### FINDINGS OF FACT

1. Cowlitz County is a political subdivision of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. Service Employees International Union, Local 49, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees working in what is now the Cowlitz County Health Department. The union's representation of those employees dates back to a time when they were employed by a Cowlitz County Health District under a different governance structure.
3. The employer and union are parties to a collective bargaining agreement effective for the years 2000 and 2001. Negotiations leading to the signing of that contract were conducted between October of 1999 and January of 2000.
4. The employees in the Cowlitz County Health Department provide several types of health-related services directly to individual clients, or work in support of providing those services.
5. The employer historically operated a Cowlitz County Human Services Department entirely separate and apart from the Cowlitz County Health Department. Leslie Bombardier has been the director of the Human Services Department since 1977. The employees in the Human Services Department administer and monitor contracts with various for-profit and non-profit service providers, who in turn provide direct services to individual clients. Even where services were ultimately received by the same individual clients, there is no evidence of joint function of the two employer departments.
6. In December of 1999, the responsibilities of Leslie Bombardier were expanded to include heading both the Cowlitz County Human Services Department and the Cowlitz County Health Department.

7. While the change described in Finding of Fact 6 occurred while negotiations for the parties' current collective bargaining agreement were ongoing, no other steps were taken at that time to merge or consolidate the operations of the two departments.
8. In August 2000, the employer moved the Cowlitz County Human Services Department and the Cowlitz County Health Department into the same building in which the departments generally occupy separate portions of the building but share reception and conference spaces. Notwithstanding a sign on that building which identifies a "Cowlitz County Health and Human Services Department" as the occupant of the building, this record does not contain evidence of a formal merger of those departments by action of the legislative authority of the employer.
9. Bombardier and others having management or supervisory responsibilities now provide some support functions in common for both of the historical departments.
10. The accounting employees of the two separate departments have similar duties and similar skills. Since the move described in Finding of Fact 8, they share common supervision and office space. While the accounting functions of the two departments continue to be handled separately, the accounting employees occasionally assist one another.
11. Two employees in the bargaining unit described in Finding of Fact 2 now perform receptionist functions for both departments.
12. Employees from one or the other of the historical departments now perform occasional support functions for both departments,



such as dealing with building issues and dealing with computer systems.

13. Except as described in Finding of Fact 9, 10, 11, and 12, there has been no merger of functions or operations of the two departments now headed by Bombardier. The employees continue to perform the functions they performed in the respective departments from which they came, and there is minimal evidence of interaction in normal operations.

#### 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 bargaining unit of Cowlitz County Health Department employees historically represented by Service Employees International Union, Local 49, continues to constitute an appropriate bargaining unit under RCW 41.56.060.
3. The record in this proceeding does not support a conclusion that a single bargaining unit encompassing all of the non-supervisory employees of the Cowlitz County Health Department employees and all of the non-supervisory employees of the Cowlitz County Human Services Department is the only configuration of bargaining units appropriate for those employees under RCW 41.56.060.
4. The non-supervisory employees of the Cowlitz County Human Services Department could constitute an appropriate separate bargaining unit under RCW 41.56.060, so that an accretion of those employees to the existing bargaining unit represented by Service Employees International Union, Local 49, would

constitute an infringement upon their right to a voice in the selection of an exclusive bargaining representative (if any) under RCW 41.56.040 and RCW 41.56.070.

ORDER

The petition for clarification of an existing bargaining unit filed in the above-captioned matter is DISMISSED as raising a question concerning representation.

Issued at Olympia, Washington, on the 25<sup>th</sup> day of July, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", is written over the printed name below.

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.