

Whatcom County, Decision 7399 (PECB, 2001)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
INTERNATIONAL FEDERATION OF)	
PROFESSIONAL AND TECHNICAL)	
EMPLOYEES, LOCAL 17)	CASE 15250-C-00-982
)	
For clarification of an existing)	DECISION 7399 - PECB
bargaining unit of employees of:)	
)	ORDER CLARIFYING
WHATCOM COUNTY)	BARGAINING UNIT
)	
)	

Kim Ramsey, Union Representative, appeared on behalf of the union.

Halvorson & Saunders, by *Larry Halvorson*, Attorney at Law, appeared on behalf of the employer.

On June 19, 2000, International Federation of Professional and Technical Employees, Local 17, filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking a ruling on the proper unit placement of a newly created "data application specialist" employed by Whatcom County (employer). The petition identified Teamsters Union, Local 231, as an organization having an interest in the proceedings, but Local 231 did not move for intervention. A hearing was held on October 27, 2000, before Hearing Officer Kenneth Latsch. Local 17 and the employer filed post-hearing briefs on December 22, 2000.

On the basis of the evidence presented at the hearing and the legal arguments filed, the Executive Director concludes it would not be

appropriate to accrete the disputed position to the bargaining unit represented by Local 17.

BACKGROUND

Whatcom County is governed by an elected county council and an elected county executive. One of the departments within its table of organization is the Health and Human Services Department.

The employer has collective bargaining relationships with organizations representing four separate bargaining units among employees of the Health and Human Services Department:

- The Washington State Nurses Association represents registered nurses working in the department;
- Local 231 represents a bargaining unit of professional, technical, and office-clerical employees in several Whatcom County departments, including professional and technical employees the Health and Human Services Department;¹
- Teamsters Local 231, represents a separate bargaining unit of office-clerical employees in the Health and Human Services Department; and
- Local 17 represents employees performing a variety of functions internal to the department, including both direct service to the public (e.g., environmental health specialists, nutritionists, WIC certifiers and social workers) and support, planning, coordinating and assessment functions (e.g., public

¹ At the time of the hearing in this matter, there were approximately 400 employees in that bargaining unit. The collective bargaining agreement covering that unit is termed the "master labor agreement" by its parties.

health educator and program coordinators in the environmental health, nutrition and assessment areas).

Excluded from those units are certain registered nurses and health professional positions that came to the Health and Human Services Department in 1997, when a Combined Treatment Department (Mental Health and Substance Abuse) and a Developmental Disabilities Department were consolidated.

In February 2000, the Whatcom County Council approved addition of a new "data applications specialist" position in the Health and Human Services Department, on a half-time basis. The employer initially allocated the new position to the bargaining unit represented by Local 17, and that union requested information as to the scope of work and the proposed wage for the new classification.

Soon after Local 17 requested information, Wendy Wefer-Clinton of the employer's Human Resources Department raised a question as to why the newly-created position had not been placed under the master labor agreement that covers other computer-related positions.² She was informed that the position required a degree in Environmental Health, a common requirement of members of the Local 17 bargaining unit. On that basis, Wefer-Clinton approved the initial unit placement and sent the job description to Local 17.

Shortly thereafter, the employer discovered an error in the original job description for the new position. The educational requirement for the new position was supposed to be for a "public health" degree covering a broad spectrum of the work done in the

² Since April 16, 1990, the unit represented by Local 231 under the so-called master labor agreement has included all computer-related positions in the employer's Information Services Division.

Health and Human Services Department, rather than for an "environmental health" degree with a narrower focus. On March 21, 2000, the employer notified Local 17 of that error, and of the employer's changed position that the new position should be placed under the master labor agreement.

By letter dated June 1, 2000, Local 17 notified the employer that it intended to pursue a unit clarification. The petition to initiate this proceeding followed, on June 19, 2000.

POSITION OF THE PARTIES

Local 17 argues that the disputed "data application specialist" position requires skills, duties and knowledge more closely aligned with other employees represented by Local 17 than with the computer-technology positions represented by Local 231. Local 17 also contends that placement into the unit represented by Local 231 would isolate the DAS because the disputed employee works side-by-side with, and under the same supervision as, employees represented by Local 17.

The employer claims the disputed position shares a community of interest with its other computer-related employees, who are covered by the master agreement, and that placement of the position in the bargaining unit represented by Local 17 would unnecessarily fragment the workforce and cause work jurisdiction disputes.

DISCUSSION

The authority to determine and modify appropriate bargaining units has been delegated by the legislature to the Commission. In

exercising that authority, the Commission is guided by criteria set forth in RCW 41.56.060:

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 employee; and the desire of the public employees . . .

As the employer correctly notes, the purpose of the unit determination process is to group together employees with sufficient similarities to have an ongoing community of interest in bargaining their wages, hours and working conditions with their employer. *City of Pasco*, Decision 2636-B (PECB, 1987).

The petition in this case was timely filed. Under WAC 391-35-020(3), a unit clarification may be filed at any time a dispute exists concerning "the allocation of employees or positions between two or more bargaining units." Neither employers nor unions can impose their unit preferences upon the opposite party to a bargaining relationship, or upon employees. *Yelm School District*, Decision 6440 (PECB, 1998). Employers and unions can agree on unit matters, but unit determination is not a subject for bargaining in the mandatory/permissive/illegal sense, and parties' agreements on unit matters are not binding on the Commission. *City of Richland*, Decision 279-A (PECB, 1978), *affirmed* 29 Wn.App. 599 (1981), *review denied* 96 Wn.2d 1004 (1981).

Application of Standards

The employer seeks to add the disputed position to what it describes as a "more broadly-based" or "horizontal" bargaining unit

which cuts across departmental lines and groups together employees performing computer-related functions. 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 can be found appropriate, when sought by a petitioning union. *Spokane County*, Decision 6720 (PECB, 1999), citing *City of Centralia*, Decision 3495-A (PECB, 1990).

Local 17 supports placement of the disputed position in the department-based or "vertical" bargaining unit it represents. 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 can also be found appropriate when sought by a petitioning union. *Spokane County, supra*.

Duties, Skills and Working Conditions -

The employer's focus on the academic preparation required for the disputed position is too narrow. In examining whether allocation of the disputed position to a "departmental" or "occupational" grouping is appropriate, additional factors such as commonality of duties or function, commonality of acquired or applied skills, and commonality of supervision must also be reviewed.

It is appropriate to compare the disputed position with other positions in the Health and Human Services Department. For example, the essential job duties of the "Environmental Health Specialist II" are:

- Independently *conduct on-site inspections* or surveys of food service and preparation, sewage and disposal systems, solid

waste handling and disposal facilities, medical waste handling, biosolid utilization sites, water supply and distributions systems, swimming pools, sand and gravel pits, hot tubs, camps and schools to ensure compliance with health regulations.

- *Collect food, soil, air, water and other samples for analysis; maintain records; perform routine analysis; interpret data for compliance with standards and regulations; assist with making recommendations; and utilize instruments, tools, meters and other devices.*
- *Conduct complaint investigations, such as unsanitary or unsafe food handling practices, swimming pool or hot tub water quality, illegal solid waste dumping, littering, and chemical spills and releases to ground or water.*
- *Assess compliance and interpret and apply regulations legally and equitably for assigned areas. Evaluate, issue and deny or suspend licenses and permits as assigned. Review construction and operating plans for compliance with regulations.*

(emphasis added).

Another relevant example is the "public health educator" classification, for which the job description includes:

- *Assess, identify and evaluate community health education needs utilizing a variety of methods such as data gathering from community organizations, targeted groups, health department staff, surveys and workshops; read applicable materials; and analyze community's health history, present findings and prioritize recommendations for decisions regarding development and implementation of potential health education programs to Health Department team members, groups, media, and organizations within the community.*
- *Design, develop, implement and evaluate health education activities, which meet*

all applicable local, state, federal and private funding source requirements, by drawing upon available resources to design programs, curricula or materials to most effectively meet needs.

(emphasis added).

The evident focus of those classifications represented by Local 17 is on the actual interpretation and implementation of regulations, and direct delivery of environmental services to the community.

In contrast, the job description of the disputed position suggests a much narrower role working in the background to the actual delivery of services:

- *Perform tasks related to computing, comparing and reporting data. Review data for completeness and accuracy. Select data to meet or answer a specific need or question. Analyze data to determine common content and determine which variable might best apply.*
- *Design, create or modify databases to be used in support of technical health projects. Support long-term data management.*
- *Perform spatial epidemiological plotting using computerized GIS systems to plot and map community health concerns. Use ARC View or ARC Info to produce Shape files and create maps and overlays.*
- *Assess compliance and interpret and apply regulations legally and equitably for assigned areas.*
- *Maintain departmental web page.*

(emphasis added).

While the one reference to "epidemiology" in the job description can be taken as suggesting that the disputed employee does some work which touches on the substantive aspects of environmental regulation, the balance of the job description emphasizes computer-

related functions such as programming ("select data to meet or answer a specific need or question" and "design, create and modify databases"), database administration ("review data for completeness and accuracy" and "analyze data to determine common content"), using computers to depict data in different forms ("plotting using . . . GIS systems" and "use ARC View or ARC Info to produce Shape files and create maps") and external communications ("maintain . . . web page"). One does not need to be an environmental expert to apply computers in the environmental area, and it is inferred that job mobility for the incumbent of the disputed position would be along a computer-related path, rather than deeper into "epidemiology" or substantive environmental regulation.

It is also appropriate to compare the disputed position with computer-related positions in the bargaining unit represented by Local 231. For example, the essential job duties of a "GIS specialist" classification include:

- *Research, gather, analyze, interpret, enter, update and maintain geographic data. Produce maps, charts and other related graphic media on the GIS. Assist with advanced modeling, analysis and reporting.*
- *Design, develop, upgrade, maintain and assure the effective day-to-day operation and administration of the GIS, related operating systems, hardware and databases. Provide technical assistance in use and application of GIS functions.*
- *Assess and assure compliance, interpret and apply regulations equitably, explain services and identify needs.*

(emphasis added).

There is a close correlation between the "GIS" work of the disputed position and that done by an employee covered by the master labor

agreement. Similar correlations exist with "software specialist", "PC Lan" and "technical services coordinator" classifications represented by Local 231. Like the employees represented by Local 231, the disputed employee is a computer/technology professional working in a "support" role underlying the primary educational and regulatory functions of the Health and Human Services Department.

The organizational structure and working conditions which surround the disputed position do not dictate the result sought by Local 17. The incumbent of the disputed position works under the same supervision as employees represented by Local 17, and shares office space in the Girard Street building with employees represented by Local 17, but she interacts regularly with employees from all divisions of the Health and Human Services Department.

History of Bargaining

The disputed position is new, and advances in the use of computer technology in the environmental area appear to be emerging. It is undisputed, however, that the so-called master labor agreement has historically covered all of the employer's computer-related personnel. The history of bargaining thus weighs against putting the disputed position in the unit represented by Local 17.

Extent of Organization

In making unit determinations, the Commission attempts to avoid unnecessary fragmentation of workforces and bargaining relationships. *Yelm School District*, supra. This concern is particularly apt where there is a potential for ongoing "work jurisdiction" conflicts at the borderlines between bargaining units, as in *City of Seattle*, Decision 781 (PECB, 1979), or where there is a

potential for stranding employees in residual pockets which effectively preclude them from exercising their statutory bargaining rights, as in *City of Vancouver*, Decision 3160 (PECB, 1989).

Even if the disputed position is superficially characterized as a hybrid position, close analysis establishes that placing the position in the unit represented by Local 17 would be in conflict with Commission policy. In a series of decisions over nearly the entire history of this agency, the Commission and its staff have dealt with difficult problems relating to "work jurisdiction" claims.³ Allowing two separate bargaining units to claim the same body of work has been described as "abhorrent to peaceful labor relations." *City of Mount Vernon*, Decision 4199-B (PECB, 1992). The potential for work jurisdiction disputes favors placing the disputed position into the unit represented by Local 231.

Desires of Employees

The legislature did not prioritize the unit determination criteria set forth in RCW 41.56.060, and it certainly did not specify that

³ The first of those cases, *South Kitsap School District*, Decision 472 (PECB, 1978), established the principle that an employer must give notice and provide opportunity for collective bargaining before transferring work historically performed within one bargaining unit to employees outside of that bargaining unit. In a subsequent case, *South Kitsap School District*, Decision 1541 (PECB, 1983), a bargaining unit structure which bifurcated that employer's office-clerical workforce was found inappropriate, due to conflicting work jurisdiction claims which had arisen (and were likely to arise on an ongoing basis) in such an environment. Hence, an employer and all unions representing its employees need to pay close attention to the borderlines between bargaining units.

the "desires of employees" should predominate over other criteria. *Bremerton School District, supra*. Where application of the other unit determination criteria results in a conclusion that two or more unit configurations sought by competing unions in a representation case could be appropriate, the Commission assesses the "desires of employees" by means of a secret-ballot unit determination election. See, WAC 391-25-530(1). That procedure gives all affected employees equal opportunity to express their views, and does so in a manner which avoids the disclosure of individuals' views on a matter that is often closely related to their selection of an exclusive bargaining representative. *Clark County, Decision 290-A (PECB, 1977)*.

This is a unit clarification proceeding in which no question has been raised concerning the ongoing majority status of either union in its respective bargaining unit. Proceedings under Chapter 391-35 WAC are limited to situations where changed circumstances call only the status of particular positions or classifications into question. There is no means to conduct a unit determination election in proceedings under Chapter 391-35 WAC, and accretion of a newly-created position or classification to an existing bargaining unit is appropriate where (as here) no other allocation is appropriate for that position or classification. *Port of Vancouver, Decision 6979 (PECB, 2001)*.

FINDINGS OF FACT

1. Whatcom 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. International Federation of Professional and Technical Employees, Local 17, a "bargaining representative" within the

meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the Whatcom County Health and Human Services Department. That bargaining unit has not historically included employees performing computer-related functions.

3. International Brotherhood of Teamsters, Local 231, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of Whatcom County employees performing computer-related functions.
4. In February 2000, Whatcom County created a "data applications specialist" position within its Health and Human Services Department. The duties of the new position primarily involve computer-related tasks such as programming, database maintenance, operation of GIS software, and web site maintenance. Although the position is housed in the same area as employees represented by Local 17, and is under the same supervision as employees represented by Local 17, the skills required and duties performed by the disputed employee more closely correlate with those of employees performing computer-related functions in the bargaining unit represented by Local 231.
5. After initially taking a position based on an incorrect understanding as to the educational requirements for the position, Whatcom County took steps to place the position described in Finding of Fact 4 into the bargaining unit represented by Teamsters Local 231. Whatcom County notified both Local 231 and Local 17 of its decision.
6. Local 17 claims the position described in Finding of Fact 4 should be allocated to the bargaining unit it represents, and it filed a timely petition under Chapter 391-35 WAC.

7. The disputed position shares a community of interest with employees in the bargaining unit represented by Local 231, so that allocation of the new position to the unit represented by Local 17 would create a potential for work jurisdiction conflicts concerning computer-related work.

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. Allocation of the new data applications specialist position to the bargaining unit of environmental personnel represented by Local 17 would not be an appropriate configuration of bargaining units under RCW 41.56.060.

ORDER

The existing bargaining unit represented by International Federation of Professional and Technical Engineers, Local 17, is clarified to exclude the data applications specialist position at issue in this proceeding.

Issued at Olympia, Washington, on the 17th day of May, 2001.

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.