

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON STATE COUNCIL OF COUNTY)	CASE 20063-C-06-1253
AND CITY EMPLOYEES, LOCAL 492GCO)	
)	DECISION 9627 - PECB
For clarification of an existing)	
bargaining unit of employees of:)	
)	ORDER CLARIFYING
SPOKANE COUNTY)	BARGAINING UNIT
_____)	

Timothy O'Brien, Labor Relations Manager, for Spokane County.

Audrey B. Eide, General Counsel, for Washington State Council of County and City Employees, Local 492-GCO.

David M. Kanigal, General Counsel, for Washington State Council of County and City Employees, Local 492-G.

On January 5, 2006, Washington State Council of County and City Employees, Local 492-GCO (Local GCO) filed a unit clarification petition with the Public Employment Relations Commission (Commission), seeking the accretion of seven work crew officers and two transportation officers who work at the Spokane County Geiger Corrections Center (employer).¹ The work crew officers and the transportation officers are currently represented by Washington State Council of County and City Employees, Local 492-G (Local G).

¹ Although the employer was not an active participant in the case, its name will appear in documents and captions for the case. Each dispute resolved by the Commission must arise out of an employment relationship within the jurisdiction of the agency, and the Commission's docketing procedures require identification of the employer in each case.

A hearing on the matter was held on October 4, 2006, before Hearing Officer Terry N. Wilson with Local G as an incumbent intervenor. The employer chose not to participate in the matter.

ISSUES PRESENTED

The issues before the Executive Director are as follows:

1. Whether the positions of work crew officer and transportation officer meet the statutory definition for "uniformed personnel" and are eligible for interest arbitration.
2. Whether the positions of work crew officer and transportation officer should be severed from their present bargaining unit and accreted into Local GCO, a bargaining unit eligible for interest arbitration.

Based upon the record as a whole, the Executive Director finds that the positions of work crew officer and transportation officer meet the statutory definition of "uniformed personnel" and are eligible for interest arbitration. As such, the positions are inappropriately included in the Local G bargaining unit. The Executive Director accepts the petition of Local GCO and modifies that bargaining unit to include that positions of work crew officer and transportation officer.

APPLICABLE STATUTES AND LEGAL STANDARDS

The employer has a bargaining relationship with both Local GCO and Local G under the Public Employees' Collective Bargaining Act (PECB), Chapter 41.56 RCW. The determination and modification of appropriate bargaining units is a function delegated to the Commission by the Legislature. RCW 41.56.060. The criteria for such determinations include the duties, skills, and working conditions of the employees; the history of collective bargaining;

the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. No one factor listed is controlling. The factors apply in varying degrees, and all four factors need not arise in each and every case. *Benton County*, Decision 7651 (PECB, 2002), *aff'd*, Decision 7651-A (PECB, 2003).

RCW 41.56.070 grants local government employees a voice and the right to vote to determine whether or not they wish to be represented for the purposes of collective bargaining. Rather than by individual actions, those rights are effected by majority vote of employees in an appropriate bargaining unit. In addition, once a bargaining unit has been certified, long-established Commission and judicial precedent limits the rights of labor and management in regard to unit modifications:

Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed. However, both accretions and exclusions can be accomplished through unit clarification in appropriate circumstances. If, as contended by the employer and found by the authorized agent, the agreed unit is found by intervening decisions of the Commission or the Courts to be inappropriate, it may be clarified at any time. This rule is consistent with NLRB policies on the subject.

City of Richland, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The limited circumstances where accretions are appropriate were further explained in *Kitsap Transit Authority*, Decision 3104 (PECB, 1989). The policies enunciated in *Richland*, *Kitsap Transit*, and numerous other Commission precedents were subsequently codified in the Commission's rules, as follows:

WAC 391-35-020 TIME FOR FILING PETITION -- LIMITATIONS ON RESULTS OF PROCEEDINGS.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; or

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

(5) Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:

(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.

(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.

(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

A party may file a unit clarification petition at any time, however, with regard to disputes concerning eligibility for interest arbitration as noted in WAC 391-35-020 (1) which reads:

WAC 391-35-020 TIME FOR FILING PETITION -- LIMITATIONS ON RESULTS OF PROCEEDINGS.

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes concerning positions which have been newly created by an employer.

(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.

(c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.

(d) *Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.*

(e) Disputes under WAC 391-35-320 concerning status as a confidential employee.

(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(emphasis added). As codified in RCW 41.56.430 - .905, the Legislature provided interest arbitration to uniformed personnel, which is defined by RCW 41.56.030(7)(b) to include the following:

[C]orrectional employees who are uniformed and non-uniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates

Those employees who occupy positions eligible for interest arbitration are excluded from bargaining units which include employees who are not eligible for interest arbitration. WAC 391-35-310.

Where circumstances permit under WAC 391-35-020, various cases guide the Commission in modifying a bargaining unit. In making unit determinations, the Commission seeks to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. *King County*, Decision 5910-A (PECB, 1997). The law does not require a determination of the most appropriate bargaining unit. It is only necessary that the petitioned-for unit be an appropriate unit. *City of Winslow*, Decision 3520-A (PECB, 1990).

ANALYSIS

When first formed at Geiger Corrections Center (Geiger), Local G represented a wall-to-wall bargaining unit comprised of correctional officers and support personnel such as nurses and maintenance workers. The positions of transportation officer and work crew officer were created circa 1991 and were soon accreted into Local G. At that time, transportation officers were commonly viewed as those employees who transported inmates at Geiger to various appointments, including, but not limited to, medical and court-related appearances. Work crew officers were commonly viewed as those employees who transported inmate work crews to various project sites and supervised inmate work at those sites. Today, the positions of work crew officer and transportation officer are commonly perceived to be one and the same.

In the late 1990's, correctional officers were deemed eligible for interest arbitration. Subsequently, the correctional officers at Geiger severed from Local G and formed their own bargaining unit, Local GCO. Work crew officers and transportation officers, however, remained in the existing unit represented by Local G.

Today, Local G may be described as a wall-to-wall unit comprised of institutional cooks, commissary supply persons, accounting technicians, clerical workers, administrative support employees, maintenance workers, property mail specialists, transportation officers, and work crew officers. The community of interest among these employees is that they provide support services for the employer. In contrast, Local GCO is comprised of uniformed personnel who are responsible for controlling inmates.

Local GCO now asserts that work crew officers and transportation officers should be accreted into its unit because they perform work

associated with correctional officers. Further, Local GCO asserts that the positions at issue fall under the statutory definition of "uniformed personnel" and therefore, should be placed in a uniformed personnel unit which is subject to interest arbitration.

Uniformed Personnel

As stated earlier, uniformed personnel include correctional officers who receive training for and who are responsible for controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates. Correctional officers must be security personnel employed by a jail in a county with a population of at least 70,000. In the present case, the positions at issue clearly satisfy these requirements. Work crew officers and transportation officers at Geiger are employed in a jail in Spokane County which, according to the United States Census Bureau, has a population approaching 441,000.

The record reflects that work crew officers and transportation officers at Geiger work as security personnel. Their functions include: preventing inmates from escaping, keeping inmates safe, and keeping the public safe. Officer Daniel Flint testified that transportation officers are charged with the direct supervision of inmates during transports. Such supervision, he added, could include the prevention of inmate escape through the use of verbal cues, notification of the police and Geiger for additional security, and the physical restraint of inmates when circumstances warrant such actions. In order to properly execute the functions of their jobs, Flint stated that the positions at issue must be able to handcuff inmates, perform pat downs, and carry out strip searches.

In addition, Captain John McGrath, who is second in command at Geiger and the direct supervisor of corrections officers and the

positions at issue, testified that work crew officers are in charge of the supervision, care, and custody of inmates during transports and at project sites. According to McGrath, these officers are responsible for physically restraining inmates, and they, along with transportation officers, must have training in handcuffs and defensive tactics in order to control jailed inmates. McGrath testified that all work crew officers and transportation officers will have additional training in pepper spray usage.

The record also reflects that work crew officers and transportation officers at Geiger are charged with keeping the inmates safe. Officer Clint Barnett testified that, as a work crew officer, his number one duty is to keep the public and inmates safe. Barnett explained that it is his responsibility to make sure the inmates do not mix in with the public at the various projects sites. Such interactions could harm the public as well as the inmates. Officer Ron Tomsha added that as a work crew officer, he could either physically restrain or use verbal cues with an unruly inmate in order to provide a safe, calm environment. Failing to provide a calm, stable environment could result in inmates harming one another.

The key responsibilities of work crew officers and transportation officers are to act as security personnel to maintain custody over jailed inmates and to keep the inmates safe from the public, each other, and themselves. When the above factors are considered in their totality, the work, the inherent duties, and the physical environment of work crew officers and transportation officers satisfy the statutory definition of "uniformed personnel" in RCW 41.56.030(7). The positions, therefore, qualify for interest arbitration. The Executive Director finds that the positions at issue must be severed from Local G, as it is not eligible for interest arbitration.

Local G, however, asserts that the work crew officers and the transportation officers should remain in its bargaining unit. Local G avers that the conditions under which work crew officers and transportation officers provide care, custody, and control of inmates is dramatically different from the circumstances in which corrections officers provide care, custody, and control of inmates. The primary difference is where that care, custody, and control is provided. Corrections officers perform these functions primarily at Geiger while work crew officers and transportation officers perform these functions primarily outside of the facility.

Although 41.56.30(7)(b) defines "uniformed personnel" as correctional employees "employed in a jail", such a narrow interpretation of the statute is not possible. Clearly, inmates are sometimes located outside the confines of a jail or correctional facility, yet they must still be maintained in custody and controlled. The corrections personnel at issue "maintain custody and control" of inmates, are employed by a jail but perform their duties outside the facility. This interpretation is in line with the intent of the Legislature when it afforded interest arbitration to certain security personnel whose jobs have a significant impact on the safety and welfare of the citizenry.

Local G also argues that the training that work crew officers and transportation officers undergo is different from the training of correctional officers. For instance, those employed as work crew officers and transportation officers are not required to attend a law enforcement academy. Moreover, some work crew officers and transportation officers have never received defensive training, as testified by Officer Daniel Flint. The Executive Director finds this argument lacking as the statute does not detail how much training a correctional officer must have, just as long as the

training provided is for the goal of controlling and maintaining the custody of inmates.

Accretion to Local GCO: Duties, Skills, and Working Conditions

The duties, skills, and working conditions of employees are normally considered in resolving unit determination issues, but these factors are particularly important in considering severance of a distinct group and accreting that group into another bargaining unit. Local GCO seeks the accretion of two positions: work crew officer and transportation officer, into a bargaining unit composed of correctional officers who are eligible for interest arbitration. As noted earlier, the positions at issue and correctional officers share similar duties. The record reflects that those shared duties include the following:

- the overall care, control, and custody of jailed inmates at Geiger.
- writing infractions if an inmate is unruly.
- assisting in strip searches of inmates.
- transporting inmates to various appointments.
- monitoring inmates.
- keeping inmates safe.
- supervising inmates at project work sites.
- searching for contraband.

Local G argues, however, that the work crew officers and transportation officers have distinct, specialized duties which are unique to their positions and are not performed by corrections officers. Thus, they should not be accreted into Local GCO. Those distinct duties identified by Local G include the following:

- work crew officers provide instruction to inmates on how to use tools.

- work crew officers have direct relations with the public outside the confines of Geiger.
- work crew officers are sometimes used as flaggers to direct traffic.

In contrast, corrections officers at Geiger are responsible for the hygiene of inmates, and they routinely search for contraband within the jail. Work crew officers and transportation officers do not perform these duties. Local G also notes that anyone at Geiger can write an infraction report when dealing with inmates, and the evidence showed that all employees at Geiger must follow the same general rules when interacting with inmates.

Local G is correct in noting the distinctions between the specific duties of the positions in question and corrections officers. Although these specific differences have some significance, they are not controlling. They must be weighed against the history of bargaining and the extent of organization. In addition, the distinctions noted by Local G do not obliterate the similarities shared among the groups, especially the functions related to the duty of controlling and maintaining custody of inmates.

The record supports that the skills and working conditions among transportation officers, work crew officers, and correctional officers are generally the same. The primary function of each position concerns interacting with inmates and providing security. As such, the three positions utilize verbal cues and various physical restraint techniques. In addition, the positions share the same chain of command, all reporting directly to Captain McGrath. The three positions also follow the same policies when interacting with inmates. According to Officer Flint, work crew officers and transportation officers often interact with corrections officers. Flint testified that corrections officers may

assist work crew officers in writing infraction reports. Flint also testified that corrections officers are responsible for preparing the inmates for work crew officers and transportation officers. This preparation could include finding the inmates, waking the inmates, and getting them out of bed. According to Flint, it is the corrections officers who receive inmates when the work crew officers and transportation officers return them to Geiger. At that point, corrections officers perform strip searches and pat downs. Flint added that work crew and transportation officers may provide assistance during these searches. Officer Clint Barnett testified that, as a work crew officer, he has observed and assisted in strip searches.

Local G believes that the differences in the working conditions and skills among the positions are significant and provide a foundation for keeping working crew officers and transportation officers within their present bargaining unit. For example, corrections officers have shift bidding and may work three different shifts while work crew officers and transportation officers generally work traditional eight-hour shifts. The positions at issue also deal with less threatening inmates according to Officer Flint, who testified that the inmate work crews primarily come out of Building A, which is less hazardous than other parts of the jail. Additionally, unlike corrections officers, work crew officers and transportation officers rarely use physical force and are not required to attend training at a law enforcement academy. The record also reflects that work crew officers do their paper work out of a county warehouse facility that is located two blocks from Geiger as opposed to the facility itself.

Once again, the specific differences cited by Local G have limited significance and those differences are not controlling. Differences among the positions with generally similar job responsibili-

ties do not negate the many significant similarities shared among the groups.

Accretion: Extent of the Organization and History of Bargaining

In general, the history of bargaining and the extent of organization may be characterized as the main impediments to a severance. Strict scrutiny is applied to severance petitions than may be called for in the initial organization of bargaining units. *Cowlitz County*, Decision 4960 (PECB, 1995). Concerns about "extent of organization" generally relate to the number and complexity of contracts to be negotiated and administered within an employer's workforce. The Commission has a long-standing policy of avoiding unnecessary fragmentation of the workplace into multiple bargaining units, and very small units are discouraged where the positions can properly be fit into broader bargaining units. Unit structures have also been found inappropriate when they bifurcate an employer's workforce in a manner that creates an ongoing potential for work jurisdiction conflicts. *King County*, Decision 5910-A (PECB, 1997). The evidence in the instant matter does not establish that severing the work crew officers and transportation officers from Local G and accreting them to Local GCO would result in excessive fragmentation, an unraveling of labor-management relations, or excessive costs for the employer.

Throughout their existence, the positions of work crew officer and transportation officer have been included in Local G. Thus, the history of bargaining might weigh against severing the current unit. The Executive Director, however, finds that the positions at issue are eligible for interest arbitration, and as such, the intent of the Legislature to separate interest-eligible groups from bargaining units comprised of positions not eligible for interest arbitration outweighs the history of bargaining.

Accretion: Desires of Employees

The "desires of employees" is only significant if two or more appropriate bargaining unit configurations are being proposed by competing labor organizations. Because the "desires" of employees concerning the configuration of bargaining units can be closely aligned with the employees' views on representation, and because employees have a statutory right to the protections of a secret ballot election or a confidential cross-check with regard to their choice of a bargaining representative, the Commission does not take testimony or subject employees to cross-examination on such matters. WAC 391-25-420. Thus, the Commission only assesses "desires of employees" by conducting unit determination elections under the laboratory conditions associated with secret ballot elections. *Pierce County*, Decision 7018-A (PECB, 2001).

SUMMARY

Review of the evidence supports a conclusion that work crew officers and transportation officers should be severed from Local G. The Executive Director finds that the positions at issue are eligible for interest arbitration and, as such, leaving them within Local G, which is not eligible for interest arbitration, would be inappropriate. The evidence also supports that Local GCO is an appropriate bargaining unit for the positions of work crew officers and transportation officers as all positions within the bargaining unit are eligible for interest arbitration. Moreover, the Executive Director finds that the groups have similar working conditions and duties.

FINDINGS OF FACTS

1. Spokane County is an employer within the meaning of Chapter 41.56 RCW. The employer operates a jail staffed with, among other employees, corrections officers, work crew officers and transportation officers.
2. The Washington State Council of County and City Employees, Local 492-G is a bargaining representative within the meaning of RCW 41.56.030(3), representing transportation officers, work crew officers, institutional cooks, commissary supply persons, accounting technicians, clerical workers, administrative support employees, maintenance workers, and property mail specialists at the Geiger Corrections Center, which is managed by the employer.
3. The Washington State Council of County and City Employees, Local 492-GCO is a bargaining representative within the meaning of RCW 41.56.030(3), representing correctional officers employed at the Geiger Corrections Center.
4. The Washington State Council of County and City Employees, Local 492-GCO filed a unit clarification petition seeking the severance of seven work crew officers and two transportation officers from Local 492-G. Local GCO proposed that the work crew officers and transportation officers be accreted to its bargaining unit.
5. RCW 41.56.030(7)(b) defines uniformed personnel as correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained

- for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates.
6. As codified in RCW 41.56.430 - .905, the Legislature provided interest arbitration to uniformed personnel.
 7. WAC 391-35-310 provides that employees who occupy positions eligible for interest arbitration are excluded from bargaining units which include employees who are not eligible for interest arbitration.
 8. Local 492-GCO is comprised of correctional officers, who meet the statutory definition of uniformed personnel. Accordingly, Local 492-GCO is eligible for interest arbitration.
 9. Local 492-G is comprised of support personnel such as clerical workers and accounting technicians. Local G is not eligible for interest arbitration.
 10. The work crew officers and transportation officers receive specialized training and are responsible for the custody, care, and supervision of inmates during transport and at project sites.
 11. The duties, skills, and working conditions of work crew officers and transportation officers are sufficiently similar to those of the corrections officers. All three positions act as security personnel to maintain custody over jailed inmates and to keep the inmates safe from the public, each other, and themselves.

12. The history of bargaining reflects relative stability in the labor relations between the employer and the two locals of the Washington State Council of County and City Employees. That stability will not be disrupted by accreting the work crew officers and transportation officers to the unit represented by Local 492-GCO.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and 391-35 WAC.
2. Work crew officers and transportation officers are uniformed personnel as defined by RCW 41.56.030(7)(b).
3. The Washington State Council of County and City Employees, Local 492-G is not an appropriate bargaining unit for interest arbitration-eligible work crew officers and transportation officers under RCW 41.56.060 and WAC 391-35-310.
4. The Washington State Council of County and City Employees, Local 492-GCO is an appropriate bargaining unit for interest arbitration-eligible work crew officers and transportation officers under RCW 41.56.060 and WAC 391-35-310.

ORDER

1. The petition of the Washington State Council of County and City Employees, Local 492-GCO for unit clarification is GRANTED.

2. The positions of work crew officer and transportation officer will be severed from Washington State Council of County and City Employees, Local 492-G, and accreted to the Washington State Council of County and City Employees, Local 492-GCO.

Issued at Olympia, Washington, this 3rd day of April, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, 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.