

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
PIERCE COUNTY JUVENILE COURT GUILD	)	CASE 19421-C-05-1234
	)	
For clarification of an existing	)	DECISION 9268 - PECB
bargaining unit of employees of:	)	
	)	ORDER CLARIFYING
PIERCE COUNTY	)	BARGAINING UNIT
_____	)	

Garrettson, Goldberg, Fenrich & Makler, by *Becky Gallagher*, Attorney at Law, for the union.

*Joe Carrillo*, Labor Relations Manager, for the employer.

On April 25, 2005, the Pierce County Juvenile Court Guild (union) filed a unit clarification petition with the Public Employment Relations Commission, asking that a "booking screener" classification be accreted (added) to an existing bargaining unit represented by the union. The parties filed stipulated facts on September 23, 2005, and waived their right to a hearing. The parties filed briefs on November 7, 2005.

ISSUE

The sole issue here is: "Does the booking screener classification have a community of interest with the existing bargaining unit, following a change of the employer's organizational structure?"

Based on the stipulated facts, the Executive Director rules that the booking screeners are properly accreted into the existing bargaining unit.

LEGAL PRINCIPLES

The determination and modification of appropriate bargaining units is a function delegated by the Legislature to the Commission. RCW 41.56.060. The Commission's goal in making unit determinations is:

[T]o group together employees who have a sufficient community of interest to indicate that they will be able to bargain collectively with their employer. The Commission is careful to avoid "stranding" employees and "fragmentation" of workforces.

*Benton County*, Decision 7651-A (PECB, 2003). The Commission need not determine the most appropriate bargaining unit configuration in any given case. It has approved employer-wide "wall-to-wall" bargaining units, "vertical" bargaining units of employees in one branch of the employer's organizational chart, and "horizontal" bargaining units of employees who have similar skills or duties, or who work in similar job classifications. *Washington State Patrol*, Decision 9212 (PSRA, 2006); *Educational Service District 113*, Decision 7361-A (PECB, 2002).

As a general rule, employees have a voice and vote on selection of their exclusive bargaining representative. RCW 41.56.040; RCW 41.56.060; RCW 41.56.070; *City of Auburn*, Decision 4880-A (PECB, 1995). The rules do, however, authorize accretions of employees into existing bargaining units without a vote, based on changed circumstances:

WAC 391-35-020 Time for filing petition--Limitations on results of proceedings.

. . .  
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;

Accreting employees into an existing bargaining unit is thus an exception to the general rule of employee free choice. *City of Auburn*, Decision 4880-A; *King County*, Decision 5820 (PECB, 1997). The moving party (in this case, the union) carries the burden of proving the positions should be accreted into the existing bargaining unit. *Kitsap Transit Authority*, Decision 3104 (PECB, 1989).

The submission of a stipulation implies that no other relevant facts exist. *King County*, Decision 4299-A (PECB, 1993).

#### ANALYSIS

The stipulation of facts filed by the parties in this case includes (or implies) the following relevant facts:

- The employer has historically divided its organization into separate "probation" and "detention" branches.
- The probation manager supervises all of the employees in the probation branch, where none of the employees have been represented by a union;
- The detention manager supervises all of the employees in the detention branch, where virtually all of the employees are represented by the union;
- The employer changed its organizational structure in January 2005, moving the booking screener job classification at issue in this case from the probation branch to the detention branch of its organization;

- The booking screeners process juvenile offenders who are brought into the Pierce County Juvenile Court operation, including fingerprinting, taking photographs, making contact with parents, obtaining medical information, logging-in property, and making data entries on the employer's computer system;
- All of the employees in the detention branch work in close proximity to each other, in the same building; and
- Employees represented by the union in the "juvenile detention officer lead" and "juvenile detention supervisor" classifications are trained to perform the duties of booking screeners during periods when booking screeners are not scheduled to work (for example, on the "graveyard" shift), or when the booking screeners need assistance with a work overload.

The union and employer had a discussion, on or about February 16, 2005, concerning adding the booking screeners to the bargaining unit represented by the union. The employer rejected the proposed accretion on or about March 15, 2005. The union filed its unit clarification petition on April 25, 2005.

The Union's Petition was Timely

WAC 391-35-020(4)(a) authorizes accretions "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." The change of circumstances that is of interest in this case occurred early in 2005, and the union raised the matter with the employer within six weeks thereafter. The employer took approximately one month to formally reject the proposed accretion, and the union filed this case less than six weeks thereafter. All of that occurred in less than six months, which is the period of time that would have been available for the union to file an unfair

labor practice complaint about the situation.<sup>1</sup> The Executive Director thus concludes that the union acted within the "reasonable time period" limitation contained in the rule.

This Record Establishes a Change of Circumstances

Even if the employer's decision to move the booking screeners from its probation branch to its detention branch did not give rise to a duty to bargain, that did not preclude the union from asserting a work jurisdiction claim as to the booking screeners once they arrived in the detention services branch. In *City of Spokane*, Decision 6232 (PECB, 1998), a union representing nonsupervisory employees was entitled to protect work that the employer had transferred from a supervisor to a bargaining unit employee, since the work itself was not of a supervisory nature. Here, too, the work of the booking screeners does not involve the supervision of any other employees, so the union is entitled to claim the work even though leadworkers and/or supervisors have historically provided the backup to the booking screeners.

A Community of Interests Now Exists

The booking screeners and the other employees represented by the union work together as follows:

- The booking screeners now work in the same branch of the employer's table of organization with, and under common

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<sup>1</sup> An unfair labor practice complaint would have been more likely if the change of circumstances had moved in the opposite direction. Under *South Kitsap School District*, Decision 472 (PECB, 1978) and numerous subsequent decisions concerning "skimming" of bargaining unit work, the employer would have had a duty to give notice and provide opportunity for bargaining before transferring work from the union-represented detention services branch of its organization to the unrepresented probation services branch of its organization.

supervision with, employees who are represented by the union. As in *Cowlitz County*, Decision 1652-A (PECB, 1984), the employer's reorganization action itself provides basis to rule that the "vertical" bargaining unit existing within the detention services branch should be expanded to include the additional positions that have recently been moved into that branch of the employer's table of organization.

- Isolating the booking screeners from the existing bargaining unit would create an ongoing and/or increasing potential for work jurisdiction disputes, inasmuch as there is no basis to believe the historical practice of having detention leads and supervisors perform some booking work will cease now that all of the employees involved are under common supervision.<sup>2</sup>
- Isolating the five booking screeners from the existing bargaining unit would create a potential for them to organize a separate bargaining unit, which would constitute undue fragmentation of the employer's workforce and would exacerbate the potential for work jurisdiction problems.

Following through with the logical implications of the "vertical" unit structure thus reduces the potential for future problems.

The Desires of Employees do not Prevail Over Other Criteria

The employer asserts that only two of the five booking screeners have indicated a desire to become part of the existing bargaining unit, but both the argument and the stipulation on which it is based are contrary to long-standing Commission policies:

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<sup>2</sup> Prior to the reorganization, shifts of work between the booking screeners and bargaining unit employees would impliedly have required the approval of both supervisors. Shifts of work assignments will be easier since the reorganization, because the detention manager supervises both the booking screeners and the detention officers.

- The "desires of employees" component of the statutory unit determination criteria does not prevail over the other components of the statutory criteria. "None of the four factors listed in the statute is overriding or controlling." *Concrete School District*, Decision 8131 (PECB, 2003), *aff'd*, 8131-A (PECB, 2004).
- Because requiring employees to testify under oath about their desires concern unit questions that are closely related to their right to vote by secret ballot on their representation, WAC 391-25-420 states that "Employees shall not be subjected to examination or cross-examination concerning their views on the configuration of bargaining units." The parties' purported stipulation on the desires of employees is rejected, as the Hearing Officer would have been required to exclude any testimony on that issue.
- The Commission only assesses the "desires of employees" by conducting a unit determination election under WAC 391-25-420, and then only when either of two or more bargaining unit configurations proposed by petitioning unions could be appropriate. No such facts exist in this case, which involves only one union.

Moreover, as in *Clark County*, Decision 290-A (PECB, 1977), there would be no occasion to consider a unit determination election in this case, where the fragmented/stranded result that the employer supports would not be an "appropriate" unit configuration.

#### CONCLUSION

Based on the stipulated facts submitted by the parties, the union has sustained its burden of proving that the booking screeners are properly accreted into the existing bargaining unit of employees in

the detention services branch of the employer's table of organization.

FINDINGS OF FACT

1. Pierce County is a public employer within the meaning of RCW 41.56.030(1) which, among other services, cooperates in providing juvenile probation and detention services through the Pierce County Juvenile Department operation.
2. The Pierce County Juvenile Court Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees working in the Pierce County Juvenile Department operation.
3. The Pierce County Juvenile Department operation has historically been divided into "probation" and "detention" branches, with separate supervisors heading the separate branches of the employer's organization. While the employees in the "probation" branch have not been represented for the purposes of collective bargaining, the union has historically represented virtually all of the employees in the "detention" branch.
4. The employees in the detention branch work in the same building, and in close proximity to each other.
5. On or about January 1, 2005, the Pierce County Juvenile Department changed its organizational structure by moving the "booking screener" job classification from the probation branch of its table of organization to the detention branch of its table of organization. Based on that reorganization, the



booking screeners and the employees historically included in the bargaining unit now have a common supervisor.

6. Following the change of circumstances described in paragraph 5 of these findings of fact, the union both made a timely request for inclusion of the booking screeners in the existing bargaining unit, and initiated this proceeding in a timely manner after the employer rejected its request.
7. Employees in juvenile detention officer lead and juvenile detention supervisor job classifications have training and ongoing responsibility to perform the duties of booking screeners when the booking screeners are not scheduled to work or need assistance with work overloads, so that encompassing all such employees in the same bargaining unit configuration reduce the potential for work jurisdiction disputes.

#### 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. Following the reorganization described in paragraph 5 of the foregoing findings of fact, the booking screener job classification could not constitute a separate appropriate bargaining unit under RCW 41.56.060.
3. The booking screener job classification is properly accreted, under WAC 391-35-020(4)(a) and RCW 41.56.060, into the existing bargaining unit that includes the employees in the detention services branch of the employer's table of organization.

ORDER CLARIFYING BARGAINING UNIT

The employees in the booking screener job classification are accreted into the existing bargaining unit of employees who work in the detention services branch of the Pierce County Juvenile Department.

ISSUED at Olympia, Washington, on the 28<sup>th</sup> day of March, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, 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.