

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	CASE 21533-C-08-01329
)	DECISION 10161 - PECB
AMALGAMATED TRANSIT UNION, LOCAL 758))	
)	CASE 21789-C-08-01342
For Clarification of an Existing)	DECISION 10162 - PECB
Bargaining Unit of Employees of:)	
)	
PIERCE TRANSIT)	ORDER OF DISMISSAL
_____)	

Schroeter Goldmark Bender, by *Martin S. Garfinkel*,
Attorney at Law, for the union.

Summit Law Group, by *Bruce L. Schroeder and Elizabeth R.
Kennar*, Attorneys at Law, for the employer.

On June 20, 2008, Amalgamated Transit Union, Local 758 (union) filed a unit clarification petition with the Public Employment Relations Commission under Chapter 391-35 WAC. The petition involves a new classification, Transit Security Officer, created by Pierce Transit (employer). The employer proposes to exclude 24 positions in the new classification, while the union believes the positions should be included in the existing bargaining unit, a wall-to-wall unit of transit operators, dispatchers, clerical support, maintenance, custodial and warehouse employees.¹ Hearing Officer Claire Nickleberry was assigned to the case.

¹ Appendix A of the collective bargaining agreement lists the classifications currently included in the bargaining unit. Two classifications on that list include the term "supervisor" in their titles. WAC 391-35-340 provides that supervisors "who exercise authority on behalf of the employer over subordinate employees" are appropriately excluded from bargaining units that contain their rank-and-file subordinates. However, they may be represented for purposes of collective bargaining in units with other supervisors. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

On March 28, 2008, the Hearing Officer held a pre-hearing conference call with the parties. During the call it was revealed that positions in the new classification had not been filled, and the duties these positions will actually perform had not been established. These facts raised the question as to whether the petition was filed prematurely.

On June 6, 2008, the Hearing Officer issued a show cause directive to the parties requesting information as to why this case should not be dismissed since:

PERC case law precedent requires that inclusion or exclusion of positions in a bargaining unit be determined by evidence of actual duties performed by the employees involved, rather than speculation about what the duties might be in the future. Under that precedent, the filing of this petition is premature and should be dismissed.

On June 23, 2008, the employer submitted a response indicating that the hearing should be held because the employer currently contracts this work through a third-party contractor and the duties and responsibilities are known.² The employer further asserted that these employees would not share a community of interest with other employees in the existing bargaining unit. The employer also expressed concern that delaying the hearing would pose an undue hardship on the employer because it would delay recruitment and hiring of these positions.

This Commission has long held that when determining bargaining units or unit placement, it will not consider speculation, but only

² The employer filed an amended petition with its response. Because the original petition (Case 21533-C-08-1329) was filed by the union, it cannot be amended by the employer. The employer's petition was docketed as a new case (Case 21789-C-08-01342).

duties that are actually performed. *State - Natural Resources*, Decision 8458-B (PSRA, 2005); *City of Redmond*, Decision 7814-B (PECB, 2004). The fact that contracted employees may do certain work for the employer is not dispositive. In this case, the employees are merely prospective employees. They have not yet been hired. Thus, they cannot be organized or accreted, nor can their inclusion in or exclusion from an existing bargaining unit be determined.

Accordingly, the instant petitions are both dismissed. Pursuant to WAC 391-35-020, a unit clarification may be entertained within a reasonable time after new employees are hired by the employer. In the alternative, any labor organization may wish to organize newly hired employees under the provisions set forth in WAC 391-25.

Dated at Olympia, Washington, this 14th day of August, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-590.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

Majel C. Boudia
BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 21789-C-08-01342 FILED: 06/23/2008 FILED BY: EMPLOYER
DISPUTE: COMMUNITY INT
BAR UNIT: SECURITY
DETAILS: -
COMMENTS:

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