

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
TEAMSTERS UNION, LOCAL 599)	CASE 12321-C-96-771
For clarification of an existing bargaining unit of employees of:)	DECISION 6051-A - PECB
PIERCE COUNTY)	ORDER CLARIFYING BARGAINING UNIT
_____)	

Schwerin, Campbell and Barnard, by Michelle Mentzer, Attorney at Law, appeared on behalf of the union.

John W. Ladenburg, Prosecuting Attorney, by Denise Greer, Deputy Prosecuting Attorney, appeared on behalf of the employer.

This case comes before the Commission on a petition for review filed by Teamsters Union, Local 599, seeking to overturn an order clarifying bargaining unit issued by Executive Director Marvin L. Schurke.¹

BACKGROUND

Pierce County (employer) and Teamsters Union, Local 599 (union) have had a long-term bargaining relationship. The parties' collective bargaining agreement for the period 1994-1996 covered approximately 150 employees in the following operations: area agency on aging, assessor/treasurer, clerk, medical examiner/coroner, parks and recreation, veterans' aid bureau,

¹ Pierce County, Decision 6051 (PECB, 1997).

building maintenance, and building mechanics. Pertinent to this case, the contract covered the classifications of Office Assistant I, Office Assistant II, and Grant Accountant I, in the Area Agency on Aging (also known as the Department of Aging and Long Term Care). Prior to April of 1996, the union represented five Office Assistant 2's and one Grant Accountant in the Department of Aging and Long Term Care.

The parties' collective bargaining agreement covered no employees in the Department of Social Services. Pertinent to this case, prior to early 1996, there were six unrepresented Office Assistant 2's and one Grant Accountant in the Department of Social Services.

On February 9, 1996, the union filed a petition for clarification of existing bargaining unit with the Public Employment Relations Commission. The union stated that the social services department had merged with the aging and long term care department and the name of the department had been changed to human services. The union sought to have employees in the positions of Office Assistant I, Office Assistant II, and Grant Accountant I that had previously been within the social service function accreted to the bargaining unit of employees it represents. Testimony later revealed at the hearing that the petition was filed in anticipation of the merger, because "everyone was preparing for the merger".²

In April of 1996, the employer merged the two departments of Aging and Long Term Care and Social Services. Immediately after the merger, about seven new Office Assistant 1 positions were created. Six of those were within the Department of Aging and Long Term Care, and one within the Department of Social Services. Those within the Department of Aging were placed in the bargaining unit.

² Transcript, p. 21.

Thus, immediately after the merger, the positions numbered as follows:

Represented employees in the Aging and Long Term Care function

6 Office Assistant 1's
5 Office Assistant 2's
1 Grant Accountant

Unrepresented employees in the Social Services function

1 Office Assistant 1's
6 Office Assistant 2's
1 Grant Accountant

Examiner Vincent M. Helm held a hearing on July 10, 1997, and, at the time of the hearing, the pertinent positions numbered as follows:

Represented employees in the Aging and Long Term Care function

1 Office Assistant 1
9 Office Assistant 2's
1 Grant Accountant

Unrepresented employees in the Social Services function

7 Office Assistant 2's
1 Grant Accountant

The total numbers of represented and unrepresented positions are shown below:

	<u>In Bargaining</u>	<u>Not in Unit</u>
	<u>Unit</u>	
Before Merger	6	7
Immediately After Merger	12	8
At time of hearing	11*	8

* One Office Assistant II had promoted to Office Assistant III by the hearing.

Executive Director Marvin L. Schurke issued an order denying the requested accretion on November 4, 1997. The Executive Director found that the employees represented by the union did not constitute a single appropriate bargaining unit under RCW 41.56.060, and that accretion of the employees at issue would call into question the union's majority status in the new Human Services Department, and so would be inappropriate. The Executive Director also concluded that the bargaining unit of employees historically represented by the union in the Department of Aging became inappropriate under RCW 41.56.060, as a result of the merger that created the Department of Human Services. The union petitioned for review, thus bringing the case before the Commission.

POSITIONS OF THE PARTIES

The union argues that bargaining unit employees constitute a majority of the new department's support staff, and that a community of interest exists among support staff of the Department of Human Services. The union asserts the non-represented support staff should be accreted into the larger bargaining unit, or alternatively, into a bargaining unit consisting of the union-represented support staff of the Department of Human Services. Contending that the Public Employment Relations Commission endorsed the bargaining unit as appropriate in 1992 when it removed an employee determined to be a supervisor, the union asserts that the 1992 decision should be considered res judicata in the current case. The union contends the Executive Director's decision fragments a single, historical bargaining unit into nine separate units, going against the firmly established policy against unnecessary fragmentation, and that it strands some employees in units too small to implement their rights effectively. The union

requests the Commission to reverse the Executive Director's order and grant the accretion.

The employer did not file a brief in response to the petition for review, but in its post-hearing brief, it contended that unit clarification is inappropriate because a question concerning representation exists based on preexisting positions. It based its argument on the fact that the majority of the positions existed at the time the union was recognized as the exclusive bargaining representative for the aging department classifications, and on the lack of bargaining history involving the positions in the social services department.

DISCUSSION

The Legal Standard

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.

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 by **bold** supplied.]

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**.

[Emphasis by **bold** supplied.]

Unit determinations are made on a case-by-case basis, but the Commission has held to a longstanding policy of avoiding unnecessary fragmentation of the workplace into multiple bargaining units. Ben Franklin Transit, Decision 2357-A (PECB, 1986); Municipality of Metropolitan Seattle (METRO), Decision 2358-A (PECB, 1986). In making unit determinations, the Commission considers the degree of integration of managerial functions in an organization, similar-

ties of pay and benefits, similarities of duties, and the degree of interchange of employee job functions.

Agreements of parties do not bind the Commission on matters of unit determination. City of Richland, Decision 279-A (PECB, 1978), affirmed, 29 Wn.App. 599 (Division III, 1981), review denied, 96 Wn.2d 1004 (1981); King County, Decision 4569-A (PECB, 1994); Pasco School District, Decision 5016-A (PECB, 1995). The Commission has sole authority under RCW 41.56.060 to determine appropriate bargaining units.

Circumstances for Unit Clarification -

A bargaining unit may be clarified at any time, but the Commission has long held that the status of job classifications historically included in or excluded from a bargaining unit will only be changed on the basis of changed circumstances. Quillayute Valley School District, Decision 2809-A (PECB, 1988); Toppenish School District, Decision 1143-A (PECB, 1981); City of Richland, Decision 279-A (PECB, 1978), affirmed, 29 Wn.App. 599 (Division III, 1981), review denied, 96 Wn.2d 1004 (1981).

Accretion Criteria -

Accretion is a form of modification of an existing bargaining unit, and the unit clarification procedures of Chapter 391-35 WAC are available to accomplish accretions in appropriate circumstances, where no question concerning representation exists. WAC 391-35-010.

Employees ordinarily are permitted a voice in the selection of an exclusive bargaining representative. RCW 41.56.040 and 41.56.060. Accretions are an exception to the statutory general rule of employee free choice, and 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). The party proposing an accretion 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).

Appropriateness of Bargaining Unit

The Standard -

An appropriate bargaining unit is a necessary precondition to an accretion. The statute does not confine the Commission to deciding "the most appropriate unit" in each case. It is only necessary that the bargaining unit be an appropriate one. See, South Central School District, Decision 5670-A (PECB, 1997), and City of Centralia, Decision 3495-A and 3496-A (PECB, 1990).

Since the structure of an organization can significantly influence the inter-relationships of employees and the resulting interests which those employees may or may not have in common, the employer's good faith organizational structure is a consideration, under the statutory "working conditions" criterion. Ben Franklin Transit, Decision 2357-A (PECB, 1986).

The Res Judicata Issue -

The union argues that Pierce County, Decision 3992 (PECB, 1992), where an Examiner removed an employee as supervisor, and thus endorsed the bargaining unit as appropriate, is res judicata as to the current case.

In order for res judicata to apply, there must be an identity of (1) subject matter, (2) cause of action, (3) persons and parties, and (4) quality of persons for or against whom the claim is made. Rains v. State, 100 Wn.2d 660, 663 (1983). See, also, Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759 (1995).

We recently reviewed the standards to be used under res judicata principles. See, City of Seattle, Decision 5852-C (PECB, 1998), citing Stevedoring Services v. Eggert, 129 Wn.2d 17 (1996), which stated as follows:

Res judicata applies in the administrative setting only where the administrative agency 'resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.' ... In Washington, **other considerations are** also relevant when the prior adjudication took place in an administrative setting including **'(1) whether the agency acting within its competence made a factual decision;** (2) agency and court procedural differences; and (3) policy considerations. ...

[Emphasis by **bold** supplied.]

In Stevedoring Services, the Supreme Court considered the fact that the petitioner in that case had no opportunity to litigate its claims.

The Commission has also applied res judicata principles, and has considered orders final in the absence of appeal. See, Clark County Public Utility District 1, Decision 3815-A (PECB, 1992), and cases cited therein. The Commission has applied res judicata principles in the past to bargaining unit determinations where a party does not avail itself of procedures to appeal a decision. See, e.g., Shelton School District, Decision 2084 (PECB, 1984)

(party did not file objections following direction of election, so decision stands as res judicata); Mount Vernon School District, Decision 1629 (PECB, 1983) (Res judicata effect of a certification continues until a change of circumstances); Town of Granger, Decision 2634 (1987) (certification became final and res judicata when no petition for review was filed); City of Mercer Island, Decision 1026-A (PECB, 1981) ("confidential" status decision not appealed is res judicata). A certification is usually a final decision. Lewis County v. PERC, 31 Wn.App. 853 (Division II, 1982), review denied, 97 Wn.2d 1034 (1982).

While no certification by the Commission can be determined to have taken place in this case, at first blush the decision ruling on the supervisory issue may appear to be a sufficient decision on an "appropriate bargaining unit" to be res judicata. We are mindful that units are only to be clarified under RCW 41.56.060 if they are "appropriate" units. We are reluctant to apply res judicata, however, as the 1992 decision only applied to a supervisory issue. The decision was not based on a thorough and detailed consideration of the makeup of the entire bargaining unit. Identity of cause of action and of subject matter is lacking, and the issues have not been litigated on their merits. We decline to apply res judicata to the bargaining unit in Pierce County, supra, because whether an employee should be excluded from the bargaining unit as a supervisor was the only issue litigated by the parties.

In addition, the bargaining unit, without consideration of the added positions from social services, is not being questioned by either party or any other union.

Community of Interest Principles

The Standards -

The Commission's accretion policy has been explained as follows:

Where new positions or classifications are created after certification of a bargaining unit, they may be accreted to an existing bargaining unit in unit clarification proceedings, based on community of interest principles ... (City of Redmond, Decision 2324 (PECB, 1985). See also Bremerton-Kitsap County Health Department, Decision 2984 (PECB, 1988), and Ben Franklin Transit, Decision 5249 (PECB, 1995)).

The presence of an appropriate bargaining unit is a necessary prerequisite to an accretion, so any accretion inquiry must begin with a review of community of interest principles.

The Legislature did not prioritize the criteria to be used to consider as a part of community of interest principles. While duties, skills, and working conditions generally operate in all unit determination cases, history of bargaining need only be considered where there is a history of representation. The extent of organization may or may not be an issue. The desires of employees are a factor to be considered by the Commission, but are not the primary or an otherwise dominant factor. Bremerton School District, Decision 527 (PECB, 1978). See, also, Pasco School District, Decision 5016-A (PECB, 1995). Each case is different. All the issues do not arise in every case, and where they do exist, one statutory factor may become more important than another.

Duties, Skills, and Working Conditions -

The bargaining unit represented by Teamsters, Local 599 is composed of a mixture of office/clerical/accounting, data processing,

appraisers, cartographers, other technical positions, custodians, and mechanics. The record indicates that the duties, skills, and working conditions of the unrepresented employees performing the social service function closely interrelate with the work of bargaining unit employees. The same job titles and the same job class descriptions are used for positions both traditionally represented, and traditionally non-represented. Office assistants, whether represented or non-represented, perform a variety of office support work, including word processing, maintaining computerized and paper files, and processing documents. They may also do database management for specialized accounting, assist supervisors, schedule training classes, take minutes at board meetings, and perform desk-top publishing tasks. All the Grant Accountant 1's perform tasks associated with maintaining and operating an accounting system, generally doing billings and backing up Grant Accountant 2's, and only the programs for which they perform the tasks vary. Personnel interact and interrelate with both bargaining unit and non-bargaining unit employees in work matters, even substituting for each other when necessary. Many of the clientele use both the aging and the social service functions.

A payroll employee does payroll for both bargaining unit and non-bargaining unit employees. A purchasing employee does purchasing for both bargaining unit and non-bargaining unit employees. Two employees handle the main reception functions dealing with the telephone, visitors, and mail, for the Human Services Department. The main numbers for both functions of aging and long-term care and social services have been combined, with all calls, mail, and visitors handled at one place.

The career path for Office Assistants serving in both the aging and the social service functions is the same. Incumbents are hired at

the Office Assistant I level, and after passing a probationary period of one year, are promoted to the Office Assistant II level. Pay and benefits are the same for those in the bargaining unit and those not in the bargaining unit. While incumbents in both represented and unrepresented positions possess a variety of education and skills, there is no difference in the requirements of the positions.

Both bargaining unit and non-bargaining unit individuals attend and participate in the same periodic support staff meetings, quarterly all-staff meetings, and retreats. Both have access to the same training. Both are affected equally by management direction and programs aimed at providing better service to clients, removing duplication, and streamlining tasks. Social activities of represented and non-represented employees are integrated. Except for two employees, all are located at the same work facility.

In conclusion, the duties, skills, and working conditions of the unrepresented positions have a sufficient degree of commonality to bargaining unit positions to support their inclusion in the unit.

History of Bargaining -

Prior to the onset of this controversy, employees in similar classifications in the social service entity were not represented for purposes of collective bargaining, but that fact is not determinative. In a case where there is a significant change of circumstances, the history of bargaining may be given less weight. The history deserves to be considered, but it is not controlling. See, Pasco School District, supra.

The parties have had a long-standing relationship with the bargaining unit in question, and the union has represented

employees from the Aging and Long-Term Care function for years. The fact the bargaining unit has existed for so long favors avoiding the disruption that would be caused by now finding it an inappropriate unit. It may not be the "most appropriate unit", but it is "an appropriate unit". Decisions have required that fringe groups be incorporated into the bargaining units to which they logically relate,³ and the Commission has rejected units as inappropriate that organize only a part of a department.⁴ In addition, the Commission has clarified units that contain a variety of classifications.⁵ Commission precedent thus favors accreting the positions from the social service function into the bargaining unit.⁶

The Executive Director based his decision in part on the fact that other clerical units within the employer's workforce are represented by other unions. Just because clerical employees are in other bargaining units does not make the unit at issue in this proceeding inappropriate.

³ See, City of Seattle, Decision 781 (PECB, 1979).

⁴ See, City of Centralia, Decision 2940 (PECB, 1988).

⁵ See, e.g., City of Wenatchee, Decision 6099-A (PECB, 1997).

⁶ We disagree with the Executive Director's approach in comparing the number of unionized employees to the number of disputed unrepresented employees and his finding that the "union's weight of numbers is largely based on widely-dissimilar employees". The number of disputed unrepresented employees aligns closely with the number of unionized employees in the bargaining unit with whom the functions are integrated and with which they have the most similarity.

Extent of Organization -

Concerns about fragmentation generally relate to the number and complexity of contracts to be negotiated and administered within an employer's workforce. Very small units are discouraged, where the positions can fit appropriately into a broader bargaining unit. City of Auburn, Decision 4880-A (PECB, 1995).

The accretion of the Office Assistant positions and the Grant Accountant positions at issue in this proceeding will not significantly alter the overall extent of organization in the employer's workforce, and will prevent stranding any employee or group of employees outside of the existing bargaining unit.

The positions at issue here are so intertwined with positions already in the bargaining unit that to isolate them as a separate bargaining unit would fragment the workplace and be unnecessary. No other union has come forward to make a claim for them, and the only other units that might be available may not be logical. To refrain from accreting the positions at this time would deprive them of their statutory rights.

Desire of Employees -

No "desire of employees" issue is presented in this proceeding.⁷ We have determined an appropriate bargaining unit by using the other statutory criteria. See, Pasco School District, Decision 5016-A (PECB, 1995); and Puyallup School District, Decision 5053-A (PECB, 1995).

⁷ RCW 41.56.060 lists "desire of employees" as a fourth factor to be considered in determining appropriate bargaining units, and that factor is considered in representation cases under Chapter 391-25 WAC, where unit determination elections can be conducted. Clark County, Decision 290-A (PECB, 1977).

Conclusions on Community of Interest -

The April 1996 merger changed the organizational framework, blurring the lines between Social Services and Aging and Long Term Care, adding positions and employees, and formalizing a new interrelationship between the affected positions. This change of circumstances, which resulted in the employees in Social Services having a community of interest with other employees in the bargaining unit, supports accretion of the unrepresented employees at issue in this case.

The Question Concerning Representation Issue

The employer argued in its post-hearing brief that a unit clarification proceeding is not appropriate because a question concerning representation exists. The Executive Director found that accretion would call into question the union's majority status, but he based that finding on a comparison between the number of employees within Aging and Long Term Care, and the number of positions at issue within Social Services at the time the unit clarification petition was filed. We are looking at the circumstances that existed at the time immediately following the merger, and comparing the number of employees in the entire bargaining unit (approximately 150), and the number of positions at issue within Social Services(8).⁸ Even if we were to compare the

⁸ The Commission has ordinarily looked to the situation existing at the time a case is filed, as the parties' bargaining rights and obligations flow from the status existing at that time. See, e.g., City of Auburn, Decision 4880-A (PECB, 1995), and Puyallup School District, Decision 5053-A (PECB, 1995). In City of Auburn, the Commission did not consider a reorganization and a move of the disputed positions to a different work unit and supervisor that took place nearly a year after the union initiated the proceeding. We are making an exception in this case, however, because of the specific

8 affected positions within Social Services to the 12 in Aging and Long Term Care (instead of the entire bargaining unit) immediately after the merger, we would conclude that the merger changed the circumstances so that bargaining unit employees constituted a majority. Viewed in this light, the number of positions to be accreted to the bargaining unit does not call into question the union's majority status, so that no question concerning representation exists.

NOW, THEREFORE, it is

ORDERED

The order clarifying bargaining unit issued in the above-captioned matter by Executive Director Marvin L. Schurke on November 4, 1997, is REVERSED, and the Commission makes the following:

AMENDED FINDINGS OF FACT

1. Pierce County is a "public employer" within the meaning of RCW 41.56.030(1).
2. Teamsters Union, Local 599, a "bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees working in various departments or divisions of Pierce County.

circumstances: (1) The merger took place within a short time (three months) of the filing of the petition. (2) The record shows the petition was filed in anticipation of the merger; (3) The employer did not contest the unit clarification on the basis of untimeliness, and (4) If we did not consider the merger in this case, we would simply be forcing the union to file a new petition, and to repeat the process.

3. The employer and union were parties to a collective bargaining agreement effective from 1994 through 1996, covering all of the Pierce County employees represented by Local 599. The history by which all of those employees came to be covered under one contract is not precisely established in this record, but reference to the Commission's decisions and docket records discloses that at least bargaining units in the office of the Pierce County Treasurer and in a Building Maintenance Division were the subject of separate representation proceedings before the Commission in 1980.
4. The collective bargaining relationship between the employer and Local 599 historically included employees in the Office Assistant 1, Office Assistant 2, and Grants Accountant classifications in the Department of Aging and Long Term Care operated by Pierce County.
5. In April of 1996, Pierce County merged its former Social Services entity with its Aging and Long Term Care to form a new Human Services Department, resulting in a change of circumstances. Employees from both of the former entities were transferred to the new department. Among the office-clerical-accounting positions in the new department, a majority are traced to the former Aging and Long Term Care entity.
6. Since the merger described in paragraph 6 of these Findings of Fact, the employer has continued to recognize Local 599 as exclusive bargaining representative of employees transferred from Aging and Long Term Care, but has declined to recognize the union as exclusive bargaining representative of employees transferred from the Social Services entity.

7. All of the office-clerical-accounting employees of the new Department of Human Services have similar duties, similar skills, common supervision, similar wages and benefits, similar work locations, and interchange in daily operations, so that a community of interest exists among all the office-clerical-accounting employees.
8. Exclusion of the office-clerical-accounting positions previously within the Social Services entity from the existing bargaining unit would strand them without any appropriate unit in which to exercise their collective bargaining rights in a meaningful manner. Creation of an additional unit limited to the positions would cause inappropriate and unnecessary proliferation of bargaining units. Accretion of the previously unrepresented employees in the Social Service entity to the existing bargaining unit is appropriate.

AMENDED 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 employees represented by Teamsters Union, Local 599 under the collective bargaining agreement between that union and Pierce County constitute an appropriate bargaining unit under RCW 41.56.060.
3. The office-clerical-accounting positions previously in the Social Services entity, but now merged with the Aging and Long Term Care entity into the new Human Services Department have duties, skills, and working conditions similar to, and a community of interest with, employees in the bargaining unit

represented by Teamsters Union, Local 599, so that their inclusion in that bargaining unit is appropriate under RCW 41.56.060.

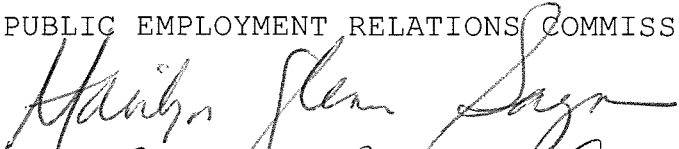
4. The office-clerical-accounting employees of the previous Social Services Department share a community of interest as defined in RCW 41.56.060 with the remaining office-clerical-accounting employees of the previous Aging and Long Term Care Department, all of whom are now in the new Department of Human Services as a result of a merger.

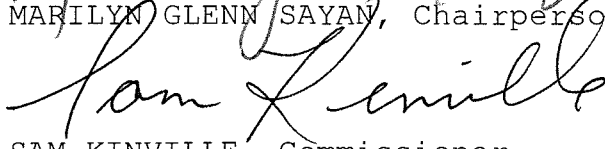
AMENDED ORDER

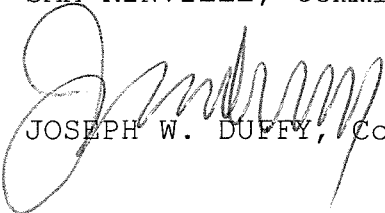
The classifications of Office Assistant 1, Office Assistant 2, and Grants Accountant classifications in the Pierce County Department of Human Services are included in the existing bargaining unit represented by Teamsters Union, Local 599.

Issued at Olympia, Washington, on the 19th day of August, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner


JOSEPH W. DUFFY, Commissioner