

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of	)	
GENERAL TEAMSTERS' LOCAL UNION	)	Case No. 1929-E-79-343
NO. 231	)	
Involving certain employees of	)	Decision No. 792-PECB
CITY OF BELLINGHAM	)	
_____	)	ORDER OF DISMISSAL

Vance, Davies, Roberts, Reid & Anderson, by Russell J. Reid, attorney at law, appeared on behalf of the petitioner.

Patrick Brock, City Attorney, appeared on behalf of the employer.

Pamela G. Bradburn, General Counsel, appeared on behalf of intervenor Washington State Council of County and City Employees.

On January 15, 1979, Teamsters Local No. 231 filed with the Public Employment Relations Commission a petition for investigation of a question concerning representation of employees of the Bellingham police department other than uniformed personnel,<sup>1/</sup> supervisors and confidential employees. Although the petition suggested the absence of an incumbent bargaining representative, initial administrative processing of the case disclosed the status of the intervenor (WSCCCE) as the incumbent bargaining representative of the employees involved. The WSCCCE made a timely motion for intervention. A hearing was held in the matter on April 4, 1979 before Jack T. Cowan and Alan R. Krebs, Hearing Officers.

BACKGROUND

WSCCCE Local 114 was created during or about 1935, and has represented non-uniformed employees of the City of Bellingham since that time. On August 12, 1976, Teamsters Local No. 231 filed a representation petition with the Public Employment Relations Commission seeking a unit of "desk operators dispatchers, desk receptionists, and Jailers" which was docketed as Case No. 404-E-76-84. That petition was dismissed following investigation which showed that the petitioned-for employees were included in the larger unit and were covered by a collective bargaining agreement which did not expire until December 31,

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<sup>1/</sup> See RCW 41.56.030(6).

1976. City of Bellingham, Decision 109 (PECB, 1976).

The employees petitioned for herein were next called into question by a letter filed with the Commission by Teamsters Local 231 on October 16, 1976 seeking a determination of bargaining representative for 16 employees employed in the Bellingham Police Department as "dispatchers, ID Bureau clerical, Jailers and meter maids". That effort was evidently abandoned, however, as Teamsters Local 231 filed a formal representation petition with the Commission on October 27, 1976 seeking the entire "all regular non-uniformed employees" unit represented by WSCCCE. That petition was docketed as Case No. 596-E-76-113. On October 29, 1976, the Washington Public Employees Association filed a representation petition for the "all regular non-uniformed employees" bargaining unit. That petition was docketed as Case No. 607-E-76-114, but all proceedings were consolidated with the proceedings in Case No. 596-E-76-113. A representation election and a run-off election were held, with the result that WSCCCE Local 114 was certified on December 22, 1976 as the exclusive bargaining representative for the bargaining unit described as

"All regular non-uniformed public employees except the Professional Engineers in the Engineering Department, Professional Librarians, Planners, Assistant Planner, City Attorney's and Mayor's Confidential Secretaries as per RCW 41.56.030, of the City of Bellingham, Washington."

See: City of Bellingham, Decision No. 144 (PECB, 1976). The exclusions were the same ones indicated in the recognition clause of the collective bargaining agreement which expired on December 31, 1976.

On April 14, 1977, the WSCCCE and the employer executed a collective bargaining agreement covering the bargaining unit for 1977 and 1978. The "Recognition and Bargaining Unit" provision of that agreement stated:

"The City recognizes the Union as the exclusive bargaining representative for all non-exempt employees of the City, (hereinafter referred to as "employees") excluding all employees represented by IAFF Local 106, Teamsters Local 231, ATU Local 843, and Professional Librarians 114L, and all part-time and seasonal employees. Unless otherwise provided, seasonal employees shall be exempt from the bargaining unit if their employment continues for five (5) consecutive calendar months or less. Exempt employees shall include employees filling those positions listed in Appendix B. attached hereto and incorporated herein, and such other employees as the City shall hire during the term of this agreement to fill positions similar in nature or responsibility to those listed in Appendix B."

Appendix B. attached to the agreement contains 44 position titles ranging from "Mayor" and the directors of various City departments, to "supervisors" in various departments, to a variety of other classifications. Eleven of those

titles are footnoted that they were in dispute and would be submitted to PERC for disposition. Some of the shift of language between the certification and the collective bargaining agreement is explained by the fact that International Association of Fire Fighters (IAFF) Local 106 represents uniformed firefighter personnel and Teamsters Local 231 represents uniformed police personnel of the City. "ATU Local 843" refers to the Amalgamated Transit Union, which represents bus operators, dispatchers and maintenance personnel in the City's transit utility, who were not involved in the representation proceedings. A unit clarification proceeding was initiated by the City, docketed as Case No. 638-C-76-26, but was closed without a ruling when the parties resolved their differences through arbitration. The WSCCCE and the City stipulated the exclusion of the "supervisor" classifications during the proceedings before the arbitrator, and the arbitrator issued an Award in City of Bellingham, Case No. 1070-A-77-110 including some of the disputed personnel in the bargaining unit.

On February 1, 1979, the WSCCCE and the City executed a successor agreement for the period January 1, 1979 through December 31, 1980. While that agreement did not pose a "contract bar" because of the filing of the petition herein during the hiatus between contracts, its recognition provision suggests the current understanding of the WSCCCE and the employer as to the scope of the unit:

"The City recognizes the Union as the exclusive bargaining representative for all non-exempt employees of the City (hereinafter referred to as 'employee') excluding all employees represented by IAFF Local 106, Teamsters Local 231, ATU Local 843, and Professional Librarians 114L. Unless otherwise provided, seasonal employees shall be exempt from the bargaining unit if their employment continues for five (5) consecutive calendar months or less, or if such seasonal personnel are employed by the Park Department even if longer than five (5) months. Extra labor employees working less than 40 hours per week shall also be excluded. Extra labor employees who regularly work 40 hours per week or more shall normally be included within the bargaining unit upon completion of their 6th consecutive month of employment, as has been past practice. Exempt employees shall include employees filling those positions listed in Appendix B. attached hereto and incorporated herein, and such other employees as the City shall hire during the term of this agreement to fill positions similar in nature or responsibility to those listed in Appendix B."

The Appendix B attached to that agreement contains 47 position titles appearing to be limited to supervisory and executive personnel.

The petition in this case involves approximately 26 to 28 of the approximately 315 employees in the existing unit, and is limited to the support personnel in the police department.

POSITIONS OF THE PARTIES

The petitioner contends that the non-exempt, non-commissioned employees of the police department should be represented in a separate bargaining unit because of commonality, working relationships and mutuality of interest among themselves and with the police officers who compose the balance of the work force in the police department.

The employer maintains a neutral posture both as to the creation of a separate bargaining unit and as to the choice of representatives by the employees in the police department. The employer indicated its desire to limit any separate unit to the positions previously represented by the intervenor, and it objects to any expansion of the unit particularly into the "part time" category.

The WSCCCE contends that the petitioned-for unit is an inappropriate severance from its existing unit, it denies that the employees involved have a separate community of interest, and it indicates its desire to continue as the exclusive bargaining representative for the city-wide unit.

DISCUSSION

The "part-time employee" issue, such as it is, in this proceeding was first raised by the employer. During the hearing, the petitioner moved to amend the unit description in the petition from "all employees" to "all full time and regular part time employees". That is the common and preferred usage in unit descriptions, and the proposed amendment is granted. However, the granting of that amendment makes little real difference in the case. The bargaining unit was previously certified by this Commission as "all regular non-uniformed public employees...". The focus of attention should be on the word "regular", as "regular" employees having a substantial and continuing interest in the wages, hours and working conditions of a bargaining unit are generally all included in the same bargaining unit regardless of "full-time" or "part-time" work hours. Farmers Insurance Group, 143 NLRB 240, 244-245 (1963). The arbitrary exclusion of regular part time employees from a unit by agreement of the parties can cast doubt on the continued appropriateness of the bargaining unit, City of Seattle, Decision 781 (PECB, 1979); but that does not appear to be the situation in this case. The only "part-time" positions noted in this record as potentially within the petitioned-for bargaining unit were some "extra help" clerical employees and a most interesting "dog quarry" position used in the training of police dogs. The employments involved were of short term, irregular and temporary nature. The opposite of "regular" is "casual", and it is well established that "casual" employees are to be excluded from bargaining units where they do not have a continuing expectation of employment. Glynn Campbell d/b/a Piggly Wiggly E1

Dorado Co., 154 NLRB 445 (1965); City of Seattle, supra; Everett School District, Decision 268 (EDUC, 1977); Tacoma School District, Decision 655 (EDUC, 1979). No class of part time employees has been called to the attention of the Commission in this record which would rise above "casual" to "regular" status within the petitioned-for bargaining unit.

Unit determinations of the Public Employment Relations Commission must be based on:

"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 desires of the public employees."  
RCW 41.56.060.

In this case there is no history of separate representation of the petitioned-for employees and there is a long history of bargaining under which the petitioned-for employees have been included in the city-wide unit. Severance principles are applicable, Mallinckrodt Chemical Works, 162 NLRB 387 (1966); Bremerton School District, Decision 527 (PECB, 1978). It was incumbent on the petitioner to demonstrate the viability of its proposed severance in order to justify disruption of the long-established bargaining relationship, and it is concluded that it has failed to sustain that burden.

The non-commissioned employees of the police department are within the following classifications:

Dispatcher (11 employees)  
Jailer (4 employees)  
Clerical (Office Worker III, IV, V, & VI, and  
Records supervisor) (9 employees)  
Warrant officer (1 employee)  
Parking control officers (3 employees)  
Evidence & I.D. technician (1 employee)

The dispatchers, the jailers and the clerical employees report to a captain in charge of "services". The evidence technician, the parking control employees and the warrant officers report to a captain in charge of "operations". Both captains report to the chief of police. The account clerk, office worker series and the reception desk are general usage classifications throughout the city personnel system. With the possible exception of duty as a police matron, the records supervisor could be allocated to the same grouping. The remaining classifications are used only in the police department.

The position of dispatcher is a responsible, demanding job enmeshed in police activity. Although preferred, previous dispatch experience is not mandatory. Candidates must, however, possess a certain psychological composition along with other related skills and abilities such as legibility and independent judgment. The fire department uses "uniformed" firefighters as dispatchers, and the only other "dispatcher" positions in the City are within the ATU unit

at the bus utility. Dispatchers do not wear uniforms. While they work and communicate with commissioned officers, they likewise deal regularly with other non-commissioned city employees and the public.

Jailer activity is centered on the supervision and restraint of prisoners. No prerequisite skills or training are required. The activity includes certain clerical functions and frequent contact with other non-commissioned employees outside of the department. The jail is located on the second floor of the city hall.

Parking control officers wear uniforms but are not "commissioned". They work under the direct supervision of the commissioned traffic sergeant. Since they work independently and without close supervision they have limited contact with either commissioned or non-commissioned personnel of the city. Their contact is primarily with the public. Education and a valid drivers license are the stated qualifications for the position.

The receptionist and the account clerk perform duties which center about departmental specifics, but which are standard functions such as are commonly found in other city departments. Job duties of the records supervisor include a variety of technical and supervisory clerical duties in addition to the responsibility for maintenance of official records. The position requires previous clerical and secretarial experience. Persons assigned to office worker classifications perform varied duties within the police department, on the arrest or events desk, or as a statistics or traffic clerk. Duties are clerical in nature, and the employees are normally in contact with both uniformed and non-uniformed personnel on a daily basis.

Court clerk is the designated position which encompasses varied clerical duties for the municipal court. The position involves regular contact with other non-uniformed city employees. Municipal court is a separate department with a separate budget, although it appears on the organization chart as a part of the operations section of the police department.

The warrant officer maintains a desk in the municipal court office but is paid from the police department budget. He is in regular contact with court and police personnel as well as the public, but does not wear a uniform and is not "commissioned".

With very few exceptions, entrance requirements for the subject positions are limited to educational requirements. Specific clerical skills are mentioned on several of the job descriptions. Certain other requirements have been included for the dispatchers. In the majority, however, special knowledge is not a preliminary requirement, and training is provided on the job for whatever particular job knowledge is required. Clerical employees in other departments

have been able to transfer to clerical positions in the police department with relative ease.

The dispatchers are housed in the courthouse. All other categories are located in various parts of city hall along with the uniformed police and other city employees. Some of the non-commissioned employees report directly to commissioned officers while others do not. Commissioned officers are ultimately responsible for the over-all activities of the department.

Non-commissioned employees in the police department are not covered by the Law Enforcement Officers and Firefighters (LEOFF) Pension System, nor do they have the right to interest arbitration as provided for uniformed personnel under RCW 41.56.450. Non-commissioned employees of the police department receive wages, overtime, vacation, sick leave accrual and insurance benefits similar to those provided to all other employees in the existing bargaining unit. They are covered by the city's civil service system and participate in the PERS retirement system.

The showing of interest filed in support of the petition was adequate and substantiated, but testimony of several of the witnesses contradicted their earlier designation of the petitioner. The matter would be best resolved by an election if the proposed unit was deemed appropriate, but that is not the case and a "Globe" election (3 NLRB 294) is impossible unless both unit choices are appropriate.

While a unified departmental effort certainly exists among both commissioned and non-commissioned employees of the police department, the record does not demonstrate a community of interest sufficient to justify fragmentation of the existing city-wide bargaining unit. Each department within the city faces the same basic situation, and each could undoubtedly reasonably advance the same rationale -- dissimilarity from other departments along with possession of unique skills and capabilities -- as argument for a separate bargaining unit based upon unified departmental effort. While not identical, the varied duties of the positions in separate departments are nevertheless somewhat similar when seen from an overview.

Persons hired through a central personnel office, having opportunity to routinely transfer to and from various departments, possessing similar job descriptions, and receiving similar pay and benefits have been found to be appropriately placed in a singular unit. City of Tacoma, Decision 204 (PECB, 1977). Employees sharing comparable wages, fringe benefits and general working conditions with other employees have been found to lack the unique community of interest and separate identity of a functionally distinct group. Kent School District, Decision 127 (PECB, 1976).

Although the non-commissioned police employees may work in a separate location on a different schedule and with limited interchange between other city employees, they share a community of interest, wages, hours and working conditions with other city employees. No changes of circumstance warranting a change of unit status has occurred. Establishment of a separate bargaining unit would merely have the effect of fragmenting the established unit.

#### FINDINGS OF FACT

1. City of Bellingham is a public employer within the meaning of RCW 41.56.
2. Teamsters Union Local No. 231, a labor organization and bargaining representative within the meaning of RCW 41.56, timely filed a petition for representation of all employees of the police department, excluding commissioned officers, supervisors and confidential employees.
3. Washington State Council of County & City Employees, AFL-CIO, Local No. 114, a labor organization and bargaining representative within the meaning of RCW 41.56, timely moved for intervention in the matter on the basis of its status as the certified exclusive bargaining representative of a unit which includes all non-commissioned city employees except those represented by other labor organizations and all of the employees claimed by the petitioner. The city's recognition of the intervenor has been in effect since 1935 and Local 114 was certified by the Public Employment Relations Commission in 1976 following a representation election in which its status was challenged by Teamsters Local No. 231.
4. Non-commissioned city employees receive similar wages, overtime, vacation, sick leave accrual and insurance benefits along with other terms and conditions of employment.
5. Duties performed by non-commissioned employees of the police department are, in general, similar to those performed by other non-commissioned city employees and are distinct from those of the uniformed (commissioned) officers of the police department.
6. The employees in the bargaining unit proposed by the petitioner all work for or in connection with the police department of the employer, but do not share common supervision, work locations, minimum qualifications or duties among themselves.
7. There has been no history of separate representation of the



petitioned-for employees. The intervenor continues to be a viable organization and has a continued interest in representing the employees in the petitioned-for bargaining unit.

CONCLUSIONS OF LAW

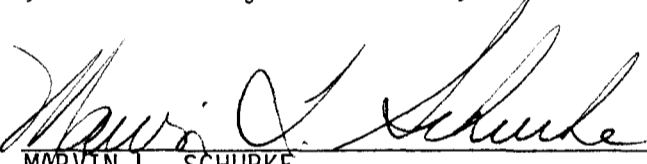
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. The petitioned-for bargaining unit of non-commissioned employees of the City of Bellingham Police Department is not an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060; and no question concerning representation presently exists.

ORDER

The petition for investigation of a question concerning representation filed in this matter shall be, and hereby is, dismissed.

DATED at Olympia, Washington, this 31st day of December, 1979.

  
MARVIN L. SCHURKE  
Executive Director