STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 618 Involving certain employees of: THURSTON COUNTY	CASE NO. 6083-E-85-1097 DECISION NO. 2574 - PECB ORDER OF DISMISSAL

Pamela G. Bradburn, General Counsel, Washington State Council of County and City Employees, appeared for the petitioner.

Patrick D. Sutherland, Prosecuting Attorney, by Marci Wright Dohrn, Deputy Prosecuting Attorney, appeared for the employer.

On October 31, 1985, the Washington State Council of County and City Employees, Local 618 (the union) filed a petition with the Public Employment Relations Commission (PERC) for investigation of a question concerning representation involving certain employees in the road department and parks department of Thurston County. A pre-hearing conference was held on the matter December 20, 1985, at which time the parties stipulated that the issues to be subject for hearing were:

1. Whether or not a question concerning representation exists.

2. If a question concerning representation exists, what is the appropriate unit description?

3. If a question concerning representation exists, what is the correct eligibility list?

A hearing was held January 28, 1986 in Olympia, Washington before Hearing Officer Katrina I. Boedecker. The briefing schedule was completed by March 18, 1986.

BACKGROUND

This case is unusual, in that the petitioner is seeking neither to be certified for a newly organized group of employees nor to supplant another union as the exclusive bargaining representative of theemployees in an existing bargaining unit. Rather, the petitioner in the instant case is an incumbent union which seeks to divide its existing bargaining unit into two separate bargaining units.[1]

At the time the petition was filed, the county and the union had a collective bargaining agreement in effect (covering the period from 1983 through 1985) which provided:

> The Employer recognizes the Union as the exclusive bargaining representative of all regular full time and permanent part time employees in the classifications and departments listed in Exhibit B ...

Exhibit B listed classifications in the departments of auditor, treasurer, assessor, prosecuting attorney, clerk, cooperative extension, public works, fair, health (division of human

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1 For purposes of this decision the following terms are used to distinguish the various units referred to in this case: The "existing unit" refers to the bargaining unit as it stands presently; the "proposed unit" is the bargaining unit that is sought by the petitioner; the "remaining unit" is the portion of the existing unit that would survive as a bargaining unit if the proposed unit were created.

services), facilities, central services, building department and weed control. The record indicates that the existing unit includes some 254 employees.

All of the employees in the proposed unit are to be found among the six divisions of the Thurston County Public Works Department. The proposed unit includes:

- Maintenance Technicians (including Senior Maintenance Technician, Lead Maintenance Technician)[2] in the Road Division;
- Bridge Supervisor (Lead Maintenance Technician) in the Road Division;
- Office Manager in the Road Division;
- Clerk Typist (Office Administrator III) in the Road Division;[3]
- Crusher Lead Person in the ER&R Division;
- Maintenance Technicians working for crusher lead person in the ER&R Division;
- Lead Parts Technician in the ER&R Division;
- Parts Technician (Central Stores Clerk) in the ER&R Division;
- Equipment Mechanics in the ER&R Division;

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2 Due to the recent institution of a reclassification plan, there appeared to be confusion among the witnesses concerning "old" and "new" titles. In this description, the old titles are listed first, the new titles are in parenthesis.

3 The proposed unit does not include clerk-typist (OA III) positions in the administrative division of the public works department or similar positions in other departments.

- Assistant Equipment Superintendent in the ER&R Division;[4]
- Tire and Lube Person (Utility Mechanic) in the ER&R Division;
- Traffic Supervisor in the Engineering Division;[5]
- Maintenance technicians working for traffic supervisor in the Engineering Division;
- Custodians in the Administrative Division;[6]

The proposed unit would include 45 to 50 employees. While none of the employees in the proposed unit work outside of the public works department, other classifications within the public works department would be left in the remaining unit.

Some employees in the proposed unit perform manual labor or maintenance type work, while others spend their time on non-manual tasks. Some employees in the proposed unit, such as the equipment mechanic, are considered to be skilled employees, while others in the proposed unit, such as the custodians, are clearly

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4 A union witness testified that he did not think that this position was in the bargaining unit and therefore not in the proposed unit. However, he stated that he would not be opposed to its inclusion if it was currently a bargaining unit position and the incumbent desired to be in the proposed unit. The union's post-hearing brief did not list this position as being in the proposed unit. The 1983-85 collective bargaining agreement places the assistant equipment superintendent in the bargaining unit, as was corroborated by the testimony of the acting chief administrative officer. The position will be considered as belonging in the proposed unit.

5 This situation has existed since at least September of 1980, when the management structure was change to shift the "traffic" personnel from the road division.

6 The proposed unit includes only the custodian(s) working at the Tilley Road shop, and so does not include persons working under similar title and on similar tasks in other county facilities.

in unskilled occupations. A similar mix of skill levels is found in the remaining unit.

Many of the employees in the proposed unit report to the Tilley Road shop, a work site located several miles from the county courthouse. Some employees in the remaining unit have occasion to work at the Tilley Road shop or to otherwise interact with the employees in the proposed unit. Thus, the lead parts technician and the lead maintenance technicians in the proposed unit interact with employees in the remaining unit, some as often as once a week. The road crew employees in the proposed unit interact frequently during road reconstruction work with survey crew employees who would be in the remaining unit. Road crew employees also work closely during spraying operations with the employees of the noxious weed department who would be in the remaining unit. The central stores clerk in the proposed unit works with administrative services division employees who would be in the remaining unit. The traffic supervisor in the proposed unit comes to the courthouse on a daily basis to confer with employees in the engineering division who would be in the remaining unit.

Employees have transferred between classifications in the proposed unit and classifications that would be in the remaining unit. Additionally, there are examples such as the clerical and custodian positions where the same generic types of work would be found in both units.

All of the employees in the proposed unit have been represented by the union since at least 1979. Members of the proposed unit have actively participated in the activities and negotiations of the existing unit. Lead maintenance technician Mike Walsh, who would be included in the proposed unit, served as president of the local union. Kathleen Schmidtke, the business agent for

AFCSME who has served the existing unit since 1979, testified that the bargaining relationship between the union and the employer has been "much better than average."

POSITIONS OF THE PARTIES

Characterizing the proposed unit as a homogeneous group with an impressive history of bargaining, the union argues that the unit is appropriate. The union contends that no instability in labor relations will result from dividing the existing unit, and it requests the Commission to allow the employees an opportunity to make their desires known in an election. The union urges the Commission to disregard severance criteria, since the incumbent union is the only labor organization involved. The union views the severance criteria emphasis on craft status reflective of a concern about the potential for the disruption of labor relations that is nonexistent when the petitioner is the incumbent.

The employer argues that since there is a history of inclusion of the petitioned-for employees in a broader unit, severance principles are applicable. Based on the standards for severance, the employer contends that the union has not demonstrated a viability for its proposed unit that is sufficient to justify the disruption of the long-established bargaining relationship. The employer urges a finding that no question concerning representation exists.

DISCUSSION

RCW 41.56.060 directs that:

> The commission . . . shall decide . . . the union appropriate for the purpose of

> collective bargaining. 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 . . . .

The notion of "appropriate bargaining unit" found in RCW 41.56.060 is pivotal to status as the exclusive bargaining representative of a unit under RCW 41.56.080 and, indeed, to the duty to bargain under RCW 41.56.030(4), 41.56.140(4) and 41.56.150(4). South Kitsap School District, Decision 1541 (PECB, 1983). To continue to represent both the proposed unit and the remaining unit, the union must show that both such units would be appropriate units for purposes of collective bargaining.

Duties, Skills and Working Conditions

The effectiveness of the collective bargaining process depends, in large part, on the propriety of the bargaining units certified by PERC. Accordingly, employees are grouped together for the purposes of collective bargaining where they share duties, skills and working conditions so as to indicate that they have a community of interest in dealing with their employer.

The employees in the existing unit constitute all of the employees of the employer in a number of county departments. "All of the employees of the employer" clearly share a community of interest, so as to constitute an appropriate bargaining unit. The propriety of such a unit was affirmed in Wahkiakum County, Decision 1876 (PECB, 1984), where another affiliate of the Washington State Council of County and City Employees first petitioned for and then won certification for a "wall-to-wall"

unit of county employees excluding only a clearly explainable group engaged in the operation of a ferry.

Although the union argues that the proposed unit consists of a homogeneous group related to the county's road maintenance function, the facts establish that less isolationism exists than the union asserts.

The wages are similar among the employees of the proposed unit and the remaining unit. A February 11, 1985 amendment to the parties' collective bargaining agreement implemented a Classification and Pay Study that had been conducted in 1984. Under that study, there seem to be no pay ranges which are exclusively reserved for the employees in the proposed unit. Rather, the pay ranges are shared with employees in departments in the remaining unit. Further, the guidelines for advancement through the "step" plan of wage increases are the same for all the existing bargaining unit employees.

The evidence discloses neither a great disparity in the number of hours comprising a work week nor in shift schedules among the employees of the existing unit.

The differences of working conditions among employees in the existing unit are also not sufficiently distinct to justify a finding of a separate community of interest for employees in the proposed unit. Although most of the proposed unit reports to the Tilley Road shop as their assigned work location, there is a high degree of interaction -- even up to a daily basis for some employees -- with the rest of the public works department, located in the courthouse complex. Blurred lines of supervision exist even within the proposed unit. Some employees report to the road superintendent, but the sign crew employees in the proposed unit report to the traffic engineer. Further, a high

degree of functional integration exists between the road crew employees and the engineering employees.

Examination of the skill levels involved also fails to support the creation of a separate unit. Although some employees in the proposed unit are required to complete a training and certification program run by the county, some members of the proposed unit are not so required. The clerical, maintenance and manual labor employees in the proposed unit share skills and generic types of duties with employees that would be in the remaining unit.

Extent of Organization

Thurston County now has collective bargaining relationships with labor organizations representing five separate bargaining units. Each of those units appears to have a rational basis for its separate and distinct existence. One of those units consists of court support personnel who are considered, under Zylstra v. Piva, 85 Wn.2d 743 (1975), to be employees of a joint employer (i.e., of Thurston County and and of the Superior Court of the state of Washington in and for Thurston County).[7] Two of the units are found in the sheriff's department. They constituted a single "vertical" unit of all of the employees in that department until 1984, when legislation[8] imposing "interest arbitration" impasse resolution procedures for those unit employees who were "uniformed personnel" (within the meaning of RCW 41.56.030(6)) forced breakup of that unit into two separate units of "uniformed" and "non-uniformed" employees. Another bargaining unit consists of emergency dispatch employees who work for the

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7 See, Thurston County, Decision 1877 (PECB, 1984).

8 Chapter 150, Laws of 1984, Section 1.

Thurston County Communications Department.[9] The "existing unit" in the instant case contains all of the other employees of Thurston County who are organized for the purposes of collective bargaining.

Since all of the employees involved in this case are currently represented by the union, the creation of the proposed unit would not alter the extent of organization. Nor would insistence on maintenance of the existing large unit frustrate the right of public employees to engage in collective bargaining by making it impossible for a union to win representation rights. It must be noted that the creation of the proposed unit would impose at least one additional bargaining relationship on the employer.

The proposed unit would be neither "vertical", (i.e., grouping together all of the employees in a single department or division along lines of management's table of organization) nor "horizontal" (i.e., grouping together all of the employees performing the same generic type of work). In fact, the proposed unit is difficult to describe along clear, understandable lines. Although the union argues that no instability in labor relations would result from dividing the existing unit, creation of the proposed unit would force the employer to administer two different bargaining relationships within the public works department, and some divisions of that department would have their employees split among the proposed and remaining units. There would seem to be little reason to add to the proliferation of bargaining units with which the employer currently has to deal absent a showing by the union of how both such units are appropriate.

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9 See, Thurston County, Decision 1064 (PECB, 1980) which, together with the name used for the employer in Thurston County Communications Board, Decision 103 (PECB, 1976), suggests the existence of a quasi-independent entity which would properly be treated as a separate employer for bargaining purposes.

History of Bargaining

The history of the existing unit is somewhat vague. Evidently, the union made a request of the employer in the early 1960's for voluntary recognition as the exclusive bargaining representative of a unit consisting of road crew employees, mechanics and engineering technicians in the engineering division of the public works department. The employer granted the request. During the 1970's, additional employees were added to the unit. By January, 1977, the recognition clause of the parties' collective bargaining agreement stated:

> 1) The employer recognizes the union as the exclusive bargaining Representative of all those employees under the bargaining unit, employed in the County Courthouse and Road Districts ...
>
> 2) It is also agreed, when the Union can show proof, (signed payroll deduction cards) of 51% membership in any other department not presently represented by the Union, those employees shall be included under the provisions of this Agreement.

The same language exists in the parties collective bargaining agreement for January 1, 1978 through December 31, 1979. For their 1980-1982 collective bargaining agreement, the parties changed the language to that which is contained in their latest contract.

Although the existing unit appears to have its roots and history of development in a series of accretions along lines of "extent of organization", the employer contends that it has become an appropriate, inclusive bargaining unit within the precedent of Kitsap County, Decision 2117 (PECB, 1984), so that "severance" principles ought be applied in this case. Thus, the employer urges that the union must, under established precedent, meet a

higher standard than merely demonstrating that the proposed unit is "an" appropriate unit.

The union has made some novel arguments for disregarding "severance" criteria in this situation. First, the union argues that the severance criteria adopted by the National Labor Relations Board in Mallinckrodt Chemical Works, 162 NLRB 387 (1966), and by the Commission in Yelm School District, Decision 704-A (PECB, 1980), are not applicable where the petitioner seeking severance is also the incumbent exclusive bargaining representative. Second, the union contends that NLRB precedent on "severance" is founded on a desire to avoid continuing animosity and struggle between the pre-merger American Federation of Labor (AF of L) and the Congress of Industrial Organization (CIO) that is no longer a valid consideration in the public sector or in general. Third, the union contends that severance principles should not be applied to a unit that grew up by voluntary recognition, as distinguished from a unit certified by the Commission.

The union arguments based on the commonality of its current representation are without merit. Bargaining units are defined by the Commission pursuant to RCW 41.56.060, but employees then have the right under RCW 41.56.040 to select the organization of their own choosing. The identity of the petitioning organization is not a factor to be considered by PERC in making a unit determination, nor can a bargaining unit be described or structured on the assumption that same union will continue to represent the employees in the future. A severance here would open the possibility of a change of bargaining representative in either the proposed unit or in the remaining unit at any time (subject to the certification bar and contract bar rules) another organization could muster the 30% showing of interest as required by RCW 41.56.070 and then win an election. Further, while City

of Seattle, Decision 1229-A (PECB, 1982), and Campbell Soup Co., 111 NLRB 234 (1955) would require that a decertification petition in the existing unit be supported by a 30% showing of interest in that unit (e.g., approximately 77 cards), the severance requested by the union here would open the door to a decertification in the proposed unit in a future year with a 30% showing of interest in the proposed unit (e.g., as little as 17 cards). It is not the purpose of the foregoing to tell the petitioner what is good for it, or to protect it from itself, but rather to point out that the unit determination which it seeks in this case would have lasting effects beyond the present case.

For reasons that flow from the foregoing, the union arguments based on past animosity between unions are similarly unpersuasive. The AF of L and the CIO had merged long before PERC was created, yet the Commission embraced the "severance" doctrine. While there may not, in the short term, be two different unions seeking to enhance their own images through competition at the bargaining table (with resulting pressure on individual employees), the unit determination decision made today in this case could lead to exactly such a situation a year from now.

The union's asserted distinction between certified and voluntarily recognized units is also unsupported. From the premise that only clerical employees have been allowed to sever from existing, broader units, the union observes that the denial of other severance petitions causes the contours of bargaining units to become impenetrable. Then, while acknowledging that such solidification may be proper for units the Commission has certified, the union argues that it is contrary to the purposes of the statute to so clothe a unit that has arrived at its current shape by a haphazard process of voluntary recognition. The union relies on Pierce County, Decision 1039 (PECB, 1980), where application of severance principles was refused. But in

Pierce County, the operation of "accretion upon showing 51%" clauses like that found in the contracts between these parties prior to 1980 had resulted in the fragmentation of the employer's workforce among several different labor organizations in a unit structure that could only be understood along lines of extent of organization. The opposite approach was taken, and severance criteria were applied, in Kitsap County, supra, cited by the employer, where a series of voluntary recognition transactions, albeit along lines of extent of organization, had resulted in a grouping which was, in its own right, an appropriate generic unit. The petitioner also overlooks the fact that the unit protected from severance in Yelm School District, supra, owed its history to a series of voluntary recognition transactions which had perfected a "wall-to-wall" unit.

Turning to application of the severance criteria, it is clear that the proposed unit does not qualify for favorable consideration. The proposed unit is not limited to a distinct and homogenous craft, or group of crafts, but is a haphazard combination of classifications itself.[10] The union has not established that sharp lines distinctly defined the original bargaining unit as including only road department employees. To the contrary, the record suggests that the existing unit has had a core of road and some engineering employees which dates back to voluntary recognition agreements made even prior to the effective date of the public employees collective bargaining act. Splitting the "road" employees from the "engineering" employees could not be justified by the parties' bargaining history. Since the petitioned-for classifications have been included in the existing

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10 The testimony suggests that the employees wanted people in the proposed unit who were based at the Tilley Road shop, together with anyone else who wanted to come along with them. As noted below, "desires of employees" is a unit determination criteria, but will not warrant creation of an otherwise inappropriate unit.

unit from its very inception, there is no separate identity to be relied upon and the evidence of integration prevails. As noted recently:

> PERC has consistently ruled against such fragmentation, especially where, as here, units are defined along the lines of 'special interests' rather than appropriate units for labor relations purposes. Fragmentation places added burdens upon management as well as diluting employee rights ...

Wapato School District, Decision 227 (PECB, 1985). The employer in Wapato would have had the Commission split an appropriate unit split into two units. On the record made here, the petitioner seeks to accomplish a similar purpose in this case. The history of bargaining in the existing unit, and precedents concerning severance, clearly contra-indicate the propriety of the petitioned-for unit.

Desires of Employees

The union proposes that the Commission should conduct a unit determination election to determine the desires of the employees on the question of unit structure.[11] The desire of the public employees is one factor for consideration under RCW 41.56.060, but it is not the primary factor or a dominant one. See, Bremerton School District, Decision 527 (PECB, 1978) where a representation petition was dismissed upon a conclusion that the proposed unit cut across supervisory lines, cut across lines of generic employee types, was not limited to skilled craftsmen, and did not

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11 There was some testimony that employees in the petitioned-for unit have indicated their desire to be included in a separate unit. Where two or more bargaining unit structures are found to be appropriate, PERC can conduct a unit determination election to obtain the "desires of employees" without subjecting any (or all) of the employees to examination and cross-examination on the question. Tumwater School District, Decision 1388 (PECB, 1982).

include all employees who were performing skilled or similar work, so as to be describable only along lines of extent of organization. In this case, the unit appears to be describable only along lines of the desires of employees. The conduct of a unit determination election is precluded by the conclusion that the petitioned-for unit would not be an appropriate unit under the other unit determination criteria set forth in the statute. See, Clark County, Decision 290-A (PECB, 1977).

FINDINGS OF FACT

1. Thurston County is a county of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. Washington State Council of County and City Employees, a bargaining representative within the meaning of RCW 41.56.030(3), has been voluntarily recognized as the exclusive bargaining representative of a unit consisting of employees in the auditor, treasurer, assessor, prosecuting attorney, clerk, cooperative extension, public works, fair, health (division of human services), facilities, central services, building and weed control departments of Thurston County. The collective bargaining relationship dates from the early 1960's.

3. Washington State Council of County and City Employees, now seeks certification as exclusive bargaining representative of a separate unit of employees in the road and engineering divisions of the public works department, and filed a timely and properly supported petition for investigation of a question concerning representation.

4. As members of a unit consisting of essentially all of the employees of the employer (except for certain exclusions

based on history and other rational considerations), the employees in the bargaining unit described in paragraph 2 of these findings of fact share similar wages, hours and working conditions, so as to have a community of interest among themselves.

5. The petitioned-for bargaining unit cuts across lines of supervision, failing to include all of the employees in the public works department. The petitioned-for unit cuts across generic employee types, including within its scope classifications such as "office assistant" and "custodian" which appear in other departments of the employer while separating groups of employees who have regular contact with one another in the course of their employment. The petitioned-for unit is not limited to skilled craftsmen, but also does not include all employees performing skilled or similar work.

6. Creation of the petitioned-for unit would fragment the existing bargaining unit along lines of the desires of the employees and the union, without changing the extent of organization among the employees of the employer. The employer opposes such fragmentation.

7. The employees in the existing unit have a history of bargaining in the existing unit since the onset of the collective bargaining relationship, when the union received its first voluntary recognition to represent a bargaining unit of some employees in what are now the road and engineering divisions of the public works department.

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 employees of Thurston county 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 18th day of November, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).