STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
ELECTRICAL AND TECHNICAL	)	
MAINTENANCE EMPLOYEES UNION	)	CASE 11292-E-94-1859
	)	
Involving certain employees of:	)	DECISION 5018 - PECB
	)	
KING COUNTY	)	ORDER OF DISMISSAL
	)	
	)	

Reaugh, Fischnaller & Oettinger, by Mark S. McCarty, appeared on behalf of the petitioner.

Norm Maleng, Prosecuting Attorney, by Sandra K. Pailca, Deputy Prosecuting Attorney, appeared on behalf of the employer.

Schwerin, Burns, Campbell & French, by Lawrence R. Schwerin, appeared on behalf of the incumbent exclusive bargaining representative, Service Employees International Union, Local 6.

On August 23, 1994, the Electrical and Technical Maintenance Employees Union (petitioner) filed a petition for investigation of question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of King County (employer). The petitioner seeks severance of a unit of electricians and technical maintenance employees in the maintenance division of the employer's METRO department from an existing broader bargaining unit. Service Employees International Union, Local 6, was granted intervention in the proceedings, based upon its status as the incumbent exclusive bargaining representative of the existing bargaining unit which includes the petitioned-for employees.

A pre-hearing conference was held, by telephone conference call, on September 22, 1994, at which time the representatives of the

petitioner, the employer, and Local 6 were able to stipulate all matters controlling the subsequent course of the proceedings except for: (1) Whether the petitioner is a labor organization qualified to act as a bargaining representative pursuant to RCW 41.56.030(3); (2) whether the severance of the electricians and maintenance technician classifications would create an appropriate unit for the purposes of collective bargaining; (3) whether a question concerning representation exists among the petitioned-for employees; and (4) identification of the employees currently eligible to vote in a representation election and the cut-off date for such list.

A hearing was held on December 5 and December 7, 1994, before Hearing Officer Walter M. Stuteville. At the outset of the hearing, the parties stipulated to the inclusion in the record of a document which they had prepared titled Stipulated Facts and Exhibits.[1] During the hearing, testimony was taken on the status of the petitioner as a labor organization. Upon the completion of that testimony, the Hearing Officer ruled that the petitioner met the requirements of the applicable statute, and overruled an objection to its participation in the hearing. Following the taking of testimony and exhibits, the parties presented oral closing arguments in lieu of filing briefs.

BACKGROUND

The petitioner is a recently-formed independent organization which seeks to represent approximately 37 employees who work in the maintenance division of the King County water and sewage treatment operations. The METRO "department" of King County operates both public transit services and water pollution control abatement

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[1] Information from that document is incorporated into the BACKGROUND section of this decision.

services.[2] The Water Pollution Control Department (WPCD) within METRO operates two major water / sewage treatment plants: The East Division plant is situated in Renton; the West Division plant is situated in Discovery Park in Seattle.[3] Additionally, the department is responsible for many pumping stations situated throughout the county. The WPCD workforce includes machinists, operators, mechanics, support personnel, and trainees, as well as the petitioned-for employees.

METRO's collective bargaining relationships with several employee organizations have been transferred to King County. Local 6 has historically represented the second-largest organized unit among former METRO employees,[4] including approximately 310 maintenance and operations personnel in the WPCD. Local 6 has historically been the only labor organization representing employees within the WPCD. The petitioned-for employees have been within the existing

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[2] The Municipality of Metropolitan Seattle (METRO) was formerly a free-standing intergovernmental agency created to provide transit, water treatment, and sewage disposal for the greater King County area. In 1993, METRO was combined into the King County government by vote of the people. The services provided by each of the former employers are going through a transition period of several years duration, involving integration of both operational and administrative responsibilities. The transit and water pollution control operations are presently joined together in a county "department" with common executive, finance, human resources, and technical services.

[3] Because the plant is landlocked by Discovery Park, many of the West Division employees are actually housed in offices and shops away from the plant.

[4] Amalgamated Transit Union, Local 587, represents approximately 3,200 employees in the METRO transit operations; International Brotherhood of Electrical Workers, Local 77, represents approximately 60 electrical maintenance employees in the transit operation; International Federation of Professional and Technical Engineers, Local 17, represents approximately 10 employees in the transit division's ride-share program.

bargaining relationship throughout its history of approximately 20 years duration.

The role of the maintenance division is to assure the continued functioning of approximately $2 billion worth of equipment at the two treatment plants and at dozens of pump stations and regulators throughout King County. The unit that the petitioner seeks to carve out of the existing bargaining unit was defined in its petition as follows:

> All employees in the Water Pollution Control Department of the King County Department of Metropolitan Services employed in the job classifications of industrial maintenance electricians and instrument technician electricians, including leads and trainees, excluding all other employees.

These employees provide preventive and corrective maintenance on the employer's electrical and mechanical equipment and instrumentation. The electricians are responsible for doing nearly all the electrical maintenance and high voltage work, including repairs to costly equipment utilized in the sewage and waste water operations.

The job description for the electricians specifies the following responsibilities:

> INDUSTRIAL MAINTENANCE ELECTRICIAN
>
> Basic Function:
> Perform skilled electrical maintenance duties at the journey level to construct, maintain and wire a wide variety of equipment used in a major automated sewage treatment system; conduct preventative maintenance program including overhauls of motors, switchgear and warning system panels. **Serve as a lead worker** for assigned maintenance personnel.
>
> Duties and Responsibilities:
> Review work orders, manuals and engineering drawings with the Electrical Maintenance Supervisor. As assigned, organize projects; secure

necessary tools, parts and other materials, and **serve as a crew lead worker.**

...

Assure that assigned personnel receive adequate electrical safety instruction and that Metro safety procedures are followed.

JOB SPECIFICATION

...

EXPERIENCE:

Three years of prior experience at the journey level are required.

Responsibility:

The electrician is responsible for performing highly complex and specialized electrical equipment maintenance throughout an operating division. The electrician makes, repairs and installs electric motors, controls, circuits and other electrical equipment pertaining to automated waste waster (sic) facilities and the CATAD warning system. The electrician may assist the supervisor in making contract with manufacturers and vendors of equipment. **He / She frequently may serve as a lead person and instruct as well as correct the work of assigned personnel.**

[Emphasis by **bold** supplied.]

According to the testimony, the qualification standard for the electricians is being revised to specify two years of prior journey-level experience.

As their title implies, the instrument technicians work on a variety of measuring devices, controls, relays, and other instruments necessary to keep the employer's network of pumps, holding tanks, and reservoirs operating. Their job description reads as follows:

INSTRUMENT TECHNICIAN

...

Basic Function:

Perform a wide variety of highly skilled technical and journey level duties to design, construct, maintain, troubleshoot and modify the

hydraulic, electronic, pneumatic and related instrument and electronic systems used in the water pollution control department. Conduct preventive maintenance programs. Provide assistance to engineers. **Serve as a lead worker** for assigned maintenance personnel.

Duties and Responsibilities:

Review work orders, blueprints, shop drawings and maintenance sequences with the maintenance supervisor. Plan work sequences needed for particular jobs, and **coordinate plans with assigned personnel**.

...

Assure that assigned maintenance personnel receive adequate instruction and that all Metro Safety procedures are followed.

Work with operations personnel, engineers and suppliers to explain the functioning and procedures needed for the operation of new equipment.

JOB SPECIFICATIONS

...

EXPERIENCE:

One year of prior related experience at a highly skilled and technical level is required.

RESPONSIBILITY:

The instrument technician is responsible for inspecting alarms and for wide variety of sensitive devices of both electronic and pneumatic design. He / she makes highly complex repairs, provides assistance to engineers, and responsible for the accuracy of the instruments used in the telemetering and CATAD warning systems. He / she also assists in the construction and modification of new instrument and electronic systems. Instrument technician is responsible for repairing all types of instruments used for control of flow, temperature, pressure, level and other processes. **The technician may be responsible for training other personnel** to perform technical duties and may act as a lead worker on projects assigned by the maintenance supervisor.

[Emphasis by **bold** supplied.]

There is no evidence of any recent major change of function for the petitioned-for employees.

The existence of the Electrical and Technical Maintenance Employee Association was formalized by the adoption of a constitution and bylaws on November 16, 1994. Those documents describe the purpose of the organization as being:

> [T]he improvement of wages, benefits and working conditions of its members, to conduct collective bargaining for its members, and to conduct other affairs of the association as determined by its members".

Membership in the organization is limited to electricians and instrument technicians working for the King County Department of Metropolitan Services. In closing argument, counsel for the organization stated that it was created to enable its members to "decertify" their existing bargaining agent, Local 6.

POSITIONS OF THE PARTIES

The petitioner claims the employees it seeks to represent are a distinct and homogeneous group of skilled craftsmen. It acknowledges that the industry pattern on representation of electricians and instrument technicians is mixed, with some represented for the purposes of collective bargaining in wall-to-wall departmental units (as in the instant case), while others are represented separately. It emphasizes that the severance criteria support a separate identity for craftspersons. It argues that the interests of the petitioned-for employees, both as a separate craft and as a group approximately one-tenth the size of the whole existing bargaining unit, are not adequately represented by the incumbent. It argues that the interests of its members are instead submerged in the interests of the larger group.

The employer argued that the severance of this group of employees from a bargaining unit with a long history is not sound labor law.

It specifically cited the principles enunciated by the National Labor Relations Board (NLRB) in Mallinckrodt Chemical Works, 162 NLRB 387 (1966), as limiting severances of new bargaining units from established units. The employer indicated a view that the existing bargaining relationship was stable and successful.

As the incumbent exclusive bargaining representative of the employees at issue, Local 6 also argues that the severance of this group of employees from the existing unit is inappropriate under both the Mallinckrodt standards and relevant Commission precedent. It specifically claims the petitioned-for employees do not work as a distinct group unto themselves, and that they do not have a history that identifies them as separate from the remainder of the existing bargaining unit.

DISCUSSION

The Legislature has delegated responsibility to the Public Employment Relations Commission to determine the bargaining unit(s) appropriate for the purposes of collective bargaining:

> RCW 41.56.060 DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit 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** ...
>
> [Emphasis by **bold** supplied.]

The Commission has described its role under RCW 41.56.060 in the following terms:

> [T]he purpose [of unit determination] is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. The statute does not require determination of the "most" appropriate bargaining unit. It is only necessary that the petitioned-for unit be an appropriate unit. Thus, **the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require setting aside a unit determination.**

City of Winslow, Decision 3520-A (PECB, 1990). [Emphasis by underline in original; emphasis by **bold** supplied.]

The Commission has found units consisting of "all of the employees of the employer" to be appropriate under RCW 41.56.060.[5] Other Commission decisions have affirmed the propriety of subdividing an employer's workforce into two or more bargaining units:

> Units smaller than employer-wide may also be appropriate, especially in larger work forces. The employees in a separate department or division may share a community of interest separate and apart form other employees of the employer, based upon their commonality of function, duties, skills and supervision. Consequently, **departmental (vertical) units have sometimes been found appropriate** when sought by a petitioning union. [Footnote omitted.] Alternately, employees of a separate occupational type may share a community of interest based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, **occupational (horizontal) bargaining units have also been found appropriate, on occasion,** when sought by a petitioning union. ...

City of Centralia, Decision 3495-A (PECB, 1990). [Emphasis by **bold** supplied.]

The starting point for any unit determination analysis is the unit configuration sought by the petitioner. There have been instances,

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[5] E.g., City of Winslow, supra.

however, where the Commission has rejected a bargaining unit configuration sought by a petitioning union.[6] When confronted with an inappropriate unit that cannot be rehabilitated by a minor adjustment, the Commission must dismiss the representation petition.

The "duties, skills, and working conditions" of the petitioned-for employees will be of influence in every case, but the same is not always true for the other unit determination criteria specified in RCW 41.56.060. In a case such as this, where a petitioner seeks to "sever" a group of employees from a long-established bargaining relationship, there is a "history of bargaining" which must be dealt with.

Both the employer and the incumbent exclusive bargaining representative argue that the existing unit configuration is the "most appropriate", or at least "more appropriate" than the proposed severance, based upon their 20-year history of bargaining. The Commission has said that it will not sever a group from a historical bargaining unit unless there is a showing that the severed group was "distinct" and "homogenous", such as a group of skilled journeyman craftsmen in a functionally distinct department of the employer. See, Yelm School District, Decision 704-A (PECB, 1980),

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[6] For example: In City of Vancouver, Decision 3160 (PECB, 1989), the petitioned-for unit would have had the effect of stranding certain employees in units too small for them to ever implement their statutory bargaining rights, and was therefore deemed inappropriate; in Forks Community Hospital, Decision 4187 (PECB, 1992), a proposed clerical/service/maintenance/technical unit in a small health care facility was found inappropriate, because it would have cut across several of the units detailed by rules of the National Labor Relations Board for hospitals under its jurisdiction, but would still have stranded some "technical" positions; in Port of Seattle, Decision 890 (PECB, 1980), a petitioned-for unit of office-clerical employees in two departments was neither "vertical" nor "horizontal", particularly in light of the existence of office-clerical employees in other departments, and so was found to be inappropriate.

where the Commission cited and relied upon the NLRB's Mallinckrodt decision. The more recent decision in Vancouver School District, Decision 4022-A (PECB, 1993), introduced the analysis with some historical perspective:

> American labor history includes a well-documented struggle between "craft" and "industrial" unions. ... The "craft" unions were dedicated to representing employees working within a particular range of skills, often in the building construction industry. In contrast, "industrial" unions desired to organize all employees working in a plant or factory, including unskilled workers and those with a variety of skills. It was in that context that the National Labor Relations Act (NLRA) of 1935, as amended by the Labor-Management Relations Act of 1947, provides:
>
> > SEC. 9. ...
> > (b) The Board shall decide in each case whether, in order to assure to employees the rights guaranteed by this Act, **the union appropriate for the purposes of collective bargaining shall** be the employer unit, **craft unit**, plant unit, or subdivision thereof: PROVIDED, that the Board shall not ...
> > (2) decide that any **craft** unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation ...
>
> [Emphasis by **bold** supplied, footnotes omitted]
>
> ... [P]roblems continued to arise when employees of a traditional craft who had been included in an industrial bargaining unit later sought "severance " as a craft unit. In Mallinckrodt Chemical Works, 162 NLRB 387, 397-398 (1966), the National Labor Relations Board (NLRB) enunciated a revised rationale for unit determinations in "severance" situations, as follows:
>
> > The following areas of inquiry are illustrative of those we deem relevant:

1. Whether or not the proposed unit consists of a **distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft** on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
2. The **history of collective bargaining of the employees sought** and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
3. The **extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit**, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The **history and pattern of collective bargaining in the industry** involved.
5. The **degree of integration of the employer's production processes**, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
6. The **qualifications of the union seeking to "carve out" a separate unit**, including that union's experience in representing employees like those involved in the severance action.

In view of the nature of the issue posed by a petition for severance, the foregoing should not be taken as a hard and fast definition or an inclusive or exclusive listing of the various considerations involved in making unit determinations in this area. No doubt other

> factors worthy of consideration will appear in the course of litigation. We emphasize the foregoing to demonstrate our intention to free ourselves from the restrictive effect of rigid and inflexible rules in making our unit determinations. Our determinations will be made only after a weighing of all relevant factors on a case-by-case basis, and we will apply the same principles and standards to all industries.

[Emphasis by **bold** supplied, footnotes omitted].

Previous to Mallinckrodt, the NLRB allowed severances of craft units under American Potash & Chemical Corporation, 107 NLRB 1418 (1954). After 12 years of experience, however, the Board had come to believe that American Potash was based upon an **erroneous assumption that the NLRA favored craft severance.**

In Mallinckrodt, a "craft" union sought to sever 12 instrument mechanics from a wall-to-wall bargaining unit of 280 production and maintenance employees. In its analysis, the Board added criteria, but did not change the basic rule that a "craft unit" must consist of a "distinct and homogeneous group of skilled journeymen, working as such, together with their apprentices. The Board dismissed the petition, citing the importance of the employer's operation to the national interest, and the **integration of the petitioned-for group into the employer's production processes.**

In Yelm, supra, the Commission denied severance to a group of school bus drivers, noting:

> 2. A severance ... would not be productive of stable labor relations in the school district.
>
> 3. There is no history giving the petitioned-for employees an identity separate from others in the existing bargaining unit.
>
> 4. "All of the employees of the employer" (after separation of certificated employees ...)

> constitute an integrated support operation essential to the overall discharge by the district of its primary educational function, and therefore are more appropriately dealt with as a unit.
>
> 5. While the Commission in no way questions the petitioner's ability to represent the district's employees, we find no special qualifications vis-a-vis those of the intervenor.

This line of reasoning has been cited in numerous subsequent Commission decisions. Many of those cases have involved school bus drivers, and have reached the same result as in Yelm.[7] The decisions in Okanogan County, Decision 2800 (PECB, 1988), and Grays Harbor County, Decision 3067 (PECB, 1988), stand for the proposition that severance will not be allowed merely because there are some differences of view between various factions or groups of employees within the bargaining unit. Moreover, the fact that the employees proposed for severance could be organized separately in the absence of a history of bargaining is not controlling.[8]

The definition of "craft" was examined in North Mason School District, Decision 3841 (PECB, 1991), as follows:

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[7] Severances have been denied where a bargaining unit has existed for a long time and the incumbent organization continues to exist. See, e.g., West Valley School District, Decision 1129 (PECB, 1981), and Lake Washington School District, Decision 1170 (PECB, 1981).

[8] Autonomous school bus driver units have been found appropriate outside the "severance" context. Cusick School District, Decision 2946 (PECB, 1989). During the initial period following a voluntary merger of a historically autonomous school bus driver bargaining unit into a broader unit of classified employees, it was concluded that the bus driver unit could still stand alone. Pasco School District, Decision 3217 (PECB, 1989). Conversely, where a school bus driver unit already existed, a "residual" unit of other classified employees was found appropriate without disrupting the existing unit. Quillayute School District, Decision 2809 (PECB, 1989).

> The term "craft" is defined in Roberts' Dictionary of Industrial Relations, Third Edition, 1986, as follows:
>
> > A trade or employment or occupation which requires skills, manual ability, an understanding of the principles of the trade and a fixed training period.
>
> Black's Law Dictionary, Fourth Edition, 1951, uses a slightly different definition:
>
> > A trade or occupation of the sort requiring skill and training, particularly manual skill combined with a knowledge of the principles of the art; also the body of persons pursuing such a calling; a guild.
>
> Entry into a "craft" generally requires formalized training over a long period of time (e.g., apprenticeship classes in some trades lasting as much as seven years).

A group of employees performing maintenance functions was denied severance in Vancouver School District, Decision 4022-A (PECB, 1993), absent a showing that they were uniformly "craft" workers.

Application of "Severance" Criteria

The criteria used in Mallinckrodt compare closely to the unit determination standards of RCW 41.56.060. The following applies the analytical pattern used in Vancouver School District.

Characteristics of a "Craft" Group -
Parallel to the "duties, skills and working conditions" aspect of RCW 41.56.060, the first of the Mallinckrodt criteria examines close groupings of employees with particular skills.

The electricians and instrument technicians may well constitute a "distinct and homogeneous group of skilled craftsmen performing their craft function on a nonrepetitive basis", but they do not fulfill the second of the disjunctive tests: They do not, by themselves, constitute a "functionally distinct department".

Instead, both the electricians and the instrument technicians frequently work on specific projects as part of a team with other maintenance department employees who would remain in the existing bargaining unit. Even if not all team members are physically present when all of the work is being done, evidence was presented that many of their work assignments are done in conjunction with other employees (e.g., an electrician may disconnect a motor the day before the pump is to be overhauled by a mechanic, and will return to reconnect the motor after it is overhauled).

History of Bargaining -
The second of the Mallinckrodt criteria directly parallels the "history of bargaining" aspect of the RCW 41.56.060 criteria.

The petitioner's argument that the existing pattern of bargaining will not be disrupted by the proposed severance is not supported by the evidence. The record indicates the petitioned-for employees have been included in the existing bargaining unit, along with the other maintenance department employees, for at least 20 years. There is no history of separate representation of the petitioned-for employees. The incumbent is a viable organization that has shown a continued interest in representing the electricians and maintenance technicians as a part of the existing bargaining unit. With such a history of bargaining, the Commission's admonition in Vancouver School District, supra, is important: "The reasons for disturbing such a long-established relationship and resulting collective bargaining agreement would have to be compelling".

Rather than a long-standing isolation, the evidence presented by the parties indicates that the motivation for this petition is of very recent origin. Throughout the history of the existing bargaining relationship up to the most recent round of contract negotiations, the electricians and instrument technicians were the highest-paid employees in the department. Other classifications within the department "caught up" with them during in the latest

contract, however. That factor, plus a realization that electricians in the employer's maintenance department were not paid as much as electricians in the employer's transit department, has now convinced some of the electricians and instrument technicians that they could better achieve their economic goals through separate representation.

Evidence, albeit hearsay, was presented regarding a statement of the electricians' and instrument technicians' concerns about the latest contract. A member of the union's negotiating team was reported to have dismissed out-of-hand complaints about a "freeze" of the wage rates for the electricians and instrument technicians. Given, however, that previous contracts had consistently resulted in these being the highest-paid classifications among the covered employees, a charge of "reverse discrimination" has not been substantiated. Pay equity studies and contract negotiations occasionally realign wage rates within an employer-wide group for reasons that are entirely legitimate. The duty of fair representation does not require that all employees benefit equally from contract negotiations.[9] Without a pattern of discrimination or exclusion over time, the recent wage negotiations do not warrant overruling the long history of bargaining in the department-wide unit. See, Grays Harbor County, Decision 3067 (PECB, 1988).

The record also fails to suggest an ongoing exclusion of the petitioned-for employees from the bargaining process. Employees in the petitioned-for group have made their needs known to Local 6 and to the employer. One member of the petitioned-for group recently served on an Equity Adjustment Committee which was jointly established by the employer and Local 6 to study the issue of wage equity within the department. Upon becoming aware of specific

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[9] An individual employee can file an unfair labor practice to protest discriminatory negotiations by their exclusive bargaining representative. City of Bonney Lake, Decision 4916 (PECB, 1994).

salary concerns among the petitioned-for employees, Local 6 and the employer jointly embarked upon a salary survey focused only on those classifications.

Maintenance of Separate Identity -

The third Mallinckrodt criteria intersects both the "duties, skills and working conditions" and "extent of organization" aspects of RCW 41.56.060. The "extent of organization" compares the unit sought in a particular case with the whole of the employer's workforce. This particularly comes into operation where sheer numbers (i.e., the size and complexity of an employer's workforce or operations) would frustrate attempts to organize an "all employees" unit, a "vertical" unit, or a "horizontal" unit. Thus, even smaller subdivisions of a workforce may be necessary if employees are to implement their statutory bargaining rights:

> The principal purpose of the Act was and is to protect workers who want to organize for collective bargaining.
>
> NLRB v. Res-Care, Inc. d/b/a Hillview Health Care Center, 705 F.2d 1469 (1983).

The Commission has, however, rejected units that are justified only on "extent of organization" grounds. Bremerton School District, Decision 527 (PECB, 1978).

In the instant case, the petitioned-for unit encompasses all of the employees covered by two job descriptions, plus the leads and trainees in those classifications. The proposed unit would not result in stranding any employees without the ability to organize.

The employer nevertheless argues that integration and interaction between its employees justify finding a department-wide community of interest that aligns with the existing bargaining unit. As indicated above, the work of the bargaining unit is assigned as a project, not by individual craft. The lead workers cooperate on

the distribution and scheduling of work. The job description for the Lead Electrician / Instrument Technician reads, in part:

> **Assign work to electrical / instrumentation skilled craft personnel in accordance with plans and schedules provided by the division planner / scheduler.** Review work orders with affected skilled crafts personnel.
>
> [Emphasis by **bold** supplied.]

Evidence concerning a "business plans" process used within the maintenance department indicates a generic method for identifying short-term and long-term goals. The planning teams are organized by geographic area, not by craft or job classification.

History of Bargaining in the Industry -
The fourth of the Mallinckrodt criteria looks to factual and legal precedents of established unit determination patterns.

A department-wide unit such as that which currently exits is, and can continue to be, appropriate. Seattle Housing Authority, Decision 4385 (PECB, 1993). The petitioner presented some evidence that bargaining units of electricians and/or instrument technicians exist elsewhere, but refrained from arguing that there was any discernible pattern among public water utilities.[10] Furthermore, there was no evidence as to how any comparable bargaining units came into existence.[11]

Integration of "Crafts" into the Employer's Workforce -
Along with the "duties, skills and working conditions" and "extent of organization" criteria of RCW 41.56.060, the fifth of the

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[10] Indeed, the evidence would not have supported such an argument.

[11] If bargaining units can be created by voluntary recognition, as they may be under Chapter 41.56 RCW, data on such units is of limited precedential value.

Mallinckrodt criteria deals with the degree of integration between crafts personnel and other bargaining unit personnel.

The electricians and instrument technicians report for work in their own shops, but are assigned out from there to projects throughout the geographical area served. From evidence presented by both journey-level and lead employees, the petitioned-for employees work on both "craft" projects and combined projects. Given the generalized statement of the department's work as being "pumping wastewater from one place to another", electrical or instrument repair is not an end-product or primary focus. It appears that most maintenance projects involve a team effort and an integrated scheduling of employees with several kinds of skills.

The evidence was clear that employees are not able to transfer into the electrician or instrument technician classifications unless they have the required training or certificates. The same is also true of employees transferring from the petitioned-for classifications to other classifications in the department. The maintenance department generally employs highly trained persons whose skills are not entirely interchangeable, but that fact alone does not justify a separate bargaining unit. Vancouver School District, supra.

Qualifications of the Petitioner -
As discussed in Vancouver, supra, RCW 41.56.060 does not contain an explicit counterpart to the Mallinckrodt inquiry about the identity or history of the petitioning labor organization.

In International Association of Fire Fighters, Local 1052 v. PERC, 45 Wn.App. 686 (Division III, 1986), the court held that the Commission should not interfere with the choice of bargaining representative by public employees, once an appropriate unit is found to exist.

Desires of the Employees -

Not found among the Mallinckrodt criteria is the final segment of the RCW 41.56.060 criteria for determining appropriate bargaining units: The desires of the employees.

RCW 41.56.040 protects the right of **employee choice** in the selection of an exclusive bargaining representative. Where application of other unit determination criteria indicates that any of two or more different unit configurations could be appropriate, the Commission assesses the "desires of employees" on the unit determination issue by conducting a unit determination election. The employees involved are thus given an opportunity to express their desires on their unit placement under the protection of a secret ballot, and there is no need for employees to give sworn testimony or be subjected to cross-examination on such a sensitive issue. The unit determination election procedure is inapplicable, however, unless all of the choices submitted to the employees are otherwise appropriate under RCW 41.56.060. Clark County, Decision 290-A (PECB, 1977).

Conclusions

As the Commission noted in Vancouver School District, supra: "The moving party in a severance case has a difficult burden to meet when there has been a long-established bargaining relationship." In the instant case, the union seeks a craft unit limited to two specific classifications within the maintenance department.

The facts of the instant case are parallel in many ways to the facts in Mallinckrodt. Where the petitioner before it was trying to carve out a unit of instrument mechanics from a larger operations and maintenance unit, the NLRB stated:

> The employer produces uranium metal by means of a highly integrated continuous flow production system which the record herein shows is beyond

doubt as highly integrated as are the production processes of the basic steel, basic aluminum, wet milling, and lumbering industries. The process itself is largely dependent upon the proper functioning of a wide variety of instrument controls which channel the raw materials through the closed pipe system and regulate the speed of flow of the materials as well as the temperatures within different parts of the system. These controls are an integral part of the production system. The instrument mechanics' work on such controls is therefore intimately related to the production process itself. Indeed, in performing such work, they must do so in tandem with the operators of the controls to insure that the system continues to function while new controls are installed, and existing controls are calibrated, maintained, and repaired.

The instrument mechanics have been represented as part of a production and maintenance unit for the last 25 years. The record does not demonstrate that their interests have been neglected by their bargaining representative. In fact, the record shows that their pay rates are comparable to those received by the skilled electricians who are currently represented by the Petitioner, and that such rates are among the highest in the plant. ... Viewing this long lack of concern for maintaining and preserving a separate group identity for bargaining purposes, ... we find that the interests served by the maintenance of stability in the existing bargaining unit of approximately 280 production and maintenance employees outweigh the interest served by affording the 12 instrument mechanics an opportunity to change their mode of representation.

...

However, it appears that the separate community of interest which these employees enjoy by reason of their skills and training has been largely submerged in the broader community of interests which they share with other employees by reason of long and uninterrupted association in the existing bargaining unit, the high degree of integration of the employer's production processes, and the intimate connection of the work of these employees with the actual uranium metal-making process itself. ...

With substitution of "wastewater treatment" for "uranium production" and "health of citizens in the state's most populous county" for "national defense", the concerns in this case clearly align with the matters of concern to the NLRB.

Step-by-step application of the statutory unit determination criteria has not produced distinctions sufficient to support a conclusion that the bargaining unit configuration sought by the petitioning union is appropriate. Like the NLRB in Mallinckrodt, it is concluded that it will not effectuate the policies of the Act to permit the disruption of the existing unit by permitting the petitioner to "carve out" the unit it seeks.

FINDINGS OF FACT

1. King County is a county of the state of Washington and is a "public employer" within the meaning or RCW 41.56.030(2). The METRO division of King County provides water pollution control services to residents of King County.

2. Electrical & Technical Maintenance Employees Association, a prospective bargaining representative within the meaning of RCW 41.56.070, is a recently formed organization which exists for the purpose of collective bargaining on behalf of certain employees of the METRO division of King County.

3. Service Employees International Union, Local 6, a "bargaining representative" within the meaning of the RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of operations and maintenance employees working in the water pollution functions of King County.

4. The bargaining relationship between the employer and Local 6 has been in existence for about 20 years, and covers a

bargaining unit that includes employees performing support and maintenance tasks under the title of "electrician", "instrument technician", "lead electrician / instrument technician", "trainee - electrical" and "trainee - instrument technician", along with all other operations and maintenance employees of the employer's water pollution control operation.

5. The petitioner has filed a timely and properly supported petition seeking to carve out a separate bargaining unit of electricians and instrument technicians, together with their related lead and trainee classifications.

6. The petitioned-for employees which support the employer's primary water pollution control function, by repairing and maintaining various motors and equipment. Such employees are required to have the training and experience necessary to qualify as journey-level craftspersons.

7. The petitioned-for employees are assigned to and supervised within the employer's water pollution control maintenance department. They are based at a shop at the East Division plant in Renton, Washington, and at a shop at the West Division plant in Seattle, Washington. These employees travel to other work sites within the division where they work, to complete specific work orders in conjunction with other department employees. Their wages, benefits, hours, and working conditions are generally similar to those of other skilled maintenance personnel working in the employer's water pollution control operations.

8. The petitioned-for employees have directly participated on Local 6 bargaining committees assigned to specific issues. They have utilized the opportunity to present proposals to the bargaining committee for negotiations. Although they were not advantaged by the latest agreement between the employer and

the Local 6, there is no evidence that Local 6 aligned itself in interest against the petitioned-for employees or discriminated against them on any unlawful basis.

9. The employees in the existing bargaining unit constitute an integrated support operation essential to the primary water pollution control function of METRO.

10. Local 6 continues to be a viable organization and has a continuing interest in representing the instrument technicians and electricians as part of the larger bargaining unit.

11. Severance of the proposed unit would contribute to fragmentation of the bargaining unit and disruption of labor relations of the employer.

CONCLUSIONS OF LAW

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

2. The Electrical and Technical Maintenance Employees' Association is a bargaining representative within the meaning of RCW 41.56.030(3).

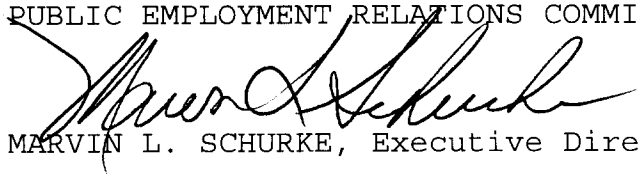
3. The petitioned-for bargaining unit limited to instrument technicians, electricians, lead instrument technician / electrician, trainee instrument technician and trainee electricians performing maintenance functions within the Water Pollution Control Division is not an appropriate unit for the purposes of collective bargaining with the meaning of RCW 41.56.060, so that no question concerning representation presently exists.

ORDER

The petition for investigation of a question concerning representation filed in the above-captioned matter by the Electrical and Technical Maintenance Employees' Association is DISMISSED.

Issued at Olympia, Washington, on the 31st day of March, 1995.

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 391-25-590(2).