

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
PLUMBERS AND STEAMFITTERS,)	CASE NO. 7493-E-88-1286
LOCAL 290)	
)	
Involving certain employees of:)	DECISION 3160 - PECB
)	
CITY OF VANCOUVER)	DIRECTION OF ELECTION
)	
)	

Matt Walters, Business Manager, appeared on behalf of the union at the hearing. Imperati, Barnett, Sherwood & Coon, P.C., by Thomas J. Barnett, Attorney at Law, filed the brief.

Foster, Pepper & Shefelman, by P. Stephen DiJulio, Attorney at Law, appeared on behalf of the employer.

On July 25, 1988, Plumbers and Steamfitters, Local 290, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as the exclusive bargaining representative for building inspectors employed by the City of Vancouver. A pre-hearing conference was held on August 31, 1988, at which time the parties framed contested issues for determination by the Commission. A statement of results of the pre-hearing conference was issued pursuant to WAC 391-08-220, and no objections thereto were filed by either party. A hearing was held at Vancouver, Washington, before Mark S. Downing, Hearing Officer, on October 19, 1988. Both parties filed post-hearing briefs on December 12, 1988.

BACKGROUND

The City of Vancouver (employer) is a municipality, bordering the Columbia River, located in the southwest corner of the state of Washington. The employer has a manager/council form of government, with an elected council consisting of seven members. The employer's 425 employees are divided into seven departments: Fire, Police, Parks and Recreation, Public Works, Finance and Administration, Law, and Planning and Development.

The employer has existing collective bargaining relationships with various organizations representing six separate bargaining units:

- * International Association of Fire Fighters, Local 452, (IAFF) represents the city's uniformed firefighters.
- * Office and Professional Employees International Union, Local 11, (OPEIU) represents the city's uniformed police officers.
- * Teamsters Union, Local 58, is the exclusive bargaining representative for parks maintenance employees.
- * Washington State Council of County and City Employees, Local 307VC, (WSCCCE) represents maintenance employees of the Public Works Department.
- * International Association of Machinists, District Lodge #24, (IAM) represents mechanics in the Public Works Department.
- * Office and Professional Employees International Union, Local 11, (OPEIU) also represents a general employee

bargaining unit made up of clerical and technical employees from five departments: Police, Parks and Recreation, Public Works, Finance and Administration, and Planning and Development.

No new bargaining units have been organized within the employer's workforce since 1969. Most of the employer's technical and professional employees are not represented for the purposes of collective bargaining, and the employees involved in this proceeding are within that group.

The petitioned-for employees work in the Public Works Department. Plumbers and Steamfitters, Local 290, (union) seeks to represent building inspectors employed in the Building and Zoning Division of that department. Three employees currently occupy such positions.

The Public Works Department is headed by a director. A detailed organization chart for the department, showing the bargaining unit status of each position, is in evidence. The director's personal staff includes two unrepresented positions, as well as one position which is allocated to the general unit represented by the OPEIU. Five division managers report to the department head, and all of those are excluded from the bargaining units. Five additional positions with titles that suggest supervisory or administrative roles are excluded from all of the bargaining units.¹ Among the remaining unrepresented positions on the employer's organization chart, 11 of them are vacant and/or have titles which suggest a requirement for

¹ These are an administrative assistant, an operations superintendent, a material control administrator, an equipment superintendent and a maintenance superintendent, all reporting to the manager of the largest of the divisions.

professional skills and qualifications.² Labor organizations represent 103 of the employees.³ That leaves only seven unrepresented positions in the entire department, where the titles do not suggest the basis for their exclusion from the existing bargaining units.

At the pre-hearing conference, the parties agreed that the only issue in dispute was whether the petitioned-for building inspector employees were an appropriate bargaining unit.⁴

POSITIONS OF THE PARTIES

The employer maintains that the employees should be accreted to the existing OPEIU general employee bargaining unit. As the basis for this argument, the employer maintains that the Public Employment Relations Commission has regularly included building inspectors in bargaining units with other public employees, and that the building inspectors share a community of interest with other employees in the OPEIU "general" bargaining, especially the engineering technician classifications. The employer also argues that creation of a separate unit would produce undue fragmentation of its employees. In the alternative, the

² Those include a special projects position (vacant), a city surveyor, an associate traffic engineer, three senior civil engineer positions (one of them vacant), three civil engineer positions (one vacant), an assistant city engineer, and a water quality chemist.

³ Ten are represented by the IAM, 11 are represented by the Teamsters, 56 are represented by the WSCCCE, and 26 are represented by the OPEIU in the "general" unit.

⁴ The Commission provided the OPEIU with notice of the pre-hearing conference and of the hearing held in this matter. No representative of that organization appeared on either occasion, and the OPEIU has not moved to intervene in this matter.

employer contends that, if a separate bargaining unit is found to be appropriate, it should include other classifications performing inspection or code enforcement work.

The union contends that the building inspectors have their own separate community of interest, distinct from the employees in the "general" bargaining unit represented by the OPEIU or any other group of employees, and thus constitutes an appropriate bargaining unit. The union relies on the fact that the petitioned-for building inspectors are the only Public Works Department employees who perform inspections on private property. Other distinguishing characteristics of building inspectors cited by the union include separate supervisory control, enforcement of different codes than other employees, and infrequent contact with other employees. In response to the employer's fragmentation argument, the union contends that Public Works Department employees have traditionally been represented by four different unions, and not on a department-wide basis.

DISCUSSION

The authority to determine the scope of a unit appropriate for the purposes of collective bargaining was delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060; City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.App 599 (Division III, 1981), rev. den. 96 Wn.2d 1004 (1981). The criteria for making a determination are:

... 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. ...

In the context of unrepresented employees, the "duties, skills and working conditions" and "extent of organization" will tend to be the operative criteria in determining the existence of a community of interest. Cusick School District, Decision 2946 (PECB, 1988).

Availability of Accretion to the OPEIU Unit

There can be no doubt that, for 20 years or more, the employer has enjoyed the freedom to deal with the petitioned-for employees (along with a few others within its Public Works Department) as unrepresented rank-and-file employees. Now, the employer would deprive them of the opportunity to vote on having union representation, by having the Commission include them in the existing bargaining unit represented by the OPEIU. The employer's support for accretion of the petitioned-for positions to the general bargaining unit represented by the OPEIU amounts, at the bottom line, to a condemnation of their unrepresented status for that entire period.

Under most circumstances, public employees have the right to freely choose their own exclusive bargaining representative. RCW 41.56.040. As stated in Kitsap Transit Authority, Decision 3104 (PECB, 1989):

Accretions are an exception to the norm, and will be ordered only where changed circumstances lead to the presence of positions which logically belong only in an existing bargaining unit, so that those positions can neither stand on their own as a separate bargaining unit or be logically accreted to any other existing bargaining unit.

Guidelines for accretion of employees into an existing bargaining unit were addressed in South Columbia Basin Irrigation District, Decision 2894 (PECB, 1988), where the following National Labor Relations Board (NLRB) standards were discussed:

... the Board has followed a restrictive policy in finding an accretion because it forecloses the employees' basic right to select their bargaining representative ... Thus, the Board has found no accretion existed where there was an absence or infrequency of interchange among employees in the new and existing groups; where there was a lack of common supervision; where there was a lack of physical, functional, and administrative integration of the groups of employees; where there were different skills and functions in the two groups; and where there was a history of exclusion of these new employees from the unit.

Weatherite Company, Inc., 261 NLRB 667 (1982)

The parameters of the existing OPEIU bargaining unit have not changed since 1969.⁵ The employer has never previously claimed that such bargaining unit was inappropriate due to its exclusion of building inspectors. The long history of unrepresented status for the petitioned-for employees requires a conclusion that an attempt by the OPEIU to absorb them now would be rejected. Representation and unit clarification proceedings cannot be used to obtain the ordered inclusion of

⁵ Commission records also indicate that "... building inspection employees of the Building Division ..." were excluded in the November 16, 1967, certification by the Washington State Department of Labor & Industries of the WSCCCE as exclusive bargaining representative for various employees of the Public Works Department. See, City of Vancouver, Decision 440 (PECB, 1978).

positions which have existed outside of the bargaining unit for a substantial period of time. King County, Decision 3049 (PECB, 1988); City of Prosser, Decision 3157 (PECB, 1989).⁶

Community of Interest

Analysis must focus on the scope of representation within the Public Works Department. The largest of the five divisions has 78 employees (all but six of them being represented by some labor organization),⁷ while the smallest of the divisions has eight positions (all but two of them being represented).⁸ This case arises out of the Building and Zoning Division, which is the next-to-smallest in size in the department.

The Building and Zoning Division is responsible for the enforcement of building and zoning codes. The division manager is Paul Edgerton. Eight additional classifications are included in this division: Zoning administrator, zoning staff technician, code enforcement officer, customer service representative, chief building inspector, and building inspector I,

⁶ See, also, City of Dayton, Decision 1432 (PECB, 1982), where a question concerning representation was held to exist based on the fact that the petitioned-for positions had been excluded by the parties for at least seven years.

⁷ A review of the classification titles and organizational structure of this division reveals that all six unrepresented positions appear to be supervisory or confidential in nature.

⁸ A review of the classification titles and organizational structure of this division reveals that one of the unrepresented positions appears to be supervisory, while the other is likely a professional.

II, and III.⁹ Only two of the seven employees under Edgerton's direction are represented by a labor organization: The customer service representative and the zoning technician.

The zoning administrator and the zoning technician review proposed development plans, and conduct on-site inspections to insure compliance with the zoning code.

The code enforcement officer spends more than 50 percent of her time in the office. She enforces the dangerous building abatement code and housing code, performing inspections before and after the destruction of buildings. Inspection reports from building inspectors are also utilized to develop necessary legal documents.

The employees in the building inspector classifications and the customer service representative are responsible for the enforcement of various building codes. The inspectors spend seven hours a day in the field, conducting inspections of buildings located on private property, to insure compliance with municipal building and construction codes.¹⁰ The inspectors work independently from inspections performed by other Public Works divisions. Ninety-five percent of their time is spent inspecting new or remodeled construction

⁹ At the time of hearing in this matter, Cindy Peterson was filling the building inspector III position, although her official classification was building inspector II. The employer had recently advertised for applicants for the chief building inspector position.

¹⁰ The codes enforced include those dealing with the areas of building, electrical, energy, mechanical and plumbing. The employees are not specialists (e.g., responsible solely for an individual building code, such as plumbing), but are responsible for inspections utilizing all of the building codes.

projects, while the remainder of their time is occupied preparing inspection reports requested by other Public Works divisions or other departments. The customer service representative serves the public at a counter in the office, answering questions from the public and maintaining radio contact with the inspectors.

Were the question being raised when such a unit was being created, it seems likely that the building inspectors could be included in a "general" bargaining unit containing employees from the Finance and Administration, Parks and Recreation, Planning and Development, Police, and Public Works departments. The employer correctly notes that the Public Employment Relations Commission has included building inspectors in bargaining units with other classifications of public employees. In Clark County, Decision 290, 290-A (PECB, 1977), for example, a unit clarification petition filed concerning "fire inspector" positions created in 1976 resulted in inclusion of the inspection personnel in a bargaining unit consisting of full-time and regular part-time employees of that employer's Public Works Department, based on the similarity of duties to classifications already in the bargaining unit, as well as an absence of a history of separate treatment. A similar result followed in City of Lacey, Decision 396 (PECB, 1978), where a building inspector was included in a city-wide bargaining unit. See, also, City of Snohomish, Decision 2712 (PECB, 1987).¹¹

¹¹ It is aptly observed that, while building inspectors were included in bargaining units with other classifications of public employees in these cases, the bargaining units involved were either of a departmental, city-wide or residual nature. The instant matter, by contrast, involves an already-fragmented unit structure.

While the Commission has shown some preference for broad, generic bargaining units (as tending to avoid the "second generation" unit determination problems often associated with situations where an employer finds it necessary or desirable to alter its table of organization),¹² historical considerations as to how employees become coalesced into various interest groups must also be taken into account in a unit determination decision. Accordingly, cases are found where employees performing "inspection" functions have been allocated to separate units based on historical or functional reasons.

In King County, Decision 1480 (PECB, 1984), the union involved sought to add the position of "fire protection engineer" to its bargaining unit of clerical, technical and engineering classifications in several departments, including the Building and Land Development Division. Fire inspection employees in the Fire Marshal's office, a section of the same division, had not been included in the petitioning union's original bargaining unit, and another organization had come along in the meantime to obtain certification as the exclusive bargaining representative of employees in the Fire Marshal's office. Upon the subsequent creation of the disputed position, the employer recognized the second union for the new position. In the unit clarification proceedings that followed, the Commission confirmed the split of "inspection" functions and the allocation of the new position to the unit in the Fire Marshal's office. It was noted that the units had historically developed along lines of the employer's table of organization, as opposed to an employee-generic base of "inspection" work.

In City of Kent, Decision 1846 (PECB, 1984), the union involved was the exclusive bargaining representative for a unit of

¹² See, Pierce County, Decision 2319, 2321 (PECB, 1985).

operation and maintenance employees in several departments. A dispute arose over the position of "construction inspector" when that employer transferred the position to its unorganized engineering department. The position was excluded from the Teamsters bargaining unit, on the basis of dissimilar working conditions and the fact that the bargaining unit had been organized along lines of the employer's table of organization.

Re-structure of OPEIU "General" Unit

The employer also maintains that the building inspectors share a community of interest with the engineering technician classifications presently within the OPEIU unit, so that any new unit should include both of those groups.

Engineering technicians are employed in the Construction, Engineering and Transportation divisions of the Public Works Department. They perform drafting and surveying tasks, write bid specifications, and conduct inspections to assure that public works projects comply with approved plans and specifications. Public Works Director Ostrowski testified that the knowledge, skills and abilities of building inspectors and engineering technicians are substantially the same. The union countered that testimony by pointing out that engineering technicians apply and enforce different codes,¹³ and work only in the public right-of-way, while building inspectors perform inspections only on private property. The two groups of employees have only infrequent contacts in the course of their duties.¹⁴

13 Engineering technicians enforce standards of the Washington State/American Public Works Association for subjects such as paving and pipe construction.

14 Building inspectors and engineering technicians occasionally work together on cross-connection control issues related to the water system.

Even if there are arguments and precedent supporting the employer's view, however, the issue is not properly before the Commission in this proceeding, and need not be resolved. More than being merely invited to intervene (as was done here), the OPEIU would be a necessary party to such proceedings. Nobody has filed and served a timely and properly supported petition for investigation of a question concerning representation, seeking what amounts to a "severance" from the OPEIU unit. The employer's argument favoring a unit of building inspectors and engineering technicians is found to be without merit.

Fragmentation of Bargaining Units

The employer's reliance on City of Centralia, Decision 2940 (PECB, 1988) is misplaced, as there are substantial differences in facts. In Centralia, a representation petition seeking a separate bargaining unit of water utility employees within a Water and Wastewater Department was rejected. The whole department was unrepresented, and employees shared common, department-wide interests in wage rates, benefits, shift schedules and other working conditions. Additionally, the same parties had previously stipulated the propriety of a single department-wide bargaining unit.¹⁵ By contrast, the employer's workforce in the instant case is already organized into four separate bargaining units represented by four different labor organizations. Creation of an additional bargaining unit is not inconsistent with the historical pattern of bargaining in the department.

¹⁵ That petition had been withdrawn prior to the conduct of an election.

Inclusion of Other "Inspection" Personnel

The employer argues that, if a separate bargaining unit is found to be appropriate, such a unit should include other classifications performing inspection and code enforcement work for the employer.

The employer points to a "fire prevention officer", a non-uniformed employee of the Fire Department who inspects buildings for compliance with fire prevention codes, performs arson investigations and conducts an educational program on fire prevention. Again, however, history stands in the way. This is not an attempt to organize a generic occupational unit (aptly termed a "horizontal" unit) on a clean slate. As noted above, not even the engineering technician personnel within the Public Works Department are available for inclusion in the petitioned-for unit. Although the position in the Fire Department requires some knowledge of building codes, the fire prevention officer is under entirely separate supervision and rarely interacts with building inspectors.

Within the Public Works Department, the employer points to the code enforcement officer and zoning administrator. While there was evidence that the zoning administrator has served in the past as acting division manager in Edgerton's absence, it was the chief building inspector that the employer proposed to exclude from the petitioned-for unit as a supervisor. The employer's position on this issue appears to be well-taken. If a unit were to be created in this case which was limited to the employees in the building inspector I, II, and III classes, the zoning administrator and code enforcement officer would be left stranded or, because they are public employees who have a right to organize for the purposes of collective bargaining, could later form yet another bargaining unit. One small unit

dictated by historical considerations can be justified against a "fragmentation" argument, but two such units cannot. The zoning administrator and code enforcement officer will, as urged by the employer, be included in the bargaining unit and will be eligible voters in the election directed herein.

FINDINGS OF FACT

1. The City of Vancouver is a public employer within the meaning of RCW 41.56.030(1).
2. Plumbers and Steamfitters, Local 290, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition for investigation of a question concerning representation involving certain employees of the City of Vancouver.
3. The City of Vancouver is organized into seven departments: Fire, Police, Finance and Administration, Law, Parks and Recreation, Planning and Development, and Public Works.
4. The City of Vancouver has existing collective bargaining relationships with six bargaining units. Office and Professional Employees International Union (OPEIU) represents a general employee bargaining unit consisting of clerical and technical employees of the Finance and Administration, Parks and Recreation, Planning and Development, Police, and Public Works departments. Operations and maintenance employees in the Public Works Department are represented by the Washington State Council of County and City Employees (WSCCCE), Local 307VC; by Teamsters, Local 58; and by District Lodge #24 of the International Association of Machinists. Uniformed

firefighter employees are represented by the International Association of Firefighters (IAFF), LOCAL 452, while the OPEIU also represents uniformed police officers. Most of the employer's technical and professional employees are unrepresented for the purposes of collective bargaining.

5. No new bargaining units have been organized among the employer's workforce since 1969.
6. The petitioner seeks to represent building inspectors employed within the Building and Zoning Division of the Public Works Department. The supervisor of such employees is Paul Edgerton, manager of the division. The petitioned-for employees are engaged in the inspection of private property for compliance with various regulations.
7. Within the Building and Zoning Division, the employer also has employees in the classifications of code enforcement officer and zoning administrator. Such employees are also engaged in the inspection of private property for compliance with various regulations.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in the matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. Based upon the extensive history of their exclusion from all bargaining units, any proposal to accrete the petitioned-for employees to any existing bargaining unit raises a question concerning representation entitling the affected employees to exercise their free choice, pursuant

to RCW 41.56.040 and RCW 41.56.070, on their selection of an exclusive bargaining representative.

3. No petition is properly before the Public Employment Relations Commission at this time to raise a question of "severance" of employees, pursuant to RCW 41.56.060, from any existing bargaining unit.
4. Employees in the building inspector, code enforcement officer and zoning administrator classifications within the Building and Zoning Division share a community of interest in common supervision and generally similar functions involving the enforcement of building and land use regulations, so that a bargaining unit consisting of:

All full-time and regular part-time inspection and enforcement personnel employed in the Building and Zoning Division of the Public Works Department of the City of Vancouver, excluding confidential employees, supervisors and all other employees of the employer

is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

5. A question concerning representation presently exists, pursuant to RCW 41.56.070, in the appropriate bargaining unit described in paragraph 4 of these conclusions of law.
6. The conduct of a representation election by mail ballot pursuant to WAC 391-25-490 will substantially reduce delay in determining the question concerning representation.

DIRECTION OF ELECTION

An election, by secret mail ballot, shall be conducted by the Public Employment Relations Commission among all employees in the bargaining unit described as:

All full-time and regular part-time inspection and enforcement personnel employed in the Building and Zoning Division of the Public Works Department of the City of Vancouver, excluding confidential employees, supervisors and all other employees of the employer

to determine whether the employees in that bargaining unit desire to be represented by Plumbers and Steamfitters, Local 290 or by no representative.

DATED at Olympia, Washington, this 23d day of March, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.