

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON STATE COUNCIL OF)
COUNTY AND CITY EMPLOYEES,) CASE 8160-E-89-1379
COUNCIL 2, LOCAL 1553-HC)
) DECISION 3515 - PECB
Involving certain employees of:)
)
SPOKANE COUNTY HEALTH DISTRICT) DIRECTION OF ELECTION
)
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In the matter of the petition of:)
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INTERNATIONAL FEDERATION OF)
PROFESSIONAL AND TECHNICAL) CASE 8278-E-89-1403
ENGINEERS, LOCAL 17)
) DECISION 3516 - PECB
Involving certain employees of:)
)
SPOKANE COUNTY HEALTH DISTRICT) DIRECTION OF ELECTION
)
_____)

Pamela G. Bradburn, Attorney at Law, appeared on behalf of the Washington State Council of County and City Employees.

Donald Larkin, State Program Director, appeared on behalf of International Federation of Professional and Technical Engineers, Local 17.

Mark Cassidy, Labor Relations Consultant, Associated Industries, Inc., appeared for the employer.

On August 31, 1989, the Washington State Council of County and City Employees, Council 2, Local 1553-HC, (WSCCCE) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of the Spokane County Health District. (Case 8160-E-89-1379.) A prehearing conference was held on October 6, 1989, at which time the employer took the position that the petitioned-for bargaining

unit was not appropriate. A Statement of Results of Prehearing Conference was issued on October 11, 1989, outlining the matters stipulated and the issues for hearing.

On October 13, 1989, International Federation of Professional and Technical Engineers, Local 17, (IFPTE) filed a petition for investigation of a question concerning representation with the Commission, seeking certification as exclusive bargaining representative of certain environmental health technician employees of the Spokane County Health District. (Case 8278-E-89-1403.)

There was some indication that the petitioners could be seeking overlapping bargaining units, and a consolidated hearing was held in these matters at Spokane, Washington, on February 5, 1990, before Hearing Officer J. Martin Smith. Post-hearing briefs were filed to complete the record.

BACKGROUND

The Spokane County Health District provides health examination, inoculation and environmental review services to residents of Spokane County. The agency is administered by a joint board of elected officials from Spokane County and the cities in the area. Lee Mellish has been the administrator of the Spokane County Health District since 1973.

The employer's public health nurses and nurse practitioners are now represented by WSCCCE Local 1553-N. That bargaining unit pre-dates other events relevant to this proceeding.¹ The employer and WSCCCE

¹ The docket records of the Commission indicate mediation services were provided in such a unit in 1977, in Case 808-M-77-302. WSCCCE became exclusive bargaining representative in Case 2625-E-80-500. Spokane County Health District, Decision 854 (PECB, April 21, 1980).

have a collective bargaining agreement in that bargaining unit which runs through 1990.

In 1980, WSCCCE filed a representation petition with the Commission, seeking certification for a bargaining unit consisting of:

[A]ll full-time and regular part-time employees of SCHED in vital statistics and environmental health departments. . . .

That proposed bargaining unit included a mix of clerical, professional and administrative employees. The parties eventually executed an election agreement which added employees of "the personal health services clinic and building maintenance departments . . .", so that the unit essentially included all of the employer's non-supervisory employees other than those in the nursing unit.² An election was conducted, and WSCCCE was certified as exclusive bargaining representative on May 16, 1980.³ After some time in negotiations, the parties reached agreement on a contract that ran through December, 1982. A successor agreement was not to follow, however, and unfair labor practice litigation ensued. Thereafter, a petition was filed by bargaining unit employees, seeking decertification of WSCCCE as exclusive representative.⁴ WSCCCE failed to sustain its majority status in an election conducted by the Commission, and a certification of "no representative" was issued on February 21, 1984.⁵ Those employees have remained unrepresented since that time.

² Notice is taken of the docket records of the Commission concerning Case 2655-E-80-0511, filed March 6, 1980.

³ Spokane County Health District, Decision 883 (PECB, 1980).

⁴ Notice is taken of the docket records of the Commission concerning Case 4988-E-83-910, filed November 23, 1983.

⁵ Spokane County Health District, Decision 1862 (PECB, 1984).

POSITIONS OF THE PARTIES

WSCCCE now seeks a separate bargaining unit centered on the office-clerical employees who were included in the unit that existed from 1980 to 1984, and it contends that such a unit is appropriate under Commission precedent dating back to 1976. WSCCCE claims that the employer's arguments are so frivolous as to warrant imposition of sanctions by the Commission in this case.

IFPTE Local 17 seeks to represent some, but not all, of the remaining classifications that were included in the unit that existed from 1980 to 1984. It put its focus on employees in the "environmental health" job classification series, and contends that those employees have separate duties, skills and working conditions which support the creation of a separate unit.

The employer points to a commonality of work hours, work locations, benefits, leave rights and holidays among its non-supervisory, non-professional employees. It relies heavily on the "history of bargaining", and resists any fragmentation of the bargaining unit that existed from 1980 to 1984. The employer disputes the characterization of the group sought by WSCCCE as a "typical clerical unit". The employer also disputes the characterization of the group sought by Local 17 as a "departmental" unit, pointing to the "functional integration" of those employees with the employees in its laboratory.

DISCUSSION

The Public Employment Relations Commission determines bargaining units under the standards set forth in RCW 41.56.060. The role is not limited to establishing "the most appropriate" unit in each case. Ben Franklin Transit, Decision 2357-A (PECB, 1986). At the same time, concern has been expressed about "fragmentation" in

numerous cases. See, e.g., Mount Vernon School District, Decision 2273-A (PECB, 1986), affirmed ___ Wn.App. ___ (Division I, 1989). Thus, a variety of concerns must be weighed in determining whether a proposed bargaining unit is "an appropriate unit".

The Propriety of Separate Office-Clerical Unit

Bargaining units of office-clerical employees are regarded as "presumptively appropriate" under precedent developed by the National Labor Relations Board (NLRB). General Electric Company, 107 NLRB 70 (1953), International Smelting and Refining, 106 NLRB 223 (1952), National Cash Register, 95 NLRB 2 (1951). Public Employment Relations Commission precedent is similar. City of Tacoma, Decision 204 (PECB, 1977). Such units are "horizontal" in nature, cutting across departmental lines to group together employees of the same generic occupational type.

Office-clerical employees have consistently been permitted to "sever" themselves from broader bargaining units in which they have been mixed with other employee types. Franklin Pierce School District, Decision 78-D (PECB, 1977); Snoqualmie Valley School District, Decision 529 (PECB, 1978); Mukilteo School District, Decision 1008 (PECB, 1980); Shelton School District, Decision 1609 (PECB, 1983); Longview School District, Decision 2551, (PECB, 1986); University Place School District, Decision 2584 (PECB, 1986). This exception to otherwise stringent "severance" principles⁶ applies even if the office-clericals are "functionally integrated" with other employees. The crux of the "office-clerical" cases is a long-standing acceptance by labor relations agencies, at both the federal and state levels, that such employees share a greater community of interest among themselves than with other employees of the enterprise.

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For a discussion of "severance" generally, see: Yelm School District, Decision 704-A (PECB, 1980).

"Fragmentation" concerns have been raised in connection with office-clerical units, but most often in the context of attempts to subdivide the office-clerical group itself. See, Lewis County, Decision 644 (PECB, 1979);⁷ Clover Park School District, Decision 683 (PECB, 1979);⁸ Port of Seattle, Decision 890 (PECB, 1980);⁹ South Kitsap School District, Decision 1541 (PECB, 1983);¹⁰ City of Port Angeles, Decision 1701 (PECB, 1983);¹¹ King County, Decision 2157 (PECB 1985);¹² Wapato School District, Decision 2227 (PECB, 1985);¹³ City of Ocean Shores, Decision 2550 (PECB, 1986);¹⁴ and Renton School District, Decision 3121 (PECB, 1989).¹⁵

WSCCCE seeks here a separate unit that principally and fundamentally includes all of the office-clerical employees of the employer. WSCCCE's original petition listed 44 employees in 14 different job classifications, including accounting assistants, clerk-typists,

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- ⁷ Employees working for various separately-elected officials were placed in a single, courthouse-wide unit.
- ⁸ Clerical employees in a quasi-independent operation were included in an employer-wide clerical unit.
- ⁹ An attempt to fragmentize the employer's clerical workforce was rejected.
- ¹⁰ Where the employer's clerical workforce had been fragmented into two separate, but overlapping, units, both units were found inappropriate.
- ¹¹ Clerical employees in a quasi-independent operation were included in an employer-wide unit.
- ¹² Fragmentation of the employer's clerical workforce was rejected.
- ¹³ Fragmentation of the employer's clerical workforce into separate "central office" and "outlying office" units was rejected.
- ¹⁴ Clerical employees in a quasi-independent operation were included in an employer-wide unit.
- ¹⁵ Fragmentation of an employer-wide clerical unit was rejected.

information processors, clerical supervisors, clerks, drug-room clerks and secretary-receptionists. WSCCCE has attempted to be specific as to which job classifications it feels are clerical in nature and hence constitute, as a whole, an appropriate bargaining unit under the criteria of RCW 41.56.060. WSCCCE need not show "changed circumstances" or meet other extraordinary tests to organize such a presumptively appropriate unit.

The employer's resistance to "severance" of an office-clerical unit in this case must be rejected. Apart from the fact that the history of bargaining the employer relies upon has been terminated for a period of time longer than the unit existed, Commission precedent supports the severance of an "office-clerical" unit even if the "wall-to-wall" unit were still in existence and viable.

A problem does arise here from the list of classifications sought by WSCCCE. The "licensed practical nurse" and "dietitian" titles appear to be of a "technical" or "para-professional" nature that places them outside the traditional office-clerical generic type. An effort to commingle office-clerical employees with other employee types was rejected in Raymond School District, Decision 3202 (1989), where separate office-clerical and transportation units had been organized in the school district, and the union representing both of those units sought to have them merged. It was noted:

The one type of employee which has been singularly successful in obtaining favorable rulings in "severance" cases is the "office-clerical" generic type. The notion, however, that a separate unit of office-clerical employees is inherently appropriate stems from a body of private sector precedent that traces its roots over a period of more than 30 years.

In the context of the strong precedent on the propriety and severance of office-clerical units, it was then observed:

It seems evident here that the proposed unit would continue only until such time as the office-clerical employees might choose to undo the merger.

Accordingly, the proposal to create a "mixed" unit was rejected, and the previously existing unit structure was continued. In the case at hand, the WSCCCE offered at the hearing to have the dietitian and licensed practical nurses left out of the unit it now seeks. It will be so ordered.

The Propriety of a Separate "Environmental Health" Unit

Local 17 has limited its focus in this case to 16 positions in the "environmental health" job classification series. The proposed unit does not include unrepresented employees working in the employer's laboratory, the previously mentioned licensed practical nurse and dietitian classifications, or unrepresented employees working in a variety of patient services roles.¹⁶

¹⁶ The employer has two nurse attendants, a dental hygienist, two health counselors, a community worker and a health program specialist who work in its personal health services function. Their history of bargaining is limited to having been included in the bargaining unit that existed from 1980 to 1984. Their current job duties appear to be the same as they were during the 1980 to 1984 period, and are distinguished from either office-clerical skills or professional nursing skills. What remains within the employer's workforce is a group of social services professionals apparently working as community workers and caseworkers in an acquired immune deficiency syndrome (AIDS) program operated by the employer. There is no history of bargaining at all for the people in the latter group, so they do not come within the facts supporting the employer's "history of bargaining" argument. Nor do those persons fit into the "office-clerical" occupational type.

A "vertical" unit consisting of all of the employees reporting through one branch of the employer's table of organization can be found appropriate under RCW 41.56.060. Such units draw their community of interest from the commonality of supervision "working condition" applicable to the employees involved. In this case, an employer official described the employer's "public health", "environmental health" and "laboratory" functions as "departments", but the employer's organization chart places all of those functions under the direct supervision of the employer's chief officer. There is little else in the record to support the propriety of a separate "departmental" unit limited to the employer's environmental health function. Taking a more global view of the services provided by the employer, both the "environmental health" and "laboratory" functions relate to the "environmental review" side of the employer's operation, while the existing nursing unit and other unrepresented employees perform work more directly related to patient services.

The Propriety of a Separate "Technical" Unit

An alternate view of the unit sought by Local 17 places emphasis on the "duties" and "skills" aspects of the RCW 41.56.060 criteria, and on the fact that the unit consists of employees within the "technical" occupational generic type. The propriety of "horizontal" unit of technical employees rests on the community of interest of the entire generic occupational type, however. The consolidated hearing produced confirmation that the "environmental health" unit sought by Local 17 would not include a number of other Spokane County Health District employees which, on their titles, appear to be of a technical nature.

The employer has particularly pointed out that it has "laboratory" employees who were not sought by either petitioner. The evidence indicates that the primary distinction between the "environmental health" classifications sought by Local 17 and the "laboratory"

classifications ignored by Local 17 is whether they work in the office or in the field. Contradicting such a narrow focus on their "duties", one of the employees placed emphasis in testimony on having a science background:

You have to have a certain amount of microbiology background to be able to inspect restaurants to determine if the foods are being handled properly due to the types of bacteria that cause food poisoning, et cetera. You also have to have a chemistry background and all that . . .

A separation based on "field" and "office" can scarcely be sustained in view of the commonalities of duties concerning water sample testing, where samples collected in the field are dropped off at the laboratory for analysis, and the control of communicable diseases. Thus, although they may not interact on a daily basis, there is a clear commonality of microbiology skills between the employees doing environmental health inspections in the field and the six employees (microbiologists and laboratory assistants) working in the laboratory.

The "extent of organization" is a factor to be considered under RCW 41.56.060, but the decisions in previous cases have also indicated concern about "stranding" of employees as the result of unit determination decisions.¹⁷ City of Vancouver, Decision 3160 (PECB, 1989); Quillayute Valley School District, Decision 2809-A (PECB, 1988); City of Snohomish, Decision 2712 (PECB, 1987); and City of Ocean Shores, supra, all dealt with the potential for stranding employees in units too small to engage in meaningful collective bargaining. The Vancouver case is particularly instructive. The petitioner there sought to represent a small bargaining unit of

¹⁷ The Commission held in Town of Fircrest, Decision 248-A (PECB, 1977) that a bargaining unit cannot be found appropriate if it consists of only one person.

building inspectors that had remained unrepresented while the vast majority of the city's employees had been included in several bargaining units, but omitted other unrepresented employees doing inspection and code enforcement work in the same department. The employer's proposed solution to the fragmentation was to "accrete" the building inspectors to a bargaining unit of "general" employees represented by another organization, without giving the affected employees a right to vote on their representation. The employer's suggestion was rejected, but the union's narrow focus was also faulted. The decision agreed with the employer that the petitioned-for unit was inappropriate:

Within the Public Works Department, the employer points to the code enforcement officer and zoning administrator. . . . 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.

An election was thus directed in an enlarged unit which included the zoning administrator and code enforcement officer. In the case at hand, a "technical" unit within the employer's environmental review function makes sense, while a decision that "strands" the laboratory people would leave open the possibility of their later organizing separately in yet another unit.

The Request for Sanctions

The arguments advanced by the employer with respect to the appropriate bargaining unit(s) are not entirely contrived, dilatory

or frivolous. In fact, adjustments have been found necessary with respect to each of the petitioned-for units. There is no basis to pursue discussion of "sanctions" in this case.

FINDINGS OF FACT

1. Spokane County Health District is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Council 2, Local 1553-HC, 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, seeking certification as exclusive bargaining representative of a bargaining unit composed primarily of office-clerical employees of the Spokane County Health District.
3. International Federation of Professional and Technical Engineers, Local 17, 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, seeking certification as exclusive bargaining representative of certain "environmental health" employees of the Spokane County Health District.
4. The Washington State Council of County and City Employees currently represents a separate bargaining unit consisting of public health nurses and nurse practitioners employed by the Spokane County Health District.
5. In 1980, the Washington State Council of County and City Employees was certified as exclusive bargaining representative of a bargaining unit consisting of office-clerical, environ-

mental health and patient care employees of the Spokane County Health District. That bargaining relationship terminated by decertification of the union in 1984, and those employees have remained unrepresented since that time.

6. Employees of the Spokane County Health District working in the accounting, receptionist, clerk-typist, information processor and secretary classifications share a community of interest as office-clerical employees that is separate and distinct from other employees of the employer.
7. Employees of the Spokane County Health District working in dietitian and licensed practical nurse classifications are not office-clerical employees.
8. The record does not sustain a finding that the employees of the Spokane County Health District in the "environmental health" job classification series share an exclusive community of interest limited to their assignment within a single branch of the employer's table of organization. Such employees share a community of interest, based on their duties and skills, with other technical employees working in the environmental health functions of the Spokane County Health District.
9. The employees of the Spokane County Health District in the classifications of microbiologist, laboratory technician and laboratory assistants share a community of interest, based on their duties and skills, with other technical employees working in the environmental health function of the Spokane County Health District.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters pursuant to Chapters 41.56 RCW and 391-25 WAC.

2. A bargaining unit consisting of:

All full-time and regular part-time non-supervisory office-clerical employees of the Spokane County Health District, excluding elected officials, officials appointed for a fixed term of office, the Director, confidential employees, supervisors, nursing personnel, technical employees in the employer's environmental health and laboratory function, and all other employees of the employer

is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and a question concerning representation presently exists pursuant to RCW 41.56.070 in such unit.

3. A bargaining unit limited to employees of the Spokane County Health District in the "environmental health" job classification series is not an appropriate unit under RCW 41.56.060.

4. A bargaining unit consisting of:

All full-time and regular part-time non-supervisory technical employees in the environmental health and laboratory functions of the Spokane County Health District, excluding elected officials, officials appointed for a fixed term of office, the Director, confidential employees, supervisors, nursing employees, office-clerical employees, employees providing patient services, and all other employees of the employer

is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and a question concerning representation presently exists pursuant to RCW 41.56.070 in such unit.

5. Any disputes concerning voter eligibility in these matters are properly resolved by means of challenged ballot procedures and post-election determination under WAC 391-25-510.

DIRECTION OF ELECTIONS

1. (CASE 8160-E-89-1379; DECISION 3515 - PECB) An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission, to determine whether the employees in the bargaining unit described in paragraph 2 of the foregoing conclusions of law desire to be represented for the purposes of collective bargaining by the Washington State Council of County and City Employees, Local 1553-HC.
2. (CASE 8160-E-89-1379; DECISION 3516 - PECB) An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission, to determine whether the employees in the bargaining unit described in paragraph 4 of the foregoing conclusions of law desire to be represented for the purposes of collective bargaining by the International Federation of Professional and Technical Engineers, Local 17.
3. The requests for the imposition of sanctions against the Spokane County Health District in this case are denied.

Issued at Olympia, Washington on the 26th day of June, 1990.

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.