

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
| INTERNATIONAL FEDERATION OF |) | CASE 9060-E-91-1497 |
| PROFESSIONAL AND TECHNICAL |) | |
| ENGINEERS, LOCAL 17, AFL-CIO |) | DECISION 3939 - PECB |
| Involving certain employees of: |) | |
| KING COUNTY |) | DIRECTION OF ELECTION |
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| In the matter of the petition of: |) | |
| INTERNATIONAL FEDERATION OF |) | CASE 9102-E-91-1505 |
| PROFESSIONAL AND TECHNICAL |) | |
| ENGINEERS, LOCAL 17, AFL-CIO |) | DECISION 3940 - PECB |
| Involving certain employees of: |) | |
| KING COUNTY |) | ORDER OF DISMISSAL |
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| In the matter of the petition of: |) | |
| INTERNATIONAL FEDERATION OF |) | CASE 9118-E-91-1508 |
| PROFESSIONAL AND TECHNICAL |) | |
| ENGINEERS, LOCAL 17, AFL-CIO |) | DECISION 3941 - PECB |
| Involving certain employees of: |) | |
| KING COUNTY |) | ORDER OF DISMISSAL |

Wayman N. Alston, Jr., Business Representative, appeared on behalf of the petitioner.

Stephen W. Robinson, Labor Relations Specialist, appeared on behalf of the employer.

On March 4, 1991, International Federation of Professional and Technical Engineers, Local 17 filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, involving certain employees of King County. Docketed as Case 9060-E-91-1497, that petition concerns employees

in the "nutritionist" classification within the King County Health Department.

On April 3, 1991, the same union filed a second representation petition involving King County Health Department personnel. Docketed as Case 9102-E-91-1505, that second petition dealt with employees classified as "dental health specialists".

On April 11, 1991, the same union filed a third petition involving King County Health Department personnel. Docketed as Case 9118-E-91-1508, that third petition concerned employees in the "public health dental hygienist" classification.

The cases were consolidated for processing. A hearing was conducted on July 30, 1991, in Seattle, Washington, before Hearing Officer Kenneth J. Latsch. The parties made closing statements in lieu of filing post-hearing briefs.

BACKGROUND

The Department Involved

The Seattle-King County Department of Public Health provides a variety of health-related services to local residents. The record indicates that the department is operated jointly on behalf of the City of Seattle and King County. There is also reference in the record to a recent change of administration, such that collective bargaining responsibilities for the department formerly vested in the City of Seattle are now performed by King County (employer).

Under the policy direction of the Director of Public Health, a number of divisions are responsible for health program implementation. Of particular interest to the instant case, the Health Services Division administers four public health centers located

throughout King County. The majority of services offered by the positions at issue in this representation case are presented to the public through these health centers.

The "regular" employees of the department are classified under more than 125 different classification titles under the King County personnel system.

Existing Bargaining Relationships in Department

King County has collective bargaining relationships with a large number of employee organizations. International Federation of Professional and Technical Engineers, Local 17 (union) represents employees in several bargaining units.

Of particular interest to the instant petitions, Local 17 represents three bargaining units of employees in the Seattle-King County Department of Public Health. A collective bargaining agreement in effect from January 1, 1990 through December 31, 1992, describes those units in terms of job classifications listed in a wage appendix. That appendix contains the following position titles:

ADMINISTRATIVE SUPPORT UNIT

ACCOUNTING SUPPORT ASSISTANT
ACCOUNTING TECHNICIAN I
ACCOUNTING TECHNICIAN II
ACCOUNTING TECHNICIAN III
ADMINISTRATIVE SPECIALIST I
ADMINISTRATIVE SPECIALIST I-WIC CLERK
ADMINISTRATIVE SPECIALIST II
ADMINISTRATIVE SPECIALIST III
ADMINISTRATIVE SUPPORT ASSISTANT
OFFICE AIDE
OFFICE ASSISTANT

PROFESSIONAL, TECHNICAL UNIT

COMMUNITY HEALTH SERVICES ASSISTANT
DATA ENTRY OPERATOR
DATA PROCESSING SYSTEMS ANALYST

ENVIRONMENTAL HEALTH SPECIALIST
ENVIRONMENTAL HEALTH INSPECTOR
ENVIRONMENTAL HEALTH SPECIALIST, SENIOR
HEALTH SERVICES ASSISTANT
HEALTH SERVICES ASSISTANT, SENIOR
MEAT INSPECTOR
MICROBIOLOGIST
MICROBIOLOGIST, SENIOR
NEIGHBORHOOD HEALTH INSPECTOR
PUBLIC HEALTH EDUCATOR
PUBLIC HEALTH LABORATORY ASSISTANT
PUBLIC HEALTH LABORATORY ASSISTANT, SENIOR
PUBLIC HEALTH LABORATORY TECHNICIAN
SOCIAL WORKER
X-RAY TECHNICIAN
X-RAY TECHNICIAN, SENIOR

SENIOR PROFESSIONAL UNIT

ENVIRONMENTAL HEALTH SERVICES SUPERVISOR

The record indicates that the collective bargaining agreement serves as a "master" agreement for the three bargaining units, with specific articles addressing particular needs for each group.

Other organizations represent other bargaining units of employees at the Health Department: The Washington State Nurses Association represents public health nurses, nurse practitioners, personal health services supervisor, and registered nurses; the Washington State Council of County and City Employees represents some job classifications that deal with environmental health and communicable diseases; Public Service and Industrial Employees (Laborers) Union, Local 1239, represents utility laborers; Plumbers and Pipefitters Union, Local 32, represents plumbing inspectors; and Teamsters Union, Local 117, represents warehousemen employed by the department.

The department also has approximately 70 non-represented job classifications. Apart from the employees at issue in these proceedings, the non-represented employees include, but are not limited to, accountants, administrative assistants, administrative secretary, clinical assistant, communicable disease officer,

delivery worker, personnel specialist, pharmacists, pharmacist assistants, and staff physicians.

The Positions at Issue

Nutritionist -

The "nutritionist" classification has existed for at least 11 years. These 17 employees are responsible for nutritional services for local residents participating in prenatal, well child and family planning clinics. They conduct nutrition surveys, advise local agencies on nutritional matters, train health service staff members, and also prepare public information as needed. The nutritionists are expected to have a bachelors degree in nutrition, and must be registered as a dietician under nation-wide standards.

Dental Hygienist -

The "dental hygienist" classification has existed for a number of years, pre-dating the current collective bargaining agreement. The hygienists assist in the planning and implementation of dental programs, and also provide public education. Hygienists examine children for dental problems, maintain records and statistics on examinations conducted, and also provide consultive services for other health officials. Hygienists must possess a degree from a four-year dental hygiene program, and must be able to conduct a variety of dental hygiene and preventive dental services.

Dental Health Assistant -

The "dental health assistant" classification was also in existence prior to the signing of the current collective bargaining agreement. These employees instruct parents, teachers and children on dental hygiene, and also perform dental hygiene screening. They must have completed a recognized dental assistant course, or must have served six months in similar work prior to date of hire.

The Onset of These Disputes

The union sent a letter to the employer on January 28, 1991, requesting voluntary recognition of "all of the County employees working for the County Health Department with the title of Nutritionist". The employer responded by letter dated February 28, 1991, declining to extend voluntary recognition. The union then filed its representation petition within a few days thereafter.

Although similar recognition requests and refusals were not made prior to the union's filing of representation petitions on "dental health specialist" and "dental hygienist" classifications, it became clear during the course of the proceedings that the employer was unwilling to grant voluntary recognition as to those groups.

POSITIONS OF THE PARTIES

Each of the above-captioned proceedings was commenced by a separate representation petition under Chapter 391-25 WAC. The union's position at the hearing was, however, that the three petitioned-for classifications should be "accreted" to the bargaining unit(s) covered by the existing collective bargaining agreement. The union argues that the classifications at issue are similar in nature to the classifications already represented by the union, and that the employees in the petitioned-for classifications desire to be represented by the union. The union relies on the fact that the employer has voluntarily allowed positions to be added to the bargaining units in the past, and it asserts that the Commission should direct such a result here. In the alternative to "accretion", the union maintains that "a" separate bargaining unit should be created.

The employer does not object to any of the petitioned-for employees being represented for the purposes of collective bargaining, but it

also does not believe that the positions in dispute should be accreted to the existing bargaining unit. The employer notes that the petitioned-for employees were not discussed during the course of collective bargaining negotiations, and that the union should not now use the representation petition process to "clarify" the bargaining unit in an untimely manner. The employer suggests that separate bargaining units should be created. It characterizes the nutritionists as "professional" employees, and maintains that they have no community of interest with the dental hygienist and dental assistant employees. While it stipulated the propriety of a separate bargaining unit of nutritionists, and distinguished them from the other petitioned-for classifications, it fell short of stipulating that the "dental" classifications could stand alone as a separate bargaining unit.

DISCUSSION

The Commission's responsibilities in the area of bargaining unit determination are set forth in RCW 41.56.060:

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 the bargaining representatives; the extent of organization among public employees; and the desire of the public employees. ...

The goal of the unit determination procedure 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. City of Pasco, Decision 2636-B (PECB, 1987).

The Commission further described the unit determination process in its decision in City of Centralia, Decision 3495-A (PECB, 1990), where it stated:

The statute does not confine us to certifying only "the most appropriate unit" in each case. It is only necessary that the petitioned-for bargaining unit be an appropriate one. Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require rejecting a proposed unit that is appropriate.

All of the employees of an employer inherently share some community of interest in dealing with their common employer. Thus, when sought by a petitioning union, employer-wide bargaining units have been viewed as presumptively appropriate.

Units smaller than employer-wide may also be appropriate, especially in larger workforces. The employees in a separate department or division may share a community of interest separate and apart from other employees of the employer, based on their commonality of function, duties, skills and supervision. Consequently, departmental (vertical) units have sometimes been found appropriate when sought by a petitioning union. Alternatively, 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) units have also been found appropriate, on occasion, when sought by a petitioning union.

[Emphasis in original; footnotes omitted.]

A number of past decisions have pointed out the "second generation unit determination problems" which tend to flow from too-heavy reliance upon extent of organization and upon specific job titles in the initial organization and description of bargaining units. The problems stemming from organizing strictly along lines of "extent of organization" became apparent in Pierce County, Decision 1039 (PECB, 1980), where a diverse group of employees which has

been accumulated in separate transactions by a single labor organization was found to be "an amalgam of units", rather than a single appropriate bargaining unit. The problem stemming from too heavy reliance on job titles is exemplified in City of Seattle, Decision 3131-A (PECB, 1989), where use of a common job title was not a sufficient basis for inclusion of an employee in a bargaining unit, absent other evidence of a community of interest with the bargaining unit.

The record developed in this case discloses not only a history of fragmentary organizing within the department involved, but also an ongoing effort in these petitions to implement "extent of organization" to the disregard of all other unit determination criteria. The fact that the employer has tolerated a pattern of organizing by job title and "accretion" to an amalgam of units covered by one contract does not compel either the employer or the Commission to continue such practices in this or future cases.

The doctrine of "accretion" grew originally out of decisions of the National Labor Relations Board (NLRB) administering the National Labor Relations Act. See, Great Atlantic & Pacific Tea Co. (A & P Stores), 140 NLRB 1011 (1963); Horn and Hardart Co., 173 NLRB 1077 (1968); Renaissance Center Partnership, 239 NLRB 180 (1979); and Panda Terminals, 161 NLRB 1215 (1966). The decision in Kitsap Transit Authority, Decision 3104 (1989), included a discussion of the accretion doctrine:

Employees ordinarily are permitted to vote on their choice of exclusive bargaining representative. RCW 41.56.040; RCW 41 56.060. 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. See, Ben Franklin Transit, Decision 2357-A (PECB, 1986). Since

accretion is accomplished without giving the affected employees an opportunity to vote on their representation, the party proposing an accretion has the burden to show that the conditions for an accretion are present.

Accretions are routinely denied where the positions have existed for a sufficient time to develop their own "history of bargaining". See, for example, City of Dayton, Decision 1432 (PECB, 1982).

The Commission has long held that it will not conduct "accretion elections", giving employees in a portion of an otherwise appropriate bargaining unit an opportunity to vote separately on representation. See, City of Vancouver, Decision 3160 (PECB, 1989).¹ A union which desires to add positions to "perfect" an existing bargaining unit can, of course, do so by raising a question concerning representation in the entire appropriate bargaining unit. Local 17 has rejected such an approach here.

The positions at issue here have existed for a considerable period of time. Although the record shows that they have some similarity of duties, skills and working conditions to classifications already in the bargaining unit, the employer's concerns about the manner in which the issues have been brought forward for determination are well-founded. The previous acquiescence of this employer (or of its predecessor) to accreting positions does not preclude it from refusing to continue that practice. The "accretions" requested by the union must be denied.

¹

The Vancouver decision explained, in detail, the problems with "accretion elections". If accretions were permitted on the basis sought by the union here, it would tend to lead to units created exclusively by "extent of organization", without concern for whether the employees share similar duties, skills, working conditions, history of bargaining or desires. There is no compelling reason to deviate from that precedent here.

Propriety of a Separate Unit of Nutritionists

As noted above, the health department already has a "crazy quilt" of union representation.² It might be possible to delineate a "residual" unit covering all of the remaining non-represented, non-supervisory classifications, or even to describe two or more "residual/occupational" units among the same employees.³ No such petition is before the Commission at this time, however.

The employer has offered no resistance to organization of the nutritionists, and it stipulated that they were professionals who constituted an appropriate separate unit. The 17 employees in the classification are small in number in relation to the overall workforce of King County, and even of the Health Department, but that alone is not a sufficient basis to dismiss the petition seeking such a bargaining unit. Thus, an election is directed in Case 9060-E-91-1497.

Propriety of Separate Units of "Dental" Occupations

While the employer offered no fundamental resistance to organization of the "dental" classifications involved in Cases 9102-E-91-1505 and 9118-E-91-1508, it pointed out the existence of two other "dental" classifications, and it fell short of stipulating the propriety of any bargaining unit including those employees. The union, for its part, called no witnesses on the "dental" classifications, and did nothing to establish the propriety of the two separate units that it petitioned for.

² The fragmentation is so extreme that the classification of "administrative specialist III - BU - PH" is represented by Local 17, while the classification of "administrative specialist III - PH" is non-represented. The precise meaning of the "BU" designation was neither disclosed nor justified in this record.

³ E.g., "health care provider professionals", "health care provider para-professionals", etc.

While one of the "dental" classifications may arguably be excludable on "supervisory" grounds, the record does not provide any basis for further subdivision of the occupational grouping of "dental" classifications within the department. Absent any evidence to support a conclusion that the two separate units sought in Cases 9102-E-91-1505 and 9118-E-91-1508 are appropriate units under RCW 41.56.060, those cases must be dismissed.

FINDINGS OF FACT

1. The Seattle-King County Department of Public Health is funded jointly by the City of Seattle and King County, and is administered by King County. The department provides a number of public health services to local residents, and is a "public employer" within the meaning of RCW 41.56.030(1). More than 125 different job classifications are utilized within that department.
2. International Federation of Professional and Technical Engineers, Local 17, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of three bargaining units of employees at the health department. Those bargaining units are composed of: (1) administrative support personnel, (2) professional and technical personnel, and (3) supervisory employees. They include employees in approximately 31 classifications.
3. Other labor organizations represent approximately 18 other classifications of employees within the department.
4. King County and Local 17 are parties to a collective bargaining agreement that was signed on July 23, 1990, and is effective through December 31, 1992.

5. The classification of "nutritionist" has existed within the department for at least 11 years, and has never been represented for the purposes of collective bargaining. The 17 employees in the classification are responsible for a variety of nutritional education and information activities, and are regularly in contact with the public. Nutritionists are required to have bachelor degrees and certification as dietitians under nation-wide standards, and are stipulated by the employer to be professional employees.
6. The classifications of "dental hygienist" and "dental health assistant" have existed within the department for at least five years. Neither classification has ever been represented for purposes of collective bargaining. The hygienists are responsible for dental education and record-keeping duties, as well as screening children for dental problems. Dental assistants provide classes for children, teachers and parents concerning dental health, and screen for dental problems. During the course of the hearing, it was disclosed that the employees in the "oral health assistant" classification also perform duties concerning the dental health of persons served by the department.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. Under the history of bargaining present in these cases, the request of International Federation of Professional and Technical Engineers, Local 17, for accretion of the classifications of "nutritionist", "dental hygienist" and "dental assistant" raises a question concerning representation as to

those employees and entitles them, under RCW 41.56.060 and .070 to exercise their right to choose their exclusive bargaining representative, if any, so that "accretion" of those classifications to the existing bargaining unit would be improper.

3. A bargaining unit consisting of all full-time and regular part-time nutritionists employed by the Seattle-King County Department of Public Health, excluding elected officials, appointed officials, confidential employees, supervisors, 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 in that bargaining unit.
4. International Federation of Professional and Technical Engineers, Local 17, has failed to establish that the petitioned-for "dental hygienist" and "dental assistant" classifications each constitute an appropriate separate bargaining unit under RCW 41.56.060.

ORDER

1. DIRECTION OF ELECTION - Case 9060-E-91-1497.

A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in paragraph 3 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, or by no representative.

2. ORDER OF DISMISSAL - Case 9102-E-91-1505.


The petition for investigation of a question concerning representation is DISMISSED.

3. ORDER OF DISMISSAL - Case 9118-E-91-1508.

The petition for investigation of a question concerning representation is DISMISSED.

DATED at Olympia, Washington, this 13th day of December, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

Paragraph 1 of this order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.

Paragraphs 2 and 3 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).