

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TEAMSTERS UNION, LOCAL 117)	CASE 9105-E-91-1506
)	
Involving certain employees of:)	DECISION 3937 - PECB
)	
PORT OF SEATTLE)	DIRECTION OF ELECTIONS
)	
)	

Davies, Roberts & Reid, by Kenneth J. Pedersen, Attorney at Law, appeared on behalf of the union.

Preston, Thorgrimson, Shidler, Gates & Ellis, by J. Markham Marshall, Attorney at Law, appeared on behalf of the employer.

On April 8, 1991, Local 117, International Brotherhood of Teamsters, AFL-CIO, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The union seeks certification as exclusive bargaining representative of clerical employees of the Police Department of the Port of Seattle. A pre-hearing conference was held in Seattle, Washington, on May 10, 1991, at which the parties stipulated to all matters except the propriety of the petitioned-for bargaining unit. A hearing was held on that issue on May 20, 1991, before Hearing Officer Walter M. Stuteville. The parties filed post-hearing briefs.

BACKGROUND

The Port of Seattle (employer) is a municipal corporation of the state of Washington, created pursuant to Title 53 RCW, which provides harbor and transportation facilities at various locations within King County, Washington. It is an "employer" within the

meaning of both RCW 41.56.030(1) and RCW 53.18.010. An elected, five-member commission sets policy for the employer and selects the director. The employer's organization is divided into five divisions: Executive/Corporate; Administrative Services; Logistics; Marine; and Aviation.

Within the Executive/Corporate Division, a Human Resources Department is involved in the centralized hiring of clerical employees for all divisions. The Human Resources Department also develops salary and benefit structures which apply to all non-represented employees, which currently includes all clerical employees.

Apart from its harbor and marina facilities relating to water-borne activities along Puget Sound, the employer operates the Seattle-Tacoma International Airport (Sea-Tac). The employer maintains its own police force, which is headquartered at the Sea-Tac airport. The Police Department is administratively under the Aviation Division. Chief of Police Edward A. Ingram heads the Police Department. That department employs approximately 135 persons. Approximately 75 are commissioned police officers of the rank of sergeant or below; 13 are office-clerical personnel working under the job titles of "Lead Staff Assistant", "Staff Assistant I", "Staff Assistant II", or "Staff Assistant III".¹

The "staff assistant" classification series is used by the employer throughout its operations.² The staff assistants are neither currently represented, nor have they ever in the past been represented for purposes of collective bargaining. The staff

¹ All of the petitioned-for employees work at the Sea-Tac Airport. Four work in the police administrative offices, seven work in the police identification office, and two work in the office of the chief of police.

² For example, the employer's job description for "Staff Assistant I" identifies that class as "schedule B; non-exempt" and as "multi-departmental/various locations".

assistants employed in the Police Department are covered by the same salary grid as other employees holding the same job titles and working under the same job descriptions in other Port of Seattle operations.

The "staff assistant I" is the entry level classification, and reports to a lead staff assistant or to an administrative assistant. The employer's job description for that classification specifies:

POSITION SUMMARY

Provides specialized and/or general office support to a department or section. Duties are performed under close supervision on new assignments or special projects, and general supervision on normal day-to-day activities. Incumbents in this position are expected to learn the basic principles and terminology of the department/location function and/or specialized field.

POSITION DUTIES AND RESPONSIBILITIES:

Performs any combination of the following duties:

Performs word processing and/or data processing activities which may include format, input and retrieval tasks.

Types letters, memos, reports and forms such as warrant requests, leases, requisitions or confidential communications.

Classifies and processes section and/or departmental information, and prepares or assists with preparation of various documents and/or reports.

Assists the department and/or section in maintaining communications with other organizations.

Performs various office duties such as organizing and maintaining files, records and listings, ordering supplies, answering phones, opening and distributing mail, timekeeping, scheduling and arranging for meetings and/or

travel, keeping petty cash accounts, maintaining tickler systems, and updating records.

Operates office machines such as copiers, calculators, transcribers, computer terminals, printers and typewriters.

Performs relief duties and/or project assignments.

Performs other related duties as required.

For employees in the "staff assistant II" and "staff assistant III" classifications, the only changes from that job description are the Position Summary paragraphs:

Staff Assistant II:

POSITION SUMMARY

Provides specialized and/or general office support to a department or section. Duties are performed under close supervision on new assignments or special projects, and general supervision on normal day-to-day activities. Incumbents in this position are expected to learn the basic principles and terminology of the department/location function and/or specialized field.

Staff Assistant III:

POSITION SUMMARY

Provides specialized and/or general office support to a department or section. This position performs duties under limited supervision, and the complexity of the assignments is such that an intermediate level of knowledge of the principles and terminology of the department/location function and/or specialized field is required. This position frequently performs assignments and special projects requiring independent research, judgment and problem solving.

In testimony concerning differences between staff assistant positions throughout the port, the major distinctions noted between the petitioned-for employees and the "staff assistant" personnel in

other Port of Seattle departments is that those employed within the police department are: (1) Required to go through a pre-employment background/security clearance which includes their prior employment, work history, a credit check, and a criminal record check; (2) are allowed to handle confidential documents,³ and (3) produce security badges allowing access to airport premises.⁴ Staff assistants in other departments are not required to have a security clearance, and do not handle confidential documents or security badges. Notwithstanding those distinctions, however, there is some evidence that staff assistants throughout the employer's operations are interchangeable. Chief Ingram listed specific examples of port employees who had transferred from the police department to other departments, and of employees who had transferred into the police department from other departments.⁵

POSITION OF THE PARTIES

The employer resists creation of the petitioned-for bargaining unit, asserting that the only appropriate bargaining unit among its office-clerical employees is one which includes all of its clerical employees. The employer cites Port of Seattle, Decision 890 (PECB, 1980), where the Commission ultimately dismissed a petition seeking to organize some, but not all, of the clerical employees of this employer. The employer points to its centralized human resources and labor relations functions, and to the similar nature of work performed by staff assistants throughout its operations, as important criteria for finding that a wall-to-wall bargaining unit

³ The petitioned-for employees handle crime-related materials and conviction records.

⁴ The petitioned-for employees produce ID badges for all port employees, tenants and contractors.

⁵ He noted, however, that transfers of the latter type are time-consuming, because of the security clearance required for employees going into the police department.

is appropriate. The employer argues, further, that the only significant change that has occurred since the 1980 decision is an even greater interchange between departments within the port.

The union argues that the office-clerical employees working in the employer's Police Department have a common working relationship and community of interest that is distinct from other clerical employees of the employer. The union argues, further, that RCW 53.18.030 gives specific classifications within a department the right to their own bargaining unit. Finally, the union asserts that the staff assistants are too diverse and scattered among the various port departments and facilities to be organized in a single bargaining unit.

DISCUSSION

Statutory Standards

Chapter 53.18 RCW provides very general guidance for deciding this case involving a port district and its employees:

RCW 53.18.015 APPLICATION OF PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT. Port districts and their employees shall be covered by the provisions of chapter 41.56 RCW except as provided otherwise in this chapter.

. . .

RCW 53.18.030 CRITERIA FOR CHOICE OF EMPLOYEE ORGANIZATION--PROCEDURES FOR RESOLUTION OF CONTROVERSY. In determining which employee organization will represent them, employees shall have maximum freedom in exercising their right of self-organization.

Controversies as to the choice of employee organization within a port shall be submitted to the public employment relations commission. . . .

. . .

RCW 53.18.050 AGREEMENTS--AUTHORIZED PROVISIONS. A labor agreement signed by a port district may contain:

(1) Provisions that the employee organization chosen by the majority of the employees in a **grouping or unit** will be recognized as the representative of all employees in the **classification included in such grouping or unit.** [emphasis supplied].

RCW 41.56.040 is in harmony with RCW 53.18.030, guaranteeing public employees "free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining". Similarly, RCW 41.56.050 is in harmony with the second paragraph of RCW 53.18.030, by requiring that disagreements concerning selection of a bargaining representative be submitted to the Public Employment Relations Commission. Going beyond the passing references to "grouping or unit" in RCW 53.18.050(1), RCW 41.56.060 affirmatively authorizes the Commission to determine appropriate units for the purposes of collective bargaining, and sets the standards for such determinations:

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 condition 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 supplied]

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).

RCW 41.56.060 expressly calls for a case-by-case approach to such matters. The Commission 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.]

The bargaining unit sought by the petitioner in this case features both occupational (horizontal) and departmental (vertical) characteristics, since it includes all of the employees of a

particular occupational grouping (office-clerical) that are found within a particular branch of the employer's table of organization (the Police Department).

Precedent on Office-Clerical Bargaining Units

Numerous decisions issued under RCW 41.56.060 have recognized office-clerical employees as a separate occupational type. Consistent with precedents of the National Labor Relations Board, office-clerical employees have even been permitted to sever themselves from larger bargaining units in which they have historically been included. See, Highline School District, Decision 3562 (PECB, 1990) and cases cited therein.

Employer-wide units of office-clerical employees have been found appropriate in the past. In City of Tacoma, Decision 204 (1977), such a unit was found to be appropriate, based upon identical entrance exams, hiring through a central personnel office, routine intra-city transfers, job descriptions that did not differentiate between positions in various offices, employees that were paid the same rate of pay and the fact of the employer having a centralized labor negotiations department.⁶ In Wapato School District, Decision 2227 (1985), a proposed unit of central office-clerical employees was found inappropriate, and an employer-wide unit of office-clerical employees was approved, subject to the customary exclusion of supervisors and confidential employees.

Where already in existence, employer-wide units of office-clerical employees have also been protected against "severance" of a

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A simultaneous petition seeking a separate clerical unit within one department was rejected.

departmental office-clerical unit. See, Renton School District, Decision 3122 (PECB, 1989).⁷

Examples are also found, however, where bargaining units limited to the office-clerical employees in a particular department have been found to be appropriate. A separate bargaining unit of office-clerical employees in a police department was approved in City of Seattle, Decision 140 (PECB, 1976).⁸ Similarly, in City of Redmond, Decision 2324 (PECB, 1986), police clericals were found to constitute an appropriate unit distinct and separate from a city hall clerical unit, based upon a 15 year history of bargaining.

The case relied upon by the employer here, Port of Seattle, Decision 890 (PECB, 1980), requires careful review in light of the recent Commission precedents on unit determination policy.⁹ That case involved the same employer as is involved here, but a different union. That petitioner's organizing efforts had been limited to office-clerical employees in what was then called the Marine Terminals and Distribution Divisions. A single unit was

⁷ The Renton decision made reference to South Kitsap School District, Decision 1541 (PECB, 1983), where a fuzzy borderline between two office-clerical bargaining units left the employer and both unions with a legacy of unit determination and work jurisdiction issues. The "neither unit is appropriate" result in South Kitsap eventually led to creation of an employer-wide clerical unit.

⁸ Although a petition for a multi-department bargaining unit of office-clerical employees was pending at the same time, that proposed unit fell short of "employer-wide".

⁹ Decisions issued at an earlier time expressed concern about fragmentation of bargaining units. See, for example, King County, Decision 2157 (PECB, 1985) and City of Redmond, supra. While not expressly reversed, the weight of those precedents must be evaluated in light of the decisions in City of Centralia, supra, and its companion case, City of Winslow, Decision 3520-A (PECB, 1990).

sought bridging between those two divisions,¹⁰ but excluding the clerical employees in the employer's other divisions. The employer responded, as it has here, that the only appropriate bargaining unit among its office-clerical employees would be an employer-wide unit encompassing all employees who perform clerical work, and who share similar wages and fringe benefits. The unit sought in that case was, indeed, held to be inappropriate.¹¹ The facts of the instant case are different, however, as the petitioner here seeks only the clerical employees in one department.

Application of Statutory Standards

Duties, Skills, and Working Conditions -

In City of Centralia, supra, the Commission found two separate department-based units to be appropriate, while rejecting the employer's demand for an employer-wide "blue collar" unit. The Commission stated:

There may be occasions when an employer or union can demonstrate circumstances that require rejection of a department-wide unit. An employer-wide or occupationally-based unit configuration seems especially apt in a case where there is integration of duties or interaction among employees across either real or nominal departmental lines. This is not such a case. The work location, shift arrangements and supervision of employees in the Parks

¹⁰ In the spirit of graphical descriptions like "horizontal" and "vertical" units, the unit sought in that case was aptly described as "an H-shaped unit".

¹¹ One occasionally must swallow one's words. Although no such unit was ever sought by the petitioner in that case, Decision 890 went on to opine that an employer-wide unit would be appropriate, and it allowed time for that union to produce a showing of interest sufficient to warrant an election in the employer-wide unit. The real holding of the case (and the ultimate basis for dismissing the petition) was that the "H-shaped" unit sought by that union was inappropriate. Anything more was dicta.

Department is separate from that in the Water and Wastewater Utilities Department and, in turn from the Public Works Department. There is no significant integration of duties or interaction among the employees.

The employer's efforts to make such a showing in the instant case have been considered, but are not found persuasive.

The equipment used by staff assistants - word processors, copy machines, telephones - is similar throughout the employer's operations. The same basic job descriptions are used, and the same basic job assignments are common, no matter where the individual staff assistant is stationed. Hours of work are parallel, as staff assistants both in and out of the Police Department work both the 8:00 a.m. to 4:30 p.m. shift, as well as alternate shifts. Finally, wages, benefits and compensated time off are administered by the centralized Human Resources Department in a uniform manner for all of the employer's staff assistants.

At the same time, there are some working conditions and task assignments that do distinguish the staff assistants in the Police Department from the staff assistants in other departments. While the crime-related information they handle is not "confidential" in a labor relations sense,¹² the nature of those records, the fact of there being pre-hire reference checks only in the Police Department, and the nature of the identification badge function, all suggest that these particular employees are working at least in support of the employer's "security" functions.¹³

¹² See, International Association of Fire Fighters v. City of Yakima, 91 Wn.2d 101 (1978).

¹³ RCW 53.18.060(3)(a) prohibits inclusion of port security personnel under the same collective bargaining agreement with other employees.

History of Collective Bargaining -

None of the employer's office-clerical employees have any history of collective bargaining.

Extent of Organization -

The petitioned-for bargaining unit would include all of the office-clerical employees of the Police Department, with the statutorily required exclusions of confidential employees¹⁴ and supervisors.¹⁵ The police officers in that department are already separately organized for the purposes of collective bargaining.¹⁶ Thus, it does not appear that the petitioned-for bargaining unit would have the effect of stranding other Police Department employees who have similar wages, hours or working conditions.

The employer apparently fears that creation of a bargaining unit in this case could set a precedent for establishing a multiplicity of "staff assistant" bargaining units in other departments. Depending on how narrowly or broadly a "department" is defined, a potential for as many as 30 department-based bargaining units of "staff assistant" employees within the employer's overall workforce is seen. Such concerns exceed both practicality and the scope of this proceeding, however. Ten of the employer's departments have only one staff assistant position assigned to them,¹⁷ and one-person units are not appropriate. Town of Fircrest, Decision 246-A (PECB,

¹⁴ See RCW 41.56.030(2)(c) and City of Yakima, *supra*.

¹⁵ See RCW 53.18.060(3)(b).

¹⁶ Notice is taken of the docket records of the Commission, which disclose the creation of bargaining relationships between the Port of Seattle and Teamsters Local 882 (the predecessor to the petitioner in the instant case) in the police department. Case 350-E-76-71 concerned police officers; Case 1249-E-77-249 concerned sergeants; and Case 1821-E-78-334 concerned lieutenants and captains.

¹⁷ Examples are the Aviation Marketing Department and the Risk Management Department of the Administrative Services Division.

1977). Of greater importance, there is no petition currently before the Commission for an employer-wide unit or for any other departmental unit, and thus no occasion to rule here on possible stranding or fragmentation problems that might be raised in such a proceeding.

Desires of the Employees -

Where application of the other unit determination criteria results in a conclusion that any of two or more bargaining units could be found appropriate, the focus must shift to the last of the unit determination criteria set forth in RCW 41.56.060. As stated in Federal Way Water and Sewer District, Decision 3794 (PECB, 1991):

Neither the showing of interest filed in support of a petition under RCW 41.56.070 and WAC 391-25-110, nor the testimony of individual employees is relied upon to assess the "desires of employees" for purposes of RCW 41.56.060. City of Seattle, Decision 781 (PECB, 1979). Rather, the confidentiality of employee views on such sensitive matters will be protected by conducting a unit determination election when it is necessary to make an assessment of employee preference. Oak Harbor School District, Decision 1319 (PECB, 1981).

Unit determination elections have been mentioned in Commission decisions dating back to at least Clark County, Decision 290-A (PECB, 1977), and are referred to in the Commission's rules at WAC 391-25-530(1). Unit determination elections have been routinely used, at least since Mukilteo School District, Decision 1008 (PECB, 1980), as part of the procedure for office-clerical employees to obtain "severance" from a larger bargaining unit.

From the foregoing, it appears that the petitioned-for separate bargaining unit of office-clerical employees in the employer's Police Department could be an appropriate bargaining unit. Under the Commission precedents cited above, it is at least arguable that an employer-wide bargaining unit of office-clerical employees could

also be an appropriate bargaining unit.¹⁸ The circumstances for direction of a unit determination election thus appear to exist in this case.

FINDINGS OF FACT

1. The Port of Seattle is a municipal corporation of the state of Washington, organized pursuant to Title 53 RCW. It is an "employer" within the meaning of Chapter 53.18 RCW, and a "public employer" within the meaning of RCW 41.56.030(1).
2. Teamsters Union, Local 117, AFL-CIO, is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The Port of Seattle is organized into 42 departments within five divisions. The Police Department is within the Aviation Division, and is headquartered at the Seattle-Tacoma International Airport.
4. Office-clerical employees of the Port of Seattle working under various "staff assistant" titles are assigned in approximately 30 of the employer's departments. The Police Department has approximately 13 staff assistants. Other departments have as many as eight, and as few as one, staff assistants.
5. The Port of Seattle has a Human Resources Department which conducts centralized hiring of staff assistants, and provides on-going personnel and collective bargaining services for all other departments, including the Police Department.

¹⁸ A definitive ruling would be necessary on the applicability of RCW 53.18.060(3)(a) to employees working only in support of the employer's "security" functions.

6. Staff assistants in all departments perform basic office-clerical duties under a common job description, and they have standardized wages and benefits.
7. Staff assistants assigned to the Police Department are subjected to pre-employment security checks not applied to staff assistants assigned to other departments.
8. In the course of their duties, staff assistants assigned to the police department have tasks concerning crime-related information and concerning the production of security badges for other departments, vendors and tenants. Such functions are not assigned to staff assistants in other departments.
9. Staff assistants working for the Port of Seattle have never been represented for purposes of collective bargaining.
10. The petitioned-for bargaining unit includes all of the un-represented employees of the Police Department, except for supervisors and confidential employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW, Chapter 53.18 RCW, and Chapter 391-25 WAC.
2. A bargaining unit consisting only of full-time and regular part-time office-clerical employees in the Port of Seattle Police Department, excluding the department head, supervisors, confidential employees and all other employees of the employer, could constitute an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, if the employees involved express their desire, by secret ballot, to constitute

themselves a bargaining unit separate and apart from all other office-clerical employees of the Port of Seattle.

3. If the creation of a separate bargaining unit is approved by the employees involved, a question concerning representation will exist under RCW 41.56.060 and .070, warranting the conduct of a representation election.

DIRECTION OF ELECTIONS

1. A unit determination election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the voting group described as:

All full-time and regular part-time office-clerical employees in the Port of Seattle Police Department, excluding the department head, supervisors, confidential employees and all other employees of the employer,

for the purpose of determining whether a majority of the employees eligible to vote desire to constitute themselves as a separate bargaining unit.

2. A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit consisting of:

All full-time and regular part-time office-clerical employees in the Port of Seattle Police Department, excluding the department head, supervisors, confidential employees and all other employees of the employer,

for the purpose of determining whether a majority of the employees in such unit desire to be represented for the purposes of collective bargaining by Teamsters Union, Local 117 or by no representative. The conduct of this representation election is conditioned upon the validation of the bargaining unit in the unit determination election directed herein, and the representation election ballots will be impounded in the event that the unit determination election fails to validate the propriety of the bargaining unit.

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

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read 'Marvin L. Schurke', is written over the printed name.

MARVIN L. SCHURKE
Executive Director

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