

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petitions of:))	CASE 10710-E-93-1764
)	DECISION 4854 - PECB
MARYSVILLE POLICE OFFICERS))	DIRECTION OF ELECTIONS
ASSOCIATION))	
)	CASE 10711-E-93-1765
)	DECISION 4855 - PECB
Involving certain employees of:))	DIRECTION OF ELECTION
)	
)	CASE 10891-E-94-1799
CITY OF MARYSVILLE))	DECISION 4856 - PECB
)	DIRECTION OF ELECTION
)	

Hoag, Vick, Tarantino & Garrettson, by Brian F. Fresonke, Attorney at Law, appeared on behalf of the petitioner.

Robert R. Braun, Jr., Labor Relations Consultant, appeared on behalf of the employer.

John Komar, Business Representative, and Davies, Roberts & Reid, by Michael R. McCarthy, Attorney at Law, appeared on behalf of incumbent intervenor, Teamsters Local 763.

On October 8, 1993, the Marysville Police Officers Association (MPOA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain non-commissioned employees working in the Marysville Police Department.¹ In a second petition for investigation of a question concerning representation filed on the same date, the MPOA sought certification as exclusive bargaining representative of the non-supervisory commissioned employees working in the Marysville Police

¹ Case 10710-E-93-1764. The MPOA's petition originally involved 13 dispatchers, 4 custody officers and an animal control officer. During the processing of the case, a records clerk who performs some dispatching duties was also claimed by the MPOA.

Department.² Teamsters Union, Local 763, was granted intervention in both proceedings, based upon its status as the incumbent exclusive bargaining representative of the petitioned-for employees.

A prehearing conference was held by telephone conference call, on January 18, 1994, at which time the parties stipulated that:

- (1) The petitions were timely filed;
- (2) There were no unfair labor practice charges which would block the processing of the petitions;
- (3) The commissioned police officers constitute an appropriate unit for the purposes of collective bargaining; and
- (4) The police sergeants constitute an appropriate unit for the purposes of collective bargaining.

The issues framed for hearing in these matters were limited to:

- (1) Whether the petitioner is an organization qualified for certification as an exclusive bargaining representative of public employees under Chapter 41.56 RCW;
- (2) Whether the non-commissioned employees of the Marysville Police Department constitute an appropriate separate unit for purposes of collective bargaining; and
- (3) Whether a recently-discharged employee, whose termination was being disputed through the grievance procedure to arbitration, should be allowed to vote in any representation election(s).³

Based on the parties' stipulation to place the sergeants in a supervisory bargaining unit separate and apart from the rank-and-file police officers, Case 10891-E-94-1799 was docketed to cover the police sergeants. Case 10711-E-93-1765 was then limited to the rank-and-file police officers.

² Case 10711-E-93-1765. The petition described the bargaining unit as "5 sergeants, 15 officers".

³ The parties otherwise stipulated the lists of employees then eligible to vote in each of the bargaining units involved in these proceedings.

A hearing was held on February 18, 1994 and March 2, 1994, before Hearing Officer Walter M. Stuteville. The parties filed briefs.

BACKGROUND

The City of Marysville is a suburban community with a population of approximately 11,000, situated on the Interstate 5 corridor just to the north of Everett, Washington. Law enforcement is among the varied local government services provided by the employer.

Prior to the onset of this dispute, the employer's workforce was organized into two bargaining units, both of which were represented by Teamsters Local 763:

- * A unit consisting of certain non-supervisory employees working in the police department;

- * A "city wide" unit consisting of all non-supervisory employees, except those in the police department bargaining unit.

On September 27, 1993, representatives of Local 763 and the employer signed a letter of agreement, altering the composition of those bargaining units:

Reference: MARYSVILLE LAW ENFORCEMENT AND SUPPORT EMPLOYEES LABOR AGREEMENT

On Tuesday, September 21, 1993 I met with you at my office to discuss the composition of the bargaining units represented by Teamsters Local Union No. 763 employed by the City of Marysville, Washington.

It was agreed that in order to comply with the Public Employment Relations Commission decisions concerning the proper structure for bargaining units covered by interest arbitration and the separation of supervisors that the police officers of the City of Marysville shall be a separate bargaining unit; the communications officers, custody officers and animal control officers shall be added to the labor Agreement between the Employer and the

Union covering the City of Marysville office-clerical and public works employees; and a new bargaining unit consisting solely of police sergeants shall be established.

These changes in the composition of the bargaining units are effective September 21, 1993 and the recognition clauses of the respective Labor Agreements shall be amended on that date with all of the other clauses in the law enforcement and support employees Labor Agreement pertaining to each restructured unit remaining in full force until renegotiated in the 1994 respective Labor Agreements.

Shortly thereafter, the MPOA filed the petitions to initiate these representation proceedings.

POSITIONS OF THE PARTIES

The MPOA argues that it is a bargaining representative within the meaning of the statute, that elections ought to be conducted in separate "commissioned" and "non-commissioned" units within the police department, and that the discharged employee should be permitted to vote by challenged ballot.

The employer did not take a position on the "status as bargaining representative" issue. It argues that the transfer of the non-commissioned police department employees to the city-wide unit should not be disturbed, that the separate unit of sergeants should be retained, that elections should be directed only for the two "commissioned" units in the police department, and that the dischargee should not be eligible to vote in the election.

Local 763 argues that the MPOA is not qualified to be certified as a bargaining representative, that the non-commissioned police department employees did not constitute an appropriate separate bargaining unit once the department-wide unit had to be broken up, and that the sergeants are properly placed in a separate unit.

DISCUSSIONQualifications As Bargaining Representative

The issue concerning the qualifications of the MPOA for certification is jurisdictional, as a defectively-filed petition is void.⁴ The stated legislative intent of the statute is to provide:

[A] uniform basis for implementing the right of public employees to join **labor organizations of their own choosing** and to be represented by such organizations in matters concerning their employment relations with public employers.

RCW 41.56.010 [emphasis by **bold** supplied].

The term "bargaining representative" is defined broadly:

Any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

RCW 41.56.030(3) [emphasis by **bold** supplied].

Challenges to the credentials of petitioning organizations are not common, but the boundaries of the definition are well-established.

Merely stating that an organization exists is not sufficient to withstand a legal challenge. In Quillayute Valley School District, Decision 2809 (PECB, 1987), a purported employee "group" had no constitution, bylaws or other evidence of its existence. In the absence of any record of meetings, elections, officers, dues, or other pragmatic indicia of the formulation or operation of a separate entity, it could not be deduced that an organization actually existed to do the work of representing employees under the statute.

⁴ Kitsap County, Decision 2116 (PECB, 1984).

Once affirmative steps are shown, the outcome changes. Washington law imposes few requirements, and clearly contains nothing comparable to the federal Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act). An organization which elected officers, held meetings and engaged in collective bargaining negotiations with the employer was found to be a labor organization in Edmonds School District, Decision 3167 (PECB, 1989), even though it had no constitution or bylaws.

As long as the organization allows employee participation, is established to represent employees, and intends to carry out its representation function, it is a bargaining representative even if it has not created bylaws or collected dues.

Southwest Washington Health District, Decision 1304 (PECB, 1981).

A petitioning union was found to be a qualified organization in Snohomish County, Decision 3012 (PECB, 1988), where its leaders had taken concrete steps to become the exclusive bargaining representative of employees, including a researched inquiry into options, polling for interest among employees, adoption of a resolution declaring its interest in representing employees, and adoption of bylaws changes prior to the hearing on the petition.

Finalization of all aspects of organizational structure is not a pre-requisite to the filing of a representation petition under Chapter 41.56 RCW. Starting with Franklin Pierce School District, Decision 78-B (PECB, 1977), several Commission decisions have held it is sufficient if the steps needed to become a bargaining representative have been completed prior to the hearing on the representation case. In the instant case, however, Local 763 argues that the MPOA did not even qualify as a bargaining representative at the time of the hearing.

Local 763 asserts that the MPOA was originally formed under a statutory provision that forbids the association from acting as a bargaining agent, and that its current association bylaws "contemplate that the Association is subordinate to the bona fide 'bargaining representative', Teamsters Local 763". That may be a correct reflection of the past relationship between the MPOA and the incumbent, but is not conclusive as to the future. The evidence does not establish that the MPOA is in any way precluded from changing its nature and purposes. The decision in City of Edmonds, Decision 3018 (PECB, 1988), where an unfair labor practice violation was found because the employer continued to provide dues deduction to a former police benevolent organization which had gone through a conversion to become a labor organization, inherently acknowledges that such conversions are possible.

Local 763 asserts that recent attempts to amend the MPOA bylaws may not have had the requisite number of votes to pass or been signed by a majority of the association's executive committee. By the time of the hearing, however, the MPOA had held organizational meetings, was working on amending its existing bylaws, had filed the petitions to initiate these proceedings, and had engaged legal counsel to represent it in this hearing process.

There is no requirement in Chapter 41.56 or in the rules of the Commission that a labor organization have a constitution, bylaws, or any particular level of formality to achieve the statutory definition qualifying it for certification as exclusive bargaining representative of public employees. The Kitsap County Employees Association held a meeting ... at which time it adopted bylaws. The procedures followed were somewhat informal, and subject to apt criticism as being ambiguous or confusing, but they do not nullify the fundamental fact that a group of public employees have taken steps to found an organization for the purposes of seeking certification as the exclusive bargaining representative of public employees for the purposes of collective bargaining under Chapter 41.56 RCW. See:

Franklin Pierce School District, Decision 78-D (PECB, 1977); Southwest Washington Health District, Decision 1304 (PECB, 1981). Even if the organization could only be described as "prospective" when the petition was filed, it is clear that an organization existed under the indicated name at the time the hearing was held, which is the critical point in time.

...

Kitsap County, Decision 2116 (PECB, 1985).

Even though the bylaws amendment process may not have been completed, the MPOA clearly meets the limited requirements spelled out in the case law. The "status as bargaining representative" arguments advanced by Local 763 in this case must be rejected.

Appropriate Bargaining Units

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

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, **the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives, the extent of organization among the public employees, and the desire of the public employees.** ...

[Emphasis by **bold** supplied.]

The Commission has described that function in the following fashion:

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

City of Winslow, Decision 3520-A (PECB, 1990) [emphasis by underlining in original].

The Commission routinely exercises its unit determination authority under RCW 41.56.060 to exclude supervisors from the bargaining units which contain their subordinates, in order to avoid conflicts of interest within bargaining units.⁵ The right of supervisors to organize and bargain under Chapter 41.56 RCW is commonly implemented through separate bargaining units of supervisors.⁶

Within the realm of "non-supervisory" employees, the Commission has found units consisting of "all of the employees of the employer" to be appropriate.⁷ It has also given general affirmation to the propriety of dividing an employer's workforce into two or more bargaining units:

Units smaller than employer-wide may also be appropriate, especially in larger work forces. The employees in a separate department or division may share a community of interest

⁵ City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

⁶ City of Tacoma, Decision 95-A (PECB, 1977); Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

⁷ E.g., City of Winslow, supra.

separate and apart from other employees of the employer, based upon their commonality of function, duties, skills and supervision. Consequently, **departmental (vertical) units have sometimes been found appropriate** when sought by a petitioning union. [Footnote omitted.] Alternately, employees of a separate occupational type may share a community of interest based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, **occupational (horizontal) bargaining units have also been found appropriate**, on occasion, when sought by a petitioning union. ...

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

The starting point for any unit determination analysis is the unit description sought by the petitioning union, although there have been cases in which petitioned-for bargaining units have been rejected as inappropriate. In City of Vancouver, Decision 3160 (PECB, 1989), the petitioned-for unit would have stranded certain employees in units too small for them to ever implement their statutory bargaining rights, and was therefore deemed inappropriate. Likewise, in Forks Community Hospital, Decision 4187 (PECB, 1992), a proposed clerical/service/maintenance/technical unit in a relatively small facility would still have stranded other "technical" positions, and so was found inappropriate. In Port of Seattle, Decision 890 (PECB, 1980), a petitioned-for unit was rejected because it would have artificially divided the employer's office-clerical workforce into two or more separate bargaining units. When confronted with an inappropriate unit that cannot be rehabilitated by a minor adjustment, the Commission must dismiss the petition.

Separation of "Uniformed Personnel"

In 1973, the Legislature established an "interest arbitration" procedure to resolve contract negotiations disputes between public employers and certain classes of public employees. As first

enacted, the definition of "uniformed personnel" was limited to fire fighters, law enforcement officers employed by cities having a population of 15,000 or more, and deputy sheriffs employed by King County. The Legislature expanded the coverage of the "interest arbitration" procedure in 1984, adding several additional counties to the list of covered employers, but the population cutoff remained unchanged for cities. The police officers in Marysville have not qualified as "uniformed personnel" in the past.

Contract negotiations are conventionally conducted on a unit-wide basis, and one outgrowth of the availability of "interest arbitration" was a line of Commission precedents holding that bargaining units eligible for interest arbitration should be kept "pure". Thurston County Fire District 9, Decision 461 (PECB, 1978); City of Yakima, Decision 808 (PECB, 1980); Cowlitz County, Decision 2067 (PECB, 1984); Benton County, Decision 2221 (PECB, 1985). Recognizing that "interest arbitration" is an exception from the general rule, employees who are not eligible for that process are not to be mixed in the same bargaining units with employees who are eligible for the "interest arbitration" procedure. The separation was not required for all law enforcement personnel, however, and only applied if the employees involved met the definition of "uniformed personnel" found in RCW 41.56.030(7). City of Winslow, supra. Thus, the mixed unit of commissioned and non-commissioned employees in the Marysville Police Department has not been affected by the "separation" precedents in the past.

In 1993, the Legislature amended Chapter 41.56 RCW to reduce the population threshold for coverage of city-employed police officers under the "interest arbitration" procedure.⁸ When that amendment becomes effective, on July 1, 1995, Marysville will be brought under the coverage of the interest arbitration statute, which will then provide:

⁸ Chapter 398, Laws of 1993 (House Bill 1081).

RCW 41.56.030 DEFINITIONS. As used in this chapter:

...
 (7) (b) Beginning on July 1, 1995, "uniformed personnel" means: (i) **Law enforcement officers as defined in RCW 41.26.030 employer by the governing body of any city or town with a population of seven thousand five hundred or more ...**

In anticipation of the impending effectiveness of that statutory amendment, the employer and Local 763 took steps to separate the employees who will become eligible for "interest arbitration" from those who will not be covered by that procedure. They are not to be faulted for taking action in that regard. Had they not acted to effect the separation in 1993, they certainly would be required to do so in less than 10 months after this decision is issued.

The Non-Commissioned Employees

A "severance" question lurks in this case. Following the precedent of the National Labor Relations Board (NLRB), the Commission has been hesitant to break up appropriate bargaining units that have a history of bargaining. Yelm School District, Decision 704-A (PECB, 1980). Whether the "severance" criteria are actually applicable is, however, controlled by analysis of the statutory unit determination criteria.

History of Bargaining -

It appears that the police department bargaining unit dates back to 1970, when it consisted of patrol officers, sergeants and dispatchers.⁹ At some unspecified time(s), that bargaining unit was expanded to include employees performing custody officer (jailer),

⁹ Notice is taken of docket records transferred to the Commission by the Department of Labor and Industries pursuant to RCW 41.58.801. Teamsters Local 763 was certified as exclusive bargaining representative in Case O-677. The order was dated June 30, 1970.

public safety receptionist, and animal control work.¹⁰ Additionally, one of the dispatchers was later assigned "records clerk" duties which now occupy the majority of her work time, but continued to be included in the police department bargaining unit.

The so-called "city-wide" unit appears to have had its origins in two separate representation proceedings. The first of those was concluded in 1972, and involved a bargaining unit of public works employees.¹¹ The second of those was concluded in 1980, and involved a bargaining unit of office-clerical employees.¹² The details concerning the merger of those two bargaining units are unknown, but there is reference to a "mixed classes" unit in Commission docket records dating back to at least 1984.¹³

It appears that the configuration of bargaining units in the Marysville Police Department became, in fact, a combination of the "occupational (horizontal)" and "departmental (vertical)" varieties described in City of Centralia, supra. The separate unit in the

¹⁰ There are two part-time receptionists employed in the public safety building. Upon their creation the positions were placed in the "police department" bargaining unit. Later, upon agreement between the parties, the positions were moved into the "city-wide" unit.

¹¹ Notice is taken of docket records transferred to the Commission by the Department of Labor and Industries pursuant to RCW 41.58.801. Teamsters Local 763 was certified as exclusive bargaining representative in Case O-1229. The order was dated September 29, 1972.

¹² Notice is taken of the docket records of the Commission for Case 2761-E-80-535. Teamsters Local 763 was certified as exclusive bargaining representative of all full-time and regular part-time office-clerical employees of the City of Marysville, excluding "employees covered by collective bargaining agreements". The certification was issued on June 9, 1980.

¹³ Notice is taken of the docket records of the Commission for Cases 5237-M-84-2187 and 5238-M-84-2188, which were companion mediation cases initiated on May 7, 1984.

police department was structured along lines of the employer's table of organization, and drew its community of interest from grouping together employees working under a separate line of supervision, but it still fell short of encompassing all employees who worked in that department. At least a "detective secretary" position and the two part-time receptionists were in the city-wide unit, which cuts across departmental lines and draws at least part of its community of interest from grouping together all of the employees performing generally similar office-clerical duties.¹⁴

When the employer and Local 763 found it would be necessary to break up the historical police department unit, they agreed to merge all of the non-commissioned employees into the employer-wide bargaining unit. That unit now contains all non-supervisory employees of the employer, other than law enforcement officers who qualify as "uniformed personnel". The MPOA argues that the city-wide unit configuration agreed upon by the employer and Local 763 should not be considered, because neither the employer nor the incumbent filed a representation petition to obtain Commission certification of that unit. That argument is without merit. RCW 41.56.050 only requires that the jurisdiction of the Commission be invoked where there is a "disagreement as to the selection of a bargaining representative". That inherently leaves open the possibility of a voluntary recognition where there is no "disagreement". Although the propriety of voluntarily recognized bargaining units is subject to challenge before the Commission,¹⁵ there is certainly no requirement that an employer or incumbent union must

¹⁴ Since its creation, the "detective secretary" position has always been in the "city-wide" bargaining unit.

¹⁵ The Commission noted in City of Richland, supra:

Unit definition is not a subject for bargaining in the conventional "mandatory/permissive/illegal" sense, although parties may agree on units. Such agreement does not indicate that the unit is or will continue to be appropriate.

file a petition with the Commission to validate a voluntarily recognized bargaining unit.

The city-wide bargaining unit agreed upon by the employer and Local 763 is clearly **an appropriate unit** under City of Winslow, supra:

A bargaining unit consisting of all of the employees of an employer "is inherently an appropriate unit", because "all such employees clearly share a community of interests in dealing with their common employer". Federal Way Water and Sewer District, Decision 3228 (PECB, 1989). Such a unit is "normally ... thought of as an appropriate unit, if not 'the most appropriate' bargaining unit structure". Raymond school District, Decision 3202 (PECB, 1989).

Employer-wide units have been approved by the Public Employment Relations Commission in the past. In Wahkiakum County, Decision 1876 (PECB, 1984), an election was directed in a unit of all of the county's employees, including deputy sheriffs, road maintenance workers, and clerical employees. Although there was a history of separate bargaining and evidence of substantial differences in employment conditions, it was noted that labor relations matters were ultimately determined by one body: the county board.

There is something to be said for broad bargaining units when dealing with employer-wide issues such as benefits, employee transfers or layoffs, or when staffing for the ongoing responsibilities of contract negotiation and administration. When applying "severance" criteria, however, one must guard against being seduced by a commonality of representation among multiple appropriate units. The identity of the exclusive bargaining representative is not among the statutory unit determination criteria, and the mere fact that two or more separate units happen to have chosen to be represented by the same organization is not controlling. Pierce County, Decision 1039 (PECB, 1980).

The problem with applying "severance" criteria to the city-wide unit agreed upon by the employer and Local 763 is found in the extremely minimal history of bargaining created in that unit after it was reformed by the September 27, 1993 letter of agreement. In Pasco School District, Decision 3217 (PECB, 1989), it was concluded that severance criteria were not applicable to a unit created by agreement of an employer and incumbent union, where a representation petition concerning one of the component groups was filed at the first opportunity after the merger. In this case, the representation petitions were filed only two weeks after the agreement between the employer and Local 763 was documented.

This case comes down to whether a separate bargaining unit of the dispatch, jail, animal control, and records clerk employees in the Marysville Police Department would be **inappropriate**. The employer and Local 763 support such a result, while the MPOA argues that the non-commissioned police department employees continue to have a community of interest separate from other city employees. That debate requires analysis of unit determination criteria other than the history of bargaining.

Duties, Skills and Working Conditions -

The MPOA argues that the incarceration, communications and animal control functions performed by the non-commissioned police department employees differentiate them from other city employees. The employer and Local 763 argue that the non-commissioned police department employees have a community of interest with other non-commissioned city employees, and that the residual group which remained after separation of the "uniformed personnel" did not constitute a distinct and homogeneous group separate from the remaining city employees. When the duties, skills, and working conditions of the employees are considered, the unit sought by the MPOA in this case is neither "vertical" nor "horizontal" in the usual sense.

The duties of the employees are varied in both of the bargaining unit configurations supported by the parties. The dispatching and jail functions have no counterpart in other city operations and even differ somewhat from one another, but they both have responsibility for the supervision of prisoners.¹⁶ The dispatch and jail functions are even further distinguished from the animal control function, which bears some similarity to the building code enforcement work performed in the city-wide unit. A division of office-clerical functions within the police department presents a serious problem with the MPOA's proposed formula, inasmuch as the detective secretaries and receptionists would continue to be members of the city-wide unit while the employee functioning as records clerk for the vast majority of her work time would be in the police department unit.¹⁷ Even though the position deals with police reports and criminal records, the records clerk function is clearly in the nature of office-clerical work for which the employee would share a community of interest with employees in the city-wide unit.

The skills of the employees are varied in both of the bargaining unit configurations supported by the parties. The evidence clearly establishes that many of the skills and much of the training of some of the non-commissioned employees in the police department (e.g., the dispatchers and jailers) are specific to the responsibilities of their respective positions. Employees in the "city-wide" bargaining unit, such as the wastewater treatment operators and the traffic signal technician, likewise have unique skills and

¹⁶ Because of the physical layout of the dispatch center and the jail, the dispatchers can visually monitor the jail area. Dispatchers control ingress and egress to the jail and have the specific responsibility for monitoring the jail area when a jail custodian is not available.

¹⁷ During or about 1988, the duties of one full-time dispatcher, Kandis Eldridge, were modified so that one-fourth of her work time was spent as a records clerk. The records task later became the primary component of her work, although she continues to act as a back-up for the dispatchers during their break and meal times.

training specific to their responsibilities. On the other side of the coin, employees in both units share some similar training and responsibilities. For example, the records clerk in the police department and the planning clerk at city hall are each custodians of official records, and both are responsible for policies and procedures related to information collection, documentation and retention.

Health benefits are similar for all of the employees involved here, as might be expected for employees who have been represented by the same labor organization for many years. All of the employees are subject to employer-wide personnel practices and an employer-wide salary plan.

The work locations of employees are varied in both of the bargaining unit configurations supported by the parties, and interchange between employees will remain limited under either configuration. The police department is located, along with the municipal court and the fire department, in a public safety facility that is separate from other city offices. The record discloses that all of the employees in the police department unit work at or out of the Public Safety Building. As noted above, however, some employees working in the Public Safety Building, and even some employees in the police department, have historically been included in the city-wide bargaining unit. Employees in the city-wide unit work at various other locations, including the city hall, a waste water treatment plant, a municipal golf course, and a public works facility. All of those work sites are at some distance from one another.

A major distinction exists with respect to the work hours and custody responsibilities of the dispatchers and jailers. Those police department functions operate 24-hours per day throughout the year, while most of the other employees in both bargaining units regularly work only on the day shift with weekends off duty.

Although they have different specific duties and skills, the similarity of working in around-the-clock functions and the prisoner monitoring functions do provide a basis for finding a community of interest between the dispatchers and jailers.

Extent of Organization -

The "extent of organization" aspect of the statutory unit determination criteria particularly comes into operation where sheer numbers (i.e., the size and complexity of the employer's workforce or operations) would frustrate attempts to organize an "all employees" unit, a "vertical" unit, or a "horizontal" unit. Smaller divisions may thus be necessary, to enable employees to implement their statutory bargaining rights. In this case, however, all of the employees involved have been organized in the past, so that there would be no change in the overall extent of organization under either of the bargaining unit configurations sought by the parties. Moreover, neither configuration would strand any city employees without bargaining rights or in units too small to bargain collectively.

Conclusions on Non-Commissioned Unit -

Cities and counties throughout the state have been or soon will be going through a unit reconfiguration exercise. This is not of their own doing, but something thrust upon them by the "interest arbitration" legislation enacted during the 1993 session of the Legislature.¹⁸ This employer and Local 763 acted in apparent good faith, resulting in an employer-wide unit that can be considered appropriate, but that is not the only possible result.

¹⁸ In addition to law enforcement officers employed by cities having a population of 7,500 to 14,999, those added to the scope of the interest arbitration law include law enforcement officers employed by counties having a population of 35,000 to 69,999, jailers in counties having a population greater than 70,000, dispatchers working within fire departments, and some small groups of security and paramedic personnel working for other types of public employers.

To say that a separate unit in the police department was inappropriate in this case would have state-wide implications. It would necessarily follow that non-uniformed groups surviving after separation of uniformed personnel in numerous other cities and counties would also be inappropriate as separate units. In situations where there is no employer-wide unit to receive them, that would mean that employees historically represented by a particular union would be deprived of all union representation. Where the employer-wide unit happened to be represented by a different labor organization, employees orphaned by a separation process would be shoved into those bargaining units without giving them an opportunity to vote on their choice of bargaining representative. There is no evidence of any legislative intent to prejudice the rights of the employees who were not granted interest arbitration, and hence no basis to proceed with a decision which would have that effect.

On the record made in this case, it appears that a bargaining unit consisting of a core group of the former police department unit (*i.e.*, the dispatcher and custody classifications) **could be an appropriate unit**, based on their community of interest in performing around-the-clock functions unique to the police department. Inclusion of the records clerk position in the former police department bargaining unit was questionable at best, once the focus of the position changed to work of an office-clerical nature, and would not be appropriate. The animal control tasks were not part of the former police department bargaining unit at its outset, and do not share in the around-the-clock work schedule, so the evidence does not establish that it has an ongoing community of interest with the dispatchers and jailers.

Where two or more unit configurations could be appropriate based on other unit determination criteria, the Commission assesses the **"desires of employees"** by conducting a secret-ballot unit determination election. The employees involved are thus given an

opportunity to express their desires on their unit placement under the protection of a secret ballot, and there is no need for employees to give sworn testimony or be subjected to cross-examination on such a sensitive issue. If the employees in the dispatch and jail classifications so indicate, a question concerning representation will exist in a separate bargaining unit.

The Supervisor Bargaining Unit

Contrary to its stipulation during the pre-hearing conference, the MPOA argued at the hearing that the police sergeants should not be separated from the rank-and-file police officers. The Hearing Officer took evidence on that issue in addition to making a record on the issues identified above, and that evidence has been considered by the Executive Director. What is lacking is a basis to excuse the MPOA from its stipulation on this issue.

The stipulations made by parties during the processing of representation cases are binding upon them, except for good cause shown. Community College District 5, Decision 448 (CCOL, 1978). The fact that the MPOA was not represented by legal counsel during the pre-hearing conference is not sufficient to excuse it from its stipulation. A labor organization is not required to appear through legal counsel in all proceedings before the Commission. In this case, an officer of the MPOA represented the organization during the pre-hearing conference. WAC 391-08-010(3) expressly authorizes union officials to "practice" before the Commission. The MPOA will be held to its stipulation in this case.

The MPOA's stipulation to create a separate bargaining unit of supervisors in this case was in keeping with precedent under City of Tacoma, METRO, and Richland, supra, so that there is no reason to disregard the stipulation as being repugnant on its face. The evidence taken on this issue included many indicia of supervisory

responsibilities for the sergeants. The job description developed by the employer illustrates this analysis.

Job Title: Police Sergeant

Supervisor's Title: Police Lieutenant

Position Purpose: Protect and serve the citizens of Marysville through law enforcement.

Reporting Relationships: Reports to the Police Lieutenant along with other Sergeants.

Subordinate Summary: Dispatchers, Police Reserves, and Subordinate Officers report to the Police Sergeant.

Major Activities:

1. **Supervise Officers and Department activities on assigned shifts.**
2. Enforcement of federal, state, and local laws and City Ordinances.
3. **Supervise Departmental wide functional areas such as jail, dispatch, fleet management, detectives, reserves, property room.**
4. Conduct shift briefings, roll call training, jail inspection, reads and gives **signature approval on all reports.**
5. **Insures all officers read and initial and carry out department memos, policies, and orders.**
6. **Maintains an incident file on every employee under his/her supervision. Records incidents of good as well as sub-standard performance.**
7. **Assumes budget and financial accountability for areas under his/her assigned control.**
8. **Approves vacation and insures adequate staffing is provided.**
9. **Continually monitors officer performance and submits regular reports to the Lieutenant and chief concerning the officers and shift productivity.**
10. **May be assigned acting Chief in absence of Chief and Lieutenant.**

11. **Supervises officer/vehicle appearance and care of City equipment.**
12. **Conducts annual performance evaluations on each employee under his/her supervision.**
13. **Recommends commendations as well as disciplinary action as needed.**
14. Must be able to make forceful arrests.

Supporting Activities:

1. May be called in for emergency situations.
2. **On duty in the absence of the Police Chief and Police Lieutenant.**

...

[Emphasis by **bold** supplied.]

While the sergeants may not have the final word on hiring or severe disciplinary action against the members of their squads, it is apparent from this job description that they are expected to supervise and evaluate the members of their squads and assigned non-commissioned personnel. Further, they are required to maintain incident files on the members of their respective squads and recommend disciplinary and commendation responses.

The strongest evidence against a conclusion that the sergeants have supervisory authority was the testimony of the employer's chief of police, who explicitly stated that he has the final decisionmaking authority in the department. The chief's testimony was in direct contradiction to the employer's pre-hearing stipulation on this very subject. The employer has not argued against a separate unit of sergeants, let alone offering any basis to be excused from its stipulation on the matter.

Voter Eligibility

During the hearing, the parties stipulated that Shelly Brooks was employed by the City of Marysville as a police dispatcher, from

April 16, 1989 until discharged by the employer on November 22, 1993. Local 763 filed a grievance protesting that discharge, and that grievance was being processed to arbitration as specified in the parties' collective bargaining agreement.

The MPOA argued that Brooks should be allowed to vote by challenged ballot, noting that the issue concerning her eligibility would only need to be resolved if challenged ballots were sufficient in number to affect the results of the election. The employer stated that the seriousness of the charge against the employee, the support for the employer's action by other city employees, and the length of time elapsed from the date of discharge, create a reasonable doubt that the employee could be expected to return to work, so that the employee should not be eligible to vote. Although Local 763 raised the issue of Brooks' voting eligibility at the hearing, it did not assert any argument on that point at the hearing or in its brief.¹⁹

Any person who presents themselves at the polls and claims eligibility to vote in an election conducted by the Commission will be permitted to cast at least a challenged ballot. The standard procedure will be followed here.

FINDINGS OF FACT

1. The City of Marysville is a public employer within the meaning of RCW 41.56.030(1). The city is governed by an elected city council and mayor. Among its operations are a justice administration center which included the police department, police dispatch, city jails, and the municipal court.
2. Public, Professional & Office Clerical Employees and Drivers, Local Union No. 763, affiliated with the International

¹⁹ It had argued that no election should be held involving the non-commissioned employees.

Brotherhood of Teamsters, et al., (Teamsters Local 763) was the exclusive bargaining representative for a unit which consisted of commissioned law enforcement officers, custody officers, dispatchers, a records clerk, and an animal control officer employed by the City of Marysville.

3. Teamsters Local 763 is the exclusive bargaining representative of a bargaining unit composed of all non-supervisory employees of the City of Marysville, excluding specific classifications employed by the police department.
4. On September 27, 1993, the employer and Teamsters Local 763 signed a memorandum of agreement altering the structure of the two bargaining units described in paragraphs two and three of these findings of fact. The separate bargaining unit which had historically existed in the police department was divided into a unit of non-supervisory, commissioned law enforcement officers and a unit of sergeants; the non-commissioned employees in the police department were accreted into the city-wide bargaining unit. That agreement was made in apparent good faith, in anticipation of the July 1, 1995 effective date of amendments to RCW 41.56.030(7)(b) enacted in 1993, by which commissioned law enforcement officers employed by the City of Marysville will become eligible for the first time for the interest arbitration procedures of RCW 41.56.430, et seq.
5. On October 8, 1993, the Marysville Police Officers Association filed a timely and properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of a unit composed of all non-supervisory, commissioned law enforcement officers employed by the City of Marysville.
6. On October 8, 1993, the Marysville Police Officers Association filed a timely and properly supported petition for investiga-

tion of a question concerning representation, seeking certification as exclusive bargaining representative of a unit composed of certain non-supervisory, non-commissioned employees of the Marysville Police Department formerly included in the separate bargaining unit which existed prior to September 27, 1993.

7. On November 22, 1993, the employer discharged Shelley Brooks from employment as a dispatcher in the police department. A grievance protesting that discharge has been processed though the grievance procedure of the collective bargaining agreement between the employer and Teamsters Local 763. The parties have stipulated that no procedural issues would block a final decision by an arbitrator on that grievance.
8. On January 18, 1994, the parties stipulated to the propriety of a separate bargaining unit of supervisors, in which the police sergeants employed in the Marysville Police Department would be eligible voters. No party has shown good cause to be excused from that stipulation.
9. The dispatchers and custody personnel (jailers) employed in the Marysville Police Department have a community of interest in working on an around-the-clock basis to perform duties which include the supervision of prisoners by employees in both classifications.
10. The record in this proceeding fails to establish an ongoing community of interest between the dispatchers and custody personnel in the Marysville Police Department and the employee who performs animal control functions for the employer.
11. A division of office-clerical functions in the Marysville Police Department, including the records clerk function,

between two bargaining units would create an ongoing potential for work jurisdiction disputes.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. A bargaining unit consisting of all full-time and regular part-time employees of the employer, excluding elected officials, officials appointed to office for a fixed term of office, confidential employees, supervisors, and commissioned law enforcement officers is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.
3. A bargaining unit consisting of all full-time and regular part-time dispatcher and custody (jailer) employees of the employer, excluding elected officials, officials appointed to office for a fixed term of office, confidential employees, supervisors, commissioned law enforcement officers, and all other employees of the employer, could be an appropriate unit for the purposes of collective bargaining under RCW 41.56.030, if the desires of the employees so indicate. A question concerning representation will exist in that bargaining unit, if the propriety of the bargaining unit is validated in a unit determination election.
4. A bargaining unit consisting of all full-time and regular part-time commissioned law enforcement officers employed by the employer, excluding elected officials, officials appointed to office for a fixed term of office, confidential employees, supervisors, and all other employees of the employer, is an appropriate unit for the purposes of collective bargaining

under RCW 41.56.030. A question concerning representation presently exists in that bargaining unit.

5. A bargaining unit consisting of all full-time and regular part-time commissioned, supervisory law enforcement officers employed by the employer, excluding elected officials, officials appointed to office for a fixed term of office, confidential employees, non-supervisory law enforcement officers, and all other employees of the employer, is an appropriate unit for the purposes of collective bargaining under RCW 41.56.030. A question concerning representation presently exists in that bargaining unit.
6. Employees working under the title of "sergeant" in the Marysville Police Department are eligible voters in the bargaining unit described in paragraph five of these conclusions of law, as supervisors whose duties warrant their exclusion, pursuant to RCW 41.56.060, from the appropriate bargaining unit which includes their subordinates.

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 in paragraph three of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees eligible to vote in that voting group 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 voting group described in paragraph three of the foregoing conclusions of law, 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 Local 763 or by the Marysville Police Officers Association 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 elections fail to validate the propriety of the bargaining unit.

3. 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 four of the foregoing conclusions of law, 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 Local 763 or by the Marysville Police Officers Association or by no representative.
4. 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 five of the foregoing conclusions of law, 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 Local 763 or by the Marysville Police Officers Association or by no representative.

ISSUED at Olympia, Washington, this 30th day of September, 1994.

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.