

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

LYNNWOOD ENGINEERS GROUP

Involving certain employees of:

CITY OF LYNNWOOD

CASE 22295-E-09-3435

DECISION 10668 - PECB

ORDER OF DISMISSAL

Jared Bond, for the Lynnwood Engineers Group.

David M. Kanigel, Attorney at Law, for Washington State Council of County and City Employees.

On February 25, 2009, the Lynnwood Engineers Group (petitioner) filed a representation petition seeking to sever the Public Works Engineering Services Division employees employed by the City of Lynnwood (employer) from a larger bargaining unit represented by the Washington State Council of County and City Employees, Local 3035 (union).

The existing bargaining unit is currently comprised of all full-time and regular part-time clerical, technical and professional employees of the City of Lynnwood, excluding supervisors, confidential employees, maintenance employees, recreational employees, and all other employees. In its amended petition filed on March 9, 2009, the petitioner seeks to sever the following positions from the union's existing unit and represent them in a new unit: all full, part-time, and temporary employees in the Public Works Engineering Services Division and all employees in the Traffic Division, except supervisors and confidential employees. Specifically, the employee group includes the positions of engineering technical aide, engineering technician I, engineering technician II, civil engineer I, project manager, resident engineer, traffic signal technician, and traffic signal technician lead. Representation Coordinator Sally J. Iverson held an investigation conference on March 24, 2009. The conference included representatives of the petitioner, the

union and the employer. The union and the petitioner were unable to stipulate to the propriety of the proposed bargaining unit. The employer did not take a position.

A hearing on the matter was held on April 21, 2009, before Hearing Officer Terry Wilson. During the hearing, the parties jointly submitted position descriptions for the positions of shop assistant and office assistant in the employer's Public Works Department. The parties stipulated that they should remain in the existing unit as they are clerical in nature. The union and the petitioner submitted briefs which were considered.

ISSUES

1. Is it appropriate to sever the petitioned-for bargaining unit from the existing professional, technical and clerical unit represented by the union?
2. If the severance petition is granted, should the parties' stipulation to exclude the positions of shop assistant and office assistant be accepted?

Applying the statutory standards to the facts of this case, the Executive Director finds that severance of the petitioned-for employees from their existing bargaining relationship is not appropriate. Accordingly, there is no need to consider or rule upon the parties' stipulation to exclude the positions of shop assistant and office assistant in the petitioned-for bargaining unit. There is also no need to address the propriety of including temporary employees in the proposed bargaining unit.

APPLICABLE LEGAL STANDARDS

The Legislature delegated the responsibility of determining whether bargaining units are appropriate for the purpose of collective bargaining to this Commission:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT—BARGAINING REPRESENTATIVE. (1) 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; . . .

The above factors, taken as a whole, are used by the Commission to assess whether a similar group of employees will be able to bargain collectively with their employer. *King County*, Decision 5910-A (PECB, 1997). None of the statutory criteria predominates to the exclusion of others, but have varying weight, depending on the factual settings of particular cases. *City of Centralia*, Decision 2940 (PECB, 1988). As noted in *Benton County*, Decision 7651 (PECB, 2002), no one factor is controlling in the determination of the appropriate unit, and all four factors need not arise in each and every determination case. The duties, skills, and working conditions of petitioned-for employees, however, will always be of some influence in unit determinations. *King County*, Decision 5018 (PECB, 1995).

The Commission has described its role under RCW 41.56.060 in the following manner:

[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). The unit configuration proposed by a petitioning organization is always the starting point for any unit determination analysis. *King County*, Decision 5910-A.

ANALYSIS

Working Conditions

The petitioner wishes to sever the following positions from the bargaining unit represented by the union in the employer’s Public Works Department: engineering technical aide, engineering

technician I, engineering technician II, civil engineer I, project manager, resident engineer, traffic signal technician, and lead traffic signal technician. Bill Franz, the public works director for the employer, testified that all the employees in the petitioned-for unit perform engineering work and tasks, in varying degrees, which requires them to know the theories, principles, and practices of civil engineering. According to Franz, these duties include:

1. Preparing technical reports,
2. Applying math to problem solving,
3. Using knowledge of chemistry physics, and other physical sciences to complete tasks,
4. Compiling statistical data,
5. Executing engineering tasks,
6. Knowledge of the impacts of products on the environment,
7. Knowledge of safety rules,
8. Knowledge of the impacts of products on the environment,
9. Knowledge of engineering tools, and
10. Using software unique to engineering.

All of the petitioned-for positions are within Public Works Department, and most fall under the Engineering Division in that department. Traffic signal technicians, traffic signal technicians lead, and one project manager, fall under the Maintenance and Operations Division of public works. The petitioned-for employees perform their duties at the city campus or in the field. The field locations may vary greatly among the positions. Traffic signal technicians may work on highways while an engineering technician may work at a construction site. All of the positions are required to respond to emergency situations which could include earthquakes, hazardous waste spills, wind storms, and floods. Responses include manning the emergency operation center, coordinating efforts to address a specific emergency, and communicating with the public.

All positions in the proposed bargaining unit must either be a licensed professional engineer or work directly under the supervision of a licensed professional engineer. Those licensed professional engineers who are supervisors were not included in the petition at issue. Three positions in the petitioned-for bargaining unit, according to Franz, are licensed professional engineers who do not supervise any employees.

Duties and Skills of the Positions at IssueEngineering Employees

The engineering technical aide is an entry-level position. The main duties of the position include: maintaining records, preparing and drafting maps, researching records, tracking bonds, recording documents, assisting with inspections, fielding questions from the public, and assisting in taking test samples. An Associate of Arts (A.A.) degree in mathematics, drafting, surveying, or engineering is required for this position. The incumbent in the position reports to the public works director or to the engineering services manager.

The engineering technician I positions provide technical support services in project development review and inspection. This position is similar to the engineering tech aide, but requires more independent judgment. An A.A. degree in mathematics, drafting, surveying, or engineering, in addition to two years of experience, is required for this position. The incumbent in this position reports to the engineering services manager.

The engineering technician II requires a Bachelor of Science (B.S.) degree in engineering and three years of experience. Incumbents in this position also report to engineering services, and their duties include developing policies and guidelines of assigned projects as well as coordinating the preparation of plans, specifications, and contracts for city improvement project. Engineering tasks, including inspections, cost estimates, environmental reports, legal research, and project administration are also associated with this position.

The civil engineer I reports to the public works director. While no formal written job description currently exists for this position, Public Works Director Bill Franz testified that the incumbent works with environmental and development services to prepare technical reports. Other specific engineering tasks include structural analysis, surveying, and inspections.

The position of project manager requires a B.S. degree in civil engineering, three years of experience, and either a professional engineer's license, the ability to obtain a professional license within six months of hire, or demonstrated experience. Project managers may supervise the local improvement district process and the acquisition of property by the city. Project managers may

also develop and draft ordinances, policies, and guidelines, in addition to performing project engineering tasks. Project managers report to the public works director. Based upon the record, it appears that there is one project manager in the Maintenance and Operations Division.

The position of resident engineer requires a B.S. degree in civil engineering, six years of experience, and a professional engineer's license. The main tasks associated with this job include overseeing project construction, monitoring and coordinating construction activities, directing on-site inspections, ensuring compliance with federal and state laws, and researching, analyzing, and resolving technical problems and issues related to construction. The position reports to the construction manager in engineering.

Maintenance and Operations Employees

The incumbent in the position of traffic signal technician performs technical work in the installation, maintenance, repair, and inspection of street lights, traffic signals, traffic controls, telemetry, and other electronic systems. The signal technician may install underground conduits, junction boxes, cabinets, switchboards, and electrical power for controllers. Qualifications for this position include two years of experience installing and maintaining traffic control devices, appropriate certification, and a driver's license. No college education is required. The position of lead traffic signal technician requires five years of experience installing, maintaining, and calibrating electronic signal devices. The lead traffic signal technician assists with the research, design, and implementation of the Lynnwood Intelligent Transportation System. A college degree is not required for this position. Both positions report to the traffic engineer.

Criteria for Severance

In cases involving severance petitions, the Commission is very reluctant to sever a group of employees from a long-standing bargaining relationship. In *Yelm School District*, Decision 704-A (PECB, 1980), the Commission considered the following factors in their ruling, upholding the Executive Director's decision to dismiss a petition to sever a bargaining unit:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a

nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or operations for which a tradition of separate representation exists. (footnote omitted).

2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The history and pattern of collective bargaining in the industry involved;
5. The degree of integration of the employer's production processes, including the extent to which the contained normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action. (footnote omitted).

The Commission noted in that case that these factors should not be taken as a hard and fast definition or an exclusive listing of the various considerations involved in making unit determinations. Other factors worthy of consideration may appear in the course of litigation.

Commission precedent dictates that strict scrutiny will be applied to severance petitions. See *Western Washington University*, Decision 9903-A (PSRA, 2008). In that case, the Executive Director noted that the scrutiny placed on severance petitions is more strict, and perhaps more inflexible, than that which may be utilized in the initial organization of bargaining units. Similarly, in *Eastern Washington University*, Decision 9950 (PSRA, 2008), the Executive Director noted that the moving party in a severance petition has a difficult burden to meet where a bargaining relationship has been established. The existence of a bargaining relationship between an incumbent union and an employer establishes a barrier to severance that is typically an arduous burden to overcome.

The Commission has deemed a variety of bargaining units appropriate in cases involving initial organizing. For example, the Commission found units consisting of “all of the employees of the employer” to be appropriate under RCW 41.56.060. Other Commission decisions have affirmed the propriety of subdividing an employer's workforce into two or more bargaining units:

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 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). These units that were deemed appropriate in *City of Centralia*, however, were not separating themselves from larger units.

Distinct and Homogenous Group

As referenced above, in order to be deemed appropriate, the proposed bargaining unit must meet the standards established in *Yelm School District*. The first standard to consider is the propriety of the proposed bargaining unit:

[the proposed bargaining unit shall] consist of a distinct and homogenous group of skilled journeymen craftsmen performing the functions of their craft on a non-repetitive basis or of employees constituting a functionally distinct department, working in trades or operations for which a tradition of separate representation exists.

The petitioner's proposed unit of engineers share some common duties, skills, and working conditions as enumerated by Franz earlier in the decision. Some of these commonalities include preparing technical reports, applying math to problem solving, using knowledge of physical sciences to complete tasks, compiling statistical data, executing engineering tasks, and using software unique to engineering.

Were this not a severance and the petitioner were in the process of an initial organizing effort, the proposed unit may have been found appropriate. *See Eastern Washington University, Decision 9950 (PSRA, 2008)*. However, as this is a severance, the strict, narrow scrutiny utilized in *Western Washington University, Decision 9903-A (PSRA, 2008)* must be applied.

The evidence does not support a finding that the employees constitute a distinct, homogenous group. For example, the duties and educational levels associated with the traffic signal technicians are remarkably different from those of resident engineers, engineering technicians, and project managers. The traffic signal technicians are located in the Maintenance and Operations Division of the Public Works Department while the other employees are located in the engineering division of that department. Traffic signal technicians report to the traffic engineer while the rest of the proposed bargaining unit, except one project manager, reports to engineering service managers or the public works director.

The educational requirements for the positions also vary significantly. Some positions require two years of college education while other positions require a four year degree and licensing as a registered professional engineer. Traffic signal technicians require two to five years of experience depending on the specific position, but no specific post-high school education.

All of the petitioned-for employees primarily work from the employer's main campus, but each position also works in a second location. The second locations are very diverse in nature. For example, resident engineers may work at construction sites while traffic signal technicians may work on a remote highway. In sum, based upon a diversity of job requirements, job location, job duties, and reporting relationships, the evidence does not support that the petitioned-for group represents a distinct and homogenous group.

Journeyman Craft

The Commission has limited the terms “skilled crafts” and “trades” to groups of employees that have long traditions of separate organization in the private sector such as electricians, plumbers, and carpenters. Such employees traditionally attain journeyman status after several years of formal apprenticeship training under the oversight of an apprenticeship council and working under

the close supervision of skilled craftsmen. *See Monroe School District*, Decision 5283 (PECB, 1995). In the present case, the qualifications associated with each position in the proposed bargaining unit differ remarkably from the traditional apprenticeship required to gain journeymen status. The positions require varying degrees of experience and education. The requirements range from one to three years of experience, an A.A. degree or a B.A. degree, and a driver's license. The engineers may be required to be licensed as registered professional engineers. The evidence does not support the petitioner's claim of "journeymen craft" status to the employees it seeks to represent.

The petitioner asserts that its petition should be granted because there are bargaining units composed of engineers that exist in the state of Washington. For example, citing the testimony of Bill Keenan, a bargaining representative for the union, the petitioner points out that Local 109E of Snohomish County is a bargaining unit composed solely of engineers. The fact that there may be bargaining units composed of engineers does not establish that the bargaining unit at issue in the present case is appropriate, or that the existing bargaining unit is inappropriate. The Commission determines the appropriateness of a bargaining unit on a case-by-case basis. *City of Centralia*, Decision 2940 (PECB, 1988). The circumstances which persuaded the Commission to determine that those bargaining units were appropriate, such as initial organizing as opposed to severance from an existing unit, do not exist in the present case. Moreover, in severance petitions, one of the elements to consider is whether the positions at issue can be classified as "journeymen craft" under *Yelm School District*.

Stable Labor Relations

The second criterion under *Yelm School District* analyzes whether a severance would upset stable labor relations by looking at the history of bargaining. In severance cases, "the 'history of bargaining' criteria . . . [is] a matter of substantial weight in a workforce which has been organized for some time." *Eastern Washington University* quoting *Grant County*, Decision 3350 (PECB, 1989). Even where a bargaining relationship has not existed for a long period of time, the "history of bargaining" weighs against its disruption by severing the unit into two or more components. *Cowlitz County*, Decision 4960 (PECB, 1995). Thus, the reason for separating an established bargaining unit would have to be compelling.

The incumbent union has been the exclusive bargaining representative of the petitioned-for employees as part of a larger bargaining unit since 2003. Following its certification as exclusive bargaining representative, the union negotiated a complete collective bargaining agreement that was effective until December 31, 2006. The agreement included wage scales for the petitioned-for employees. The employer and the union subsequently agreed to extend the collective bargaining agreement until December 31, 2007, and also increased wages of bargaining unit employees. In June 2007, the parties again modified the agreement that included establishing a pay grade for a resident engineer. Various amendments to the collective bargaining agreement establish that bargaining unit employees, including those petitioned-for, received pay raises each year since the initial collective bargaining agreement was signed. Additionally, the union and the employer have taken advantage of this agency's mediation services and have participated in interest-based bargaining training offered by this agency. The union has also filed unfair labor practices, engaged in settlement discussions, and entered into a settlement agreement in at least one case. Although this history may not be long, there is evidence that the union and the employer have actively participated in the collective bargaining process.

The Extent of Organization and Separate Identity

The third criterion under *Yelm School District* analyzes the extent of organization. The extent of organization compares the proposed unit to the whole of the employer's workforce and evaluates whether the employees in the proposed unit have established and maintained a separate identity during their inclusion in the broader unit. The extent of organization becomes increasingly important where the history of bargaining is relatively short.

In the present case, the employer's total workforce numbers about 500 employees. There are currently 8 bargaining units. The union currently represents approximately 80 employees in the existing clerical, technical, and professional unit. In addition to those professional and technical employees in the petitioned-for unit, the union represents other professional and technical employees throughout the city. Other technical and professional positions in the existing bargaining unit include such positions as financial analyst, lab technician, associate planner, fleet program specialist, building inspector (certified), finance specialist-accounting, buyer, and permit coordinator. Should the petition be granted, the existing bargaining unit would be reduced by

approximately 21 members, and the petitioner would carve out a separate unit composed of technical and professional employees. Although speculative, granting this severance petition might result in other represented professional and technical employees currently represented by the incumbent union in the existing bargaining unit seeking to establish their own bargaining units. Thus, by allowing a severance to occur, absent meeting the standards enunciated in *Yelm School District*, a proliferation of other severances could result causing excessive fragmentation of the employer's workforce into numerous additional bargaining units. This fragmentation could disrupt stable labor-management relations and interfere with the continued normal operations of the employer.

In addition, it is noted that the proposed bargaining unit would be composed of separate divisions within the Public Works Department: the Engineering Services Division and Maintenance and Operations Division. There are distinctions between these employees' supervision and working conditions.

The next standard to evaluate is whether the employees in the petitioned-for unit have maintained a separate identity. The petitioner argues that employees in the proposed bargaining unit have maintained a separate identity since 2003. It asserts that no employee in the proposed bargaining unit has participated as a member of the union's bargaining team in contract negotiations since the incumbent union was certified. Although Jared Bond, founder and president of the Lynnwood Engineers Group, testified concerning his views regarding the quality of representation, his testimony regarding those views and the desires of employees should not have been allowed into the record. The Commission has held that "[t]he quality of representation is, however, not one of the criteria for making a unit determination." *Auburn School District No. 408*, Decision 2710-A (PECB, 1987). *Western Washington University*, Decision 9903-A (PSRA, 2008). What is relevant is whether the petitioner has represented the group of employees at issue for collective bargaining. Even if it could be shown that the petitioned-for bargaining unit maintained a separate identity from the rest of the bargaining unit, this would not trump the other standards set forth by *Yelm School District*.

Pattern of Collective Bargaining In Industry

The fourth criterion under *Yelm School District* analyzes the history and pattern of collective bargaining in the industry involved. There is no evidence that there is a long-standing tradition of separate representation for engineers in local government. In addition, there is nothing in Commission case law that suggests that mixed units in city employment that include engineers are improper. Although Keenan testified that a separate unit of professional engineers existed in the state of Washington that has no bearing on this case. The facts and circumstances involved with initial organizing cannot be compared with a severance petition. The petitioner in a severance proceeding bears a greater burden to establish sufficient evidence to justify disrupting an existing bargaining unit with an established history of collective bargaining.

Affect of Severance on Mission of Employer

The fifth criterion under *Yelm School District* analyzes whether all of the employees as a whole constituted an integrated support operation essential to the overall discharge by the employer of its primary function and are therefore more appropriately dealt with as a unit. In *Eastern Washington University*, the Executive Director found that petitioned-for police officers work with other employees of Eastern Washington University in a coordinated effort to fulfill the mission of the school, and as such, severance could unnecessarily interfere with the continued normal operation of the university's primary educational function and unnecessarily fragment the bargaining units.

In the present case, Franz testified that engineers are important to many of the city's operations. He specifically noted that engineers provide essential services in emergency situations. For example, they coordinate the efforts of various public employees during the emergency, and they communicate those efforts to the public. As some of the petitioned-for employees work in a coordinated effort with other city employees to ensure safety of citizens, they are considered part of an integrated operation which depends upon the performance of their duties as part of the larger organization.

Qualifications of Petitioner

The sixth criterion under *Yelm School District* analyzes the qualifications of the union seeking to sever a separate unit from an existing bargaining unit. As noted in *Western Washington University* and *Eastern Washington University*, the qualifications analyzed include the union's experience in representing employees like those involved in the severance action. In *Western Washington University*, the Executive Director noted that the petitioning organization formed to initiate severance proceedings, and as a result that organization could claim no special expertise in representing the disputed employees. In the present case, the record does not support that the petitioner has any special expertise in representing engineers for the purposes of collective bargaining. In fact, the Lynnwood Engineers Group was apparently formed as a result of some employees wanting to sever from the incumbent union.

Bond testified that the petitioning organization has had several meetings, adopted by-laws, appointed a negotiating committee, created a budget, and sought professional legal counsel. Bond also testified about his individual qualifications. Though the qualifications of the petitioner are duly noted, they do not trump the weight of the other standards, which require a dismissal of the severance petition.

CONCLUSION

The employer and incumbent union have had a stable bargaining relationship. Granting severance of the positions from the units represented by the union would be inconsistent with labor relations at City of Lynnwood and past Commission precedents. A severance could disrupt and fragment a stable pattern of representation and could lead to additional fragmentation if other groups of technical and professional employees that are part of the union's wall-to-wall unit also seek to sever from the existing bargaining unit. Applying the statutory standards to the facts of this case, the Executive Director finds that severance of the petitioned-for employees from their existing bargaining relationship is not appropriate.

FINDINGS OF FACT

1. The City of Lynnwood is a public employer within the meaning of RCW 41.56.030(1).
2. The incumbent union, the Washington State Council of County and City Employees, is a bargaining representative with the meaning of RCW 41.56.030(3).
3. The incumbent union represents clerical, technical and professional employees within the City of Lynnwood. *City of Lynnwood*, Decision 8080 (PECB, 2003).
4. The Lynnwood Engineers Group is a bargaining representative with the meaning of RCW 41.56.030(3).
5. On February 25, 2009, the Lynnwood Engineers Group filed a petition for investigation of a question concerning representation seeking to sever the Public Works Engineering Services Division from a bargaining unit represented by the incumbent union and to become the exclusive bargaining representative of those employees.
6. On March 9, 2009, the Lynnwood Engineers Group amended its petition to include employees in the Traffic Division.
7. The proposed bargaining unit does not constitute a functionally distinct and homogenous group of skilled “journeymen” craft for which a tradition of separate representation exists.
8. There is no history of a separate identity of the petitioned-for employees separate and apart from the existing bargaining unit at the City of Lynnwood.
9. The petitioned-for employees are part of the employer’s integrated operation which depends upon the performance of their duties as part of the larger organization.
10. The Lynnwood Engineers Group was formed in connection with filing of the petition and has never represented any employees for the purposes of collective bargaining.

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. The proposed severance of various technical and engineering classifications within the Public Works Department from the existing unit historically represented by the Washington State Council of County and City Employees is not appropriate.

ORDER

Based upon the foregoing and the record as a whole, the petition for investigation of a question concerning representation is DISMISSED.

ISSUED at Olympia, Washington, this 8th day of February, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.