

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES

Involving certain employees of:

PIERCE COUNTY

CASE 23087-E-10-3540

DECISION 10992 - PECB

ORDER OF DISMISSAL

James M. Trefry, Staff Representative, for the union.

Brent Long, Senior Labor Relations Analyst, for the employer.

On March 5, 2010, the Washington State Council of County and City Employees (union) filed a petition seeking to add, pursuant to WAC 391-25-440, a group of 11 previously unrepresented Wastewater Treatment Plant Maintenance employees of Pierce County (employer) to the union's existing 11-employee bargaining unit of Wastewater Treatment Plant Operators. On April 20, 2010, Representation Coordinator Sally Iverson conducted an investigation conference, during which the parties disagreed as to the propriety of the petitioned-for bargaining unit. On August 11, 2010, Hearing Officer Guy Coss conducted a hearing on the issue, and both parties filed post-hearing briefs for consideration.

ISSUE

Is the petitioned-for bargaining unit appropriate?

Based upon the record, the Executive Director finds that the bargaining unit proposed is not an appropriate unit for the purpose of collective bargaining.

APPLICABLE LEGAL STANDARDS

WAC 391-25-440 outlines a union's responsibilities when it seeks to add unrepresented employees to a bargaining unit it already represents, and also establishes the Commission's role in the process:

(1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit, which it already represents, under this chapter and the relevant statute, the organization may petition for a self-determination election to ascertain the employees' desire to be included in its existing bargaining unit.

(2) In order to invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least thirty percent or more of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that the petitioning organization seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the appropriate statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or his or her designee shall make a determination following a hearing.

After a hearing, if the resulting bargaining unit is determined to be appropriate, the Commission conducts a self-determination election for the petitioned-for employees to ascertain whether they desire to become part of the existing unit. If the resulting unit is determined not to be appropriate, the petition is dismissed. The determination of appropriate bargaining units under Chapter 41.56 RCW, the Public Employees' Collective Bargaining Act, is a function delegated to the Commission by the Legislature:

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 Commission's role under RCW 41.56.060 is detailed in *City of Winslow*, Decision 3520-A (PECB, 1990):

[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.

The unit configuration proposed by a petitioning organization is the starting point for a unit determination analysis. *King County*, Decision 5910-A (PECB, 1997). The criteria provided in RCW 41.56.060 have varying weight based on the facts of a particular case, and none of the criteria predominates to the exclusion of others. *City of Centralia*, Decision 2940 (PECB, 1988). No one factor is controlling in the determination of an appropriate unit, and all four factors need not arise in every determination case. *Benton County*, Decision 7651 (PECB, 2002), *aff'd*, Decision 7651-A (PECB, 2003).

ANALYSIS

On April 30, 2009, the Commission issued an interim certification¹ for the union's existing bargaining unit of Wastewater Treatment Plant Operators. The interim certification described the bargaining unit as:

All full-time and regular part-time Wastewater Treatment Plant Operators of Pierce County, excluding supervisors, confidential employees and all other employees.

1 *Pierce County*, Decision 10377 (PECB, 2009).

The proceeding was held open to resolve an eligibility dispute framed by the parties involving one employee/position. On June 19, 2009, the Commission issued an order closing the case² after the parties resolved the eligibility issue. The order indicated that the interim certification would stand as the final certification for the case. Commission records indicate that there were 11 employees in the bargaining unit.

The union seeks to add a vertical unit of 11 maintenance employees who work primarily at the employer's Chambers Creek Wastewater Treatment Plant in University Place to its existing bargaining unit of Wastewater Treatment Plant operators. The work performed by employees in the petitioned-for unit consists of system installation, maintenance and repair at the employer's treatment plant as well as its other Chambers Creek properties. The employer argues that the petitioned-for bargaining unit is inappropriate because the Wastewater Treatment Plant employees affected by the petition also share a community of interest with 35 Collections Maintenance employees who perform work at the treatment plant and other locations on the Chambers Creek properties, including the Environmental Services Building and Chambers Bay Golf Course.

The union argues that there are clear distinctions between Wastewater Treatment Plant and Collections Maintenance employees in work functions and location, qualifications, and supervision. The record does not reflect many of these distinctions, however, and instead leads to the conclusion that the Wastewater Treatment Plant and Collections work groups have become more interchangeable in recent years as the employer has attempted to create efficiency in its operations.

With an eye toward future expansion, Pierce County Public Works and Utilities began the process of reorganizing its Sewer Utility in 2009. Prior to the reorganization, the utility's Wastewater Treatment Plant, Collections, Engineering, Water Utility, and Strategic Planning and Asset Management functions were under the supervision of the Wastewater Utility Manager. As part of the reorganization, Wastewater Treatment Plant and Collections Maintenance were placed in the Maintenance/Operations Division under the supervision of Maintenance Manager Terry Soden,

² *Pierce County, Decision 10377-A (PECB, 2009).*

who reports to Wastewater Utility Manager Tim Ramsaur. Soden also oversees Operations, Maintenance Engineering, and Water Utility Maintenance.

Non-supervisory employees in Wastewater Treatment Plant and Collections Maintenance are divided into three units (Wastewater Treatment Plant Maintenance, Line Maintenance, and Pump Station Maintenance), according to the employer's January 20, 2010 organizational chart. There are 11 employees in Wastewater Treatment Plant Maintenance, and the Collections Maintenance Division consists of 19 employees in Line Maintenance and 16 in Pump Station Maintenance. These employees directly report to field supervisors in their respective units.

The Wastewater Treatment Plant Maintenance Division includes the 11 employees that the union seeks to add to its existing unit by the petition:

- 5 Wastewater Maintenance Specialists-Mechanical;
- 3 Wastewater Maintenance Specialists-Instrumentation;
- 2 Wastewater Maintenance Specialists-Electrical; and
- 1 Wastewater Treatment Plant Utility Worker.

The Collections Maintenance Division consists of:

- 19 Wastewater Maintenance Technicians (12 in Line Maintenance and 7 in Pump Station Maintenance);
- 13 Wastewater Maintenance Specialists-Mechanical (6 in Line Maintenance and 7 in Pump Station Maintenance);
- 1 Wastewater Maintenance Specialist-Instrumentation in Pump Station Maintenance;
- 1 Wastewater Maintenance Specialist-Electrical in Pump Station Maintenance; and
- 1 Wastewater Maintenance Worker in Line Maintenance.

Of the 35-employee Collections Maintenance group, 15 employees are in the same Wastewater Maintenance Specialist classification as the employees in the petitioned-for Wastewater Treatment Plant Maintenance unit.

Of the aforementioned statutory criteria the Commission uses to determine community of interest, only the duties, skills and working conditions of the employees, history of collective bargaining, and the extent of organization are applicable to this case. The exclusive method of determining the desire of the employees in a representation case is by election.

Duties, Skills and Working Conditions

Duties: In 2007, the employer created the existing classification descriptions for the Wastewater Maintenance Specialist positions that are found in both the Wastewater Treatment Plant Maintenance and Collections Maintenance divisions. The general functions for each of these positions are:

Wastewater Maintenance Specialist-Electrical – This is highly skilled maintenance electrical work in the Pierce County Public Works and Utilities Department. An employee in this class is responsible for the installation, maintenance and repair of a wide variety of complex electrical systems and associated equipment at various locations of the treatment plant and outlying operational sites.

Wastewater Maintenance Specialist-Instrumentation – This is highly skilled instrumentation work in the Public Works and Utilities Department of Pierce County. An employee in this class is primarily responsible for the installation, maintenance, and repair of instrumentation systems. Work includes responsibility for the proper functioning of all instrumentation equipment of the County's wastewater treatment plant and other utility facilities.

Wastewater Maintenance Specialist-Mechanical – This is highly skilled maintenance work involving preventative and corrective mechanical activities in the Public Works and Utilities Department, Wastewater Treatment Plant and Collection System Operations. An employee in this class is responsible for the maintenance and repair of a wide range of mechanical equipment such as pumps, pipes, valves, screw augers, elevators, filter systems, combustion engines, shredders, grinders, blowers, chemical feed/filter systems and other complex machinery throughout the system.

Furthermore, the essential functions and other job functions for each of these classifications also pertain to all employees in the classification, regardless of whether they work in Wastewater Treatment Plant Maintenance or Collections Maintenance. None of the union's witnesses or

evidence disputed that these classification descriptions are an accurate representation of these positions' current functions.

Skills: The classification descriptions make no distinction between Wastewater Maintenance Specialists in the Wastewater Treatment Plant Maintenance and Collections Maintenance divisions in regard to qualifications, training or skill required. All three specialist classifications have a minimum requirement of a high school diploma or general equivalency degree, in addition to specific training and/or experience that is uniform among those in that classification. The special requirements listed in each classification description are also uniform throughout the classification, regardless of division.

The union successfully argues that there are several differences in certification and licensure requirements for employees in the Wastewater Treatment Plant Maintenance and Collections Maintenance divisions, specifically that Wastewater Treatment Plant employees need additional training and certification due to higher-voltage equipment in use at the plant. The union also contends that Collections employees have Commercial Drivers Licenses (CDL) while those at the Wastewater Treatment Plant do not unless they formerly worked in Collections.

The latter claim is refuted by the Wastewater Maintenance Specialist-Mechanical classification description special requirements, which state: "Within the first 12 months, individuals must have the ability to obtain a (CDL) Class A with Tanker Endorsement and Wastewater Collections Specialist Certification." Any employee hired since 2007 falls under that requirement, but testimony indicated that incumbents at the Wastewater Treatment Plant who did not have a CDL were not required to obtain one when the new classification descriptions were developed.

Working Conditions: Wastewater Maintenance Specialists assigned to the Wastewater Treatment Plant and those assigned to Collections work under the same compensation and personnel policies. Wastewater Maintenance Specialists earn between \$28.32 and \$35.83 an hour, have regular work hours of 7:00 a.m. to 3:30 p.m., Monday through Friday, and are subject to being called back to work during off hours.

The union contends that Wastewater Treatment Plant and Collections employees have vastly different working conditions, with little interaction, because one group operates at a fixed location and the other operates in the field. To support its argument, the union asserts that Wastewater Treatment Plant employees work primarily at the treatment plant under treatment plant supervisors, while Collections employees work under separate supervision at various locations on the Chambers Creek properties. This characterization is overly simplistic and ignores the interchange between the two work groups, both at the treatment plant and in the field.

Collections workers have traditionally been assigned to the treatment plant for routine maintenance and during times when circumstances required more assistance than the Wastewater Treatment Plant workers could provide. Testimony indicated the employer has devoted the equivalent of two full-time employees from Collections, including one Wastewater Treatment Specialist-Mechanical, to the treatment plant since September of 2009 in order to complete a diffuser project and reduce a work order backlog that had developed over the years.

Employees from the Wastewater Treatment Plant Maintenance and Collections Maintenance divisions co-maintain the Sewer Utility's other Chambers Creek properties, which include the Environmental Services Building and Chambers Bay Golf Course. Mark Newport, a Wastewater Maintenance Specialist-Electrical at the treatment plant, testified that he has done electrical work at Chambers Bay Golf Course and the Environmental Services Building, and added that Wastewater Maintenance Specialist-Mechanical Tom Cornwall has also worked at the Environmental Services Building despite being based at the treatment plant.

To illustrate how Collections and Wastewater Treatment Plant workers have become more interchangeable since 2007, Soden produced exhibits for the hearing that illustrated the number of hours each group of employees worked with assets at the treatment plant and the Environmental Services Building. The documents indicated that Collections staff accounted for 1 percent of the total hours worked with those assets in 2007, followed by an increase to 14 percent in 2008 and 26 percent in 2009.

Supervision of maintenance employees is also dependent upon circumstances and isn't as clearly delineated as the union contends. Jason Robinson, a Utilities Maintenance Field Supervisor at the Wastewater Treatment Plant, testified that he supervised Collections employees during the diffuser project, and also stated that field supervisors from the Wastewater Treatment Plant Maintenance and Collections Maintenance divisions supervise work at the Chambers Creek properties away from the plant that are co-maintained by Wastewater Treatment Plant and Collections employees.

History of Collective Bargaining

Neither the petitioned-for bargaining unit nor the Collections Maintenance employee group is currently represented for the purpose of collective bargaining. While the Collections Maintenance employees do not have a history of representation, International Brotherhood of Electrical Workers Local 483 represented Wastewater Treatment Plant employees in the positions of Wastewater Maintenance Specialist - Electrician, Wastewater Maintenance Specialist – Mechanic, Wastewater Maintenance Specialist – Instrument Technician, Wastewater Treatment Plant Utility Worker, Wastewater Treatment Plant Maintenance Lead and Wastewater Treatment Plant Laboratory Pretreatment Technician from January 1, 1997, until December 31, 1999.

Extent of Organization

Extent of organization analyzes the extent to which the employer's workforce is organized and compares the employees involved in the proposed unit with the employer's overall workforce. The Commission has long been wary of establishing multiple bargaining units among employees who perform similar functions because of the potential for work jurisdiction disputes.

One of the most recent cases to demonstrate this reluctance was *Central Washington University*, Decision 10336 (PEBC, 2009), *aff'd*, Decision 10336-A (PECB, 2009), in which the union attempted to organize a 10-employee group of student counselors and left another 55 similarly classified university employees unrepresented. The Executive Director held that the petitioned-for bargaining unit was inappropriate, stating:

Should a part, or the remainder of, the exempt student counseling employees not be included in the unit, the potential for ongoing disputes about work jurisdiction

between the bargaining units could be significant. Even if no additional units were ever organized in this workforce, the integrated nature of operations and overlapping of student counseling duties would still mean that creation of the petitioned-for unit could create ongoing jurisdictional disputes between represented and unrepresented employees.

The present case mirrors *Central Washington University*, in that the union is seeking a bargaining unit that consists primarily of Wastewater Maintenance Specialists while leaving another group of similarly classified employees unrepresented. Potential work jurisdiction disputes abound under this scenario.

For example, testimony indicated that there are two treatment plant employees who have CDLs and are able to drive the Vactor trucks used to clean sewer lines. When those employees are unavailable to perform this work at the plant – due to a work backlog or other reasons – the employer has assigned employees from the Collections division to do the Vactor work, which would clearly be bargaining unit work if the petitioned-for unit were deemed appropriate.

Another example of potential conflict would be at the employer's co-maintained facilities, where testimony indicated that both Wastewater Treatment Plant and Collections employees perform similar work functions. Because there are electrical and mechanical workers in both divisions, the nature of the work done at these sites away from the treatment plant would make work jurisdiction disputes a near certainty if the petitioned-for unit were deemed appropriate.

Other Considerations Warrant Dismissal

Although an election will not be conducted in this matter because the proposed bargaining unit would not be appropriate, it appears that another issue not raised by the parties would also preclude an election pursuant to WAC 391-25-440.

Unconfirmed during the hearing, the face of the petition suggests the union seeks to include 11 employees into its existing unit of 11 employees. There was no evidence introduced that suggests these numbers are inaccurate. A basic tenet of unit clarification, accretion, and self-determination processes is that the majority status of the underlying unit not be disturbed. Simply put, if the number of employees to be added to a unit equals or exceeds the number of employees in the

existing unit, the majority status of the union’s representation in the underlying unit is called into question, and a question concerning representation is found to exist.

Prior to the Commission’s rulemaking in 2008, the self-determination election process set forth under WAC 391-25-440 was not available. As noted in the June 17, 2008 Rulemaking Notice for WAC 391-25-440 that was filed with the Code Reviser: “Currently a labor organization must first petition to represent the smaller group of employees, and then petition to merge those employees into the larger existing bargaining unit.” This required a vote of employees in the long-established unit and the newly organized unit to determine if the employees wished to merge with the other unit. This procedure is still available and is codified in WAC 391-25-420.

The new self-determination process was designed to allow an individual employee, or a small group of employees, who share a community of interest with employees in the larger existing unit to vote to be included in the larger unit. This process leaves the larger existing bargaining unit intact, thus not disturbing or jeopardizing the presumption of the union’s majority status among employees in the underlying existing bargaining unit. Should the group proposed for addition to the existing unit be the same size or larger, the presumption of majority status can no longer be assumed. The Commission enunciated the principle of majority status in *Pierce County*, Decision 6051-A (PECB, 1998), where it overruled the Executive Director in clarifying a unit that added new employees because the number of positions to be accreted to the bargaining unit did not call into question the union’s majority status of the historic existing bargaining unit and therefore, no question concerning representation was found to exist.

Former Executive Director Schurke was more stringent in his application of this principle when dismissing a petition in *City of Vancouver*, Decision 9469 (PECB, 2006). In that case, a union sought to accrete a number that exceeded 30 percent of the number of positions that existed in the underlying unit. Schurke stated that the union’s petition would create a doubt as to the ongoing majority status of the exclusive bargaining representative, and “inherently raised a question concerning representation.” *City of Vancouver*, Decision 9469, *citing* WAC 391-35-020(5)(c). Recognizing that an accretion differs from the process set forth in WAC 391-25-440 which requires newly organized employees to vote for inclusion in the existing unit, the guiding principle

is the same in cases involving additions, be it by vote or by accretion through unit clarification. Applying the clear language of WAC 391-25-020(5)(c), once the numbers to be added equal or exceed the numbers in the existing unit, there can no longer be a presumption of majority status in that historic unit. Thus, the principles set forth in WAC 391-35-020(5)(c) reflect a basic tenet of labor law that is applicable to the self-determination process set forth in WAC 391-25-440.

CONCLUSION

Based upon the record as a whole, the Executive Director finds that the proposed bargaining unit sought by the union is not an appropriate unit for the purpose of collective bargaining. The petitioned-for maintenance employees in the Wastewater Treatment Plant have duties, skills and working conditions substantially similar to employees who work on the Collections Maintenance side of the employer's Maintenance/Operations Division. The work performed by employees in the petitioned-for positions is the same or similar to, or in some cases integrated with, that of the employees in the employer's Collections Maintenance Division. In addition, the petitioned-for unit would unduly fragment the employer's Maintenance/Operations Division workforce, leading to work jurisdiction disputes between the unit and the remaining maintenance employees.

FINDINGS OF FACT

1. Pierce County is a public employer within the meaning of RCW 41.56.030(13).
2. The Washington State Council of County and City Employees is a bargaining representative within the meaning of RCW 41.56.030(2).
3. On March 5, 2010, the union filed a representation petition under WAC 391-25-440 to add Wastewater Treatment Plant employees of Pierce County to the union's existing bargaining unit of Wastewater Treatment Plant Operators.
4. The employer argues that the petitioned-for bargaining unit is inappropriate because the Wastewater Treatment Plant employees affected by the petition also share a community of

interest with 35 Collections Maintenance employees who perform work at the treatment plant and other locations on the Chambers Creek properties, including the Environmental Services Building and Chambers Bay Golf Course.

5. Of the 35-employee Collections Maintenance group, 15 employees are in the same Wastewater Maintenance Specialist classifications as the employees in the petitioned-for Wastewater Treatment Plant Maintenance unit.
6. The work performed by employees in the petitioned-for unit consists of system installation, maintenance, and repair at the employer's treatment plant, as well as its other Chambers Creek properties.
7. The work performed by employees in the petitioned-for positions is the same or similar to, or in some cases integrated with, that of the employees in the employer's Collections Maintenance Division.
8. All of the petitioned-for employees have duties, skills and working conditions substantially similar to employees in the employer's Collections Maintenance Division.
9. All of the petitioned-for employees work under the same compensation and personnel policies as do the employees in the employer's Collections Maintenance Division.
10. The unit of petitioned-for employees would unduly fragment the employer's Maintenance/Operations Division workforce.
11. Creation of the petitioned-for bargaining unit would create an ongoing potential for work jurisdiction disputes because of the integration of maintenance operations and the similarity of work performed by the petitioned-for employees in Wastewater Treatment Plant Maintenance and those in Collections Maintenance.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. The proposed bargaining unit described in Finding of Fact 3 is not an appropriate unit for the purpose of collective bargaining.

ORDER

The petition filed in Case 23087-E-10-3540 for investigation of a question concerning representation is hereby DISMISSED.

Issued at Olympia, Washington, this 7th day of February, 2011.

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 to WAC 391-25-660.



PUBLIC EMPLOYMENT RELATIONS COMMISSION


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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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CASE NUMBER: 23087-E-10-03540 FILED: 03/05/2010 FILED BY: PARTY 2
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BAR UNIT: WATER/SEWER
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