

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

SNOHOMISH COUNTY JUVENILE  
COURT SUPERVISORS ASSOCIATION

Involving certain employees of:

SNOHOMISH COUNTY

CASE 26516-E-14-3874

DECISION 12217-A - PECB

DECISION OF COMMISSION

Law Offices of Jared Karstetter, Jr., P.S., by *Jared C. Karstetter, Jr.*, Attorney at Law, for the Snohomish County Juvenile Court Supervisors Association.

Snohomish County Prosecuting Attorney Mark K. Roe, by *Steven J. Bladek*, Deputy Prosecuting Attorney, for Snohomish County.

*Audrey B. Eide*, General Counsel, for the Washington State Council of County and City Employees.

The Snohomish County Juvenile Court Supervisors Association (Association) filed a petition to represent a bargaining unit of seven employees working as Juvenile Corrections Officer Supervisors, Juvenile Community Corrections Officer Supervisor, and Kitchen Coordinator at the Snohomish County (employer) Denney Juvenile Justice Center. The Washington State Council of County and City Employees (WSCCCE) moved and was allowed to intervene.

The Executive Director determined that the petitioned-for employees are not supervisors and share a community of interest only with employees in the WSCCCE juvenile detention bargaining unit.<sup>1</sup> The Association appealed the Executive Director's decision to allow the WSCCCE to intervene and his determination that the petitioned-for employees share a community of interest only with the WSCCCE's juvenile detention bargaining unit.

<sup>1</sup> *Snohomish County*, Decision 12217 (PECB, 2014).

We reverse the Executive Director. The WSCCCE was inappropriately allowed to intervene because it was neither an incumbent representative under WAC 391-25-170 nor did it submit a 10 percent showing of interest under WAC 391-25-190. While the petitioned-for employees share a community of interest with the employees in the WSCCCE's juvenile detention bargaining unit, they also share a community of interest, separate and apart, among themselves. The petitioned-for bargaining unit is also appropriate. The matter is remanded to the Executive Director to conduct a unit determination election under WAC 391-25-420 to ascertain the preferred bargaining unit configuration of the employees.

### BACKGROUND

The seven petitioned-for employees work in the Juvenile Detention Services Residential Custody unit and Juvenile Detention Service programs at the Denney Juvenile Justice Center. The Juvenile Corrections Officer Supervisors work in the Residential Facility and monitor juvenile offenders, address behavioral problems or other unique circumstances, and enforce the juvenile offender's behavioral compliance with established policies and procedures. The Juvenile Corrections Officer Supervisors provide and schedule training for new hires and ensure that they have received the proper certifications. They also plan, schedule, and direct the work of Juvenile Corrections Officers. The Juvenile Corrections Officers are currently included in the WSCCCE's juvenile detention bargaining unit.

The Juvenile Community Corrections Officer Supervisor works in the Detention Alternatives program and is responsible for monitoring and evaluating juveniles in the program. The Juvenile Community Corrections Officer Supervisor develops a program or curriculum that a juvenile offender is required to follow, counsels the juvenile, and recommends how the juvenile will be reintroduced into the community. The Juvenile Community Corrections Officer Supervisor coordinates training for the Juvenile Community Corrections Officers and plans and schedules their working hours. The Juvenile Community Corrections Officers are included in the WSCCCE's juvenile detention bargaining unit.

The Kitchen feeds the juvenile detainees at the Residential Facility. The Kitchen Coordinator and Cooks work in the Kitchen. The Kitchen Coordinator orders food, plans meals, and ensures the kitchen operates smoothly. The Cooks are responsible for preparing the food for meals. The Cooks are currently included in the WSCCCE's juvenile detention bargaining unit.

*Bargaining History of the Petitioned-For Employees*

Before 2002 the seven employees in the Juvenile Corrections Officer Supervisor, Juvenile Community Corrections Officer Supervisor, and Kitchen Coordinator job classes were included in the WSCCCE's juvenile detention bargaining unit. In 2002 the employer and the WSCCCE agreed to remove those employees from that bargaining unit due to conflicts of interest between those positions and the other employees in the bargaining unit. The employer and WSCCCE also removed five employees in the Health Services Director, Juvenile Probation Counselor – Supervisor, Court Services Supervisor, and Drug Treatment Counselor job classes from the bargaining unit. *Snohomish County*, Decision 12071 (PECB, 2014). The parties agreed to place these 12 positions in a separate, voluntarily recognized bargaining unit. The WSCCCE represented these employees from 2002 until 2013.

Between 2002 and 2010 the WSCCCE successfully negotiated agreements for the 12-person bargaining unit. After 2010 the WSCCCE was unable to negotiate on behalf of that bargaining unit. The employees rejected two different proposed contracts that the WSCCCE negotiated on their behalf. In both instances, the membership was split on the contract, with the seven employees in the petitioned-for bargaining unit rejecting the negotiated agreement and the five employees in the Health Services Director, Juvenile Probation Counselor – Supervisor, Court Services Supervisor, and Drug Treatment Counselor job classes accepting the agreement. Because of the divergent interests and deep division within the bargaining unit, the WSCCCE disclaimed interest in the bargaining unit in May 2013.

Following the disclaimer, the Association filed a petition to represent the same 12-person bargaining unit at the Juvenile Justice Center. The WSCCCE also filed a petition to represent just the five positions in the Health Services Director, Juvenile Probation Counselor – Supervisor,

Court Services Supervisor, and Drug Treatment Counselor job classes. Because the two petitions overlapped, a hearing was held to determine the appropriateness of each petition.

The WSCCCE's proposed unit configuration of the five positions was determined to be an appropriate bargaining unit configuration while the Association's proposed unit configuration was deemed to be inappropriate. *Snohomish County*, Decision 12071. The Association then filed this petition seeking to represent a bargaining unit configuration of only the seven employees working as Juvenile Corrections Officer Supervisors, Juvenile Community Corrections Officer Supervisor, and Kitchen Coordinator.

ISSUE 1: Whether the WSCCCE was appropriately allowed to intervene.

## ANALYSIS

### Legal Standards

The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Executive Director's conclusions of law. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Id.*

### *Intervention*

Intervention is allowed by rule in representation cases under two circumstances. First, an organization may intervene in a representation case if that organization has been the exclusive bargaining representative of part of the petitioned-for bargaining unit during the year preceding the filing of the petition. WAC 391-25-170. Second, an organization other than the incumbent representative may intervene in a representation proceeding if it can demonstrate a 10 percent showing of interest among the employees in the petitioned-for unit. WAC 391-25-190. No other rules allow for an organization to intervene in representation proceedings.

### Application of Standards

The WSCCCE did not move to intervene under either WAC 391-25-170 or WAC 391-25-190, and there is no evidence that the WSCCCE met the criteria for intervention under either rule. The WSCCCE was not the incumbent representative of any portion of the petitioned-for bargaining unit during the year preceding the filing of the representation petition. The WSCCCE was the incumbent representative of the petitioned-for employees until it disclaimed the unit in May 2013. The Association filed its petition to represent those employees on June 5, 2014, or more than one year after the WSCCCE was the incumbent representative for the petitioned-for employees. Accordingly, the WSCCCE could not intervene in this proceeding under WAC 391-25-170. Also, the WSCCCE did not submit any showing of interest, so intervention was not appropriate under WAC 391-25-190.

The WSCCCE moved and was allowed to intervene based upon its status as an “interested party” in representation cases. While an interested party may intervene in a unit clarification case and, in limited circumstances, an unfair labor practice case, there is no general right to intervene in representation cases as an “interested party.” The Executive Director erred in granting the WSCCCE’s motion.

ISSUE 2: Whether the petitioned-for bargaining unit is an appropriate unit.

### Legal Standards

When making bargaining unit determinations, the Commission’s goal is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. See *Quincy School District*, Decision 3962-A (PECB, 1993). The criteria are applied collectively to discern the existence of a community of interest among the employees of a particular employer, and no one criteria is of greater import than the others.

The starting point for any unit determination analysis is the configuration sought by the petitioning organization. *King County*, Decision 5910-A (PECB, 1997). In making bargaining unit determinations, RCW 41.56.060(1) directs this agency to 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.”<sup>2</sup> When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. Bargaining unit determinations are made on a case-by-case basis and the unit determination criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors will arise in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff’d*, *Renton Education Association v. PERC*, 101 Wn.2d 435 (1984).

### Application of Standards

The Executive Director held that the duties performed by the seven petitioned-for employees overlap with the duties performed by the employees in the WSCCCE’s juvenile detention bargaining unit. This overlap, according to the Executive Director, would create impermissible work jurisdiction issues such that he determined the petitioned-for bargaining unit configuration to be inappropriate. We disagree.

The question before the Commission is whether the petitioned-for bargaining unit is an appropriate bargaining unit configuration, not the most appropriate bargaining unit. *Washington State University*, Decision 9613-A (PSRA, 2007). In this case the petitioned-for employees share a community of interest that renders the proposed unit appropriate under the statute. The petitioned-for employees are all overtime-eligible employees performing support and oversight functions at the Juvenile Justice Center. The record shows that these employees shared a community of interest with each other when they were in a separate bargaining unit. The WSCCCE was able to bargain multiple agreements on their behalf when that labor organization represented them.

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<sup>2</sup> Although “the desire of the public employees” is one of the unit determination criteria listed in RCW 41.56.060, testimony under oath is an inherently coercive and inappropriate method for ascertaining the desires of employees. *Valley Communications Center*, Decision 4465-A (PECB, 1994). Unless an accretion is appropriate, the desires of employees are ascertained through the election process. *Central Washington University*, Decision 9963-B (PSRA, 2010).

The history of bargaining does not support a conclusion that the petitioned-for bargaining unit would create impermissible work jurisdiction issues. The petitioned-for employees have been in a bargaining unit apart from the WSCCCE's juvenile detention bargaining unit for at least 10 years. Although the duties performed by the employees in the WSCCCE's juvenile detention bargaining unit and the employees in the petitioned-for bargaining unit may be part of the continuum of duties to operate and support juvenile justice services in Snohomish County, no evidence was offered showing any impermissible work jurisdiction issues. Rather, the record and the bargaining history demonstrate a lack of work jurisdiction issues between the petitioned-for employees and the employees in the WSCCCE's juvenile detention bargaining unit.

Furthermore, it cannot be said that the Association's proposed bargaining unit configuration would fragment the employer's workforce. Both the employer and the WSCCCE agreed to exclude the petitioned-for employees from the WSCCCE's juvenile detention bargaining unit in 2002. The employer has raised no objections to the Association's proposed unit configuration. While agreements between the parties are not binding upon the Commission,<sup>3</sup> no evidence supports a conclusion that the proposed unit would fragment the employer's workforce.

Finally, although the Association's proposed unit configuration is an appropriate bargaining unit, the Executive Director correctly concluded that the petitioned-for employees also share a community of interest with the employees in the WSCCCE's juvenile detention bargaining unit. Including them in that bargaining unit would likewise constitute an appropriate bargaining unit. Therefore, there are two appropriate unit configurations in this case.

In instances where two or more bargaining unit configurations are appropriate, a unit determination election may be held. *Waterville School District*, Decision 9879 (PECB, 2007). A unit determination election gives the petitioned-for employees the ability to indicate whether they want to be represented for the purpose of collective bargaining and which appropriate bargaining unit the employees choose. Such an election is appropriate in this case.

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<sup>3</sup> See *City of Seattle*, Decision 6604-B (PECB, 2000).

CONCLUSION

The WSCCCE was inappropriately allowed to intervene because it was neither an incumbent representative under WAC 391-25-170 nor did it submit a 10 percent showing of interest under WAC 391-25-190. The Association's petition was inappropriately dismissed. The petitioned-for bargaining unit is an appropriate unit because the petitioned-for employees share a community of interest. Including the petitioned-for employees in the WSCCCE's bargaining unit would also result in an appropriate unit. The petitioned-for employees should be allowed to choose between the two appropriate bargaining units via a unit determination election.

NOW, THEREFORE, it is

ORDERED

1. The Findings of Fact issued by Executive Director Michael P. Sellars are AFFIRMED and adopted as Findings of Fact of the Commission except for Findings of Fact 11, 12, and 13, which are VACATED. The Commission makes the following Findings of Fact 11 and 12:
  11. Although the duties performed by the Juvenile Corrections Officer Supervisors, the Juvenile Community Corrections Officer Supervisor, and the Kitchen Coordinator job classes and the employees in the WSCCCE's juvenile detention bargaining unit are part of the same continuum of duties needed to operate and support the Residential Facility, there is no evidence that the duties between the two groups overlap to an extent that would create impermissible work jurisdiction issues. Rather, the bargaining history demonstrates a lack of work jurisdiction issues between the petitioned-for employees and the employees in the WSCCCE's bargaining unit.
  12. The WSCCCE did not represent the petitioned-for employees during the one-year period preceding the filing of the Association's petition and did not submit a



showing of interest demonstrating that it had the support of at least 10 percent of the employees in the proposed bargaining unit.

2. The Conclusions of Law issued by Executive Director Michael P. Sellars are VACATED and the Commission makes the following 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. Based upon Finding of Fact 12, the WSCCCE should not have been permitted to intervene in these proceedings.
  3. Based upon Findings of Fact 4 through 11, the employees working as Juvenile Corrections Officer Supervisors, Juvenile Community Corrections Officer Supervisor, and Kitchen Coordinator share a community of interest with the employees in the WSCCCE's juvenile detention bargaining unit.
  4. Based upon Findings of Fact 4 through 11, the bargaining unit configuration sought by the Association is an appropriate bargaining unit under RCW 41.56.060.
3. The Order of Dismissal issued by Executive Director Michael P. Sellars is VACATED and the Commission issues the following Order:
  1. A unit determination election will be conducted under WAC 391-25-420 to ascertain which bargaining unit configuration the employees desire. The employees will have the option of choosing between the following bargaining unit configurations:
    - a. Bargaining Unit Configuration 1 is the bargaining unit configuration proposed by the Association. That bargaining unit configuration shall be described as: "All employees working in the Snohomish County Superior

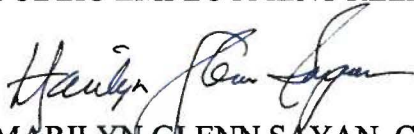
Court's juvenile justice program in the following job classes: Juvenile Corrections Officer Supervisors, Juvenile Community Corrections Officer Supervisor, and Kitchen Coordinator, excluding confidential employees, employees in other bargaining units, and all other employees.

- b. Bargaining Unit Configuration 2 is the bargaining unit configuration that the Executive Director found to be appropriate. That bargaining unit configuration shall be described as: "All employees working in the Snohomish County Superior Court's juvenile justice program in the following job classes: Juvenile Corrections Officers, Juvenile Community Corrections Officers, Cook, Juvenile Corrections Officer Supervisors, Juvenile Community Corrections Officer Supervisor, and Kitchen Coordinator, excluding confidential employees, employees in other bargaining units, and all other employees.

4. Processing of this matter is REMANDED to the Executive Director for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 22nd day of June, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



THOMAS W. McLANE, Commissioner



MARK E. BRENNAN, Commissioner



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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

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CASE NUMBER: 26516-E-14-03874 FILED: 06/05/2014 FILED BY: PARTY 2  
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