STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
MUNICIPALITY OF METROPOLITAN SEATTLE (METRO)	)	CASE NO. 5472-C-84-274
	)	DECISION 2358-A - PECB
For clarification of an existing bargaining unit of its employees represented by:	)	
	)	
AMALGAMATED TRANSIT UNION, LOCAL 587.	)	DECISION OF COMMISSION

Preston, Thorgrimson, Ellis and Holman, by J. Markham Marshall, Attorney at Law, appeared on behalf of the employer.

Frank and Rosen, by Jon Howard Rosen, Attorney at Law, appeared on behalf of Amalgamated Transit Union, Local 587.

Richard D. Eadie, Attorney at Law, appeared on behalf of intervenor International Federation of Professional and Technical Engineers, Local 17, AFL-CIO.

The petitioner, Municipality of Metropolitan Seattle (METRO), has appealed an order issued by the Executive Director dismissing its petition for clarification of an existing bargaining unit. Municipality of Metropolitan Seattle, Decision 2358 (PECB, 1986).

In its petition, METRO sought a determination that several employees in its "commuter pool" operation had accreted to a bargaining unit represented by Amalgamated Transit Union, Local 587. International Federation of Professional and Technical Engineers, Local 17, intervened in opposition to the petition,

contending that it is the exclusive bargaining representative of those same employees. Local 587 participated in these proceedings, but has not taken a position.[1]

BACKGROUND

This case arises from the April, 1984 transfer of commuter pool operations from the City of Seattle to METRO. In connection with that transfer, METRO acquired some 30 city employees, of whom five were represented by Local 17. Those five employees had been in a bargaining unit of approximately 700 City of Seattle employees. The transfer agreement between METRO and the city contained the following clauses:

> METRO shall succeed to the City's obligations under its collective bargaining agreement with the International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, (Exhibit "B") as to the represented employees transferred.
>
> METRO will take the place of the City in any pending employee grievance (represented and non-represented) and any labor arbitration proceeding involving transferred employees.

Since the transfer, METRO has declined to recognize Local 17 as the bargaining agent of any of the commuter pool employees.

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[1] Although METRO argues that Local 587 has raised a jurisdictional issue by claiming the work at issue, METRO's sole witness, Personnel Manager Eugene Matt, testified that it was Local 587's "preference was to keep out of it, keep a low profile." Tr. 104. Local 587's conduct throughout these proceedings has been consistent with Matt's testimony. In responding to questions concerning Local 587's jurisdictional claims, David Johnston, its president and business representative, was cautious and circumspect. See TR 166 - 172.

At the time of transfer, the five employees in question performed various clerical functions. METRO classified two of the five as "intermediate clerk". A sixth position also is at issue, that of an employee classified as "intermediate clerk" who had been hired by METRO previous to the transfer and was later assigned to the commuter pool operation. It is primarily the intermediate clerk positions which are disputed in this proceeding.

In a collective bargaining agreement between METRO and Local 587, the latter is recognized as the exclusive bargaining representative for employees in specified job classifications within METRO's transit operation, including "intermediate clerks". Article I, Section 1 of that agreement also states that:

> Current or future Employees assigned to perform work which has been historically or traditionally bargaining unit work at Metro or its successors, or which is agreed, or legally determined to be, bargaining unit work, shall also be covered by the terms of this Agreement.

Local 587 represents over 2800 METRO transit employees, of whom 130 to 140 perform clerical functions.

There are approximately 75 unrepresented clerical employees in METRO's workforce. About 125 to 130 employees in METRO's water pollution control operation are represented by Local 6, Service Employees International Union, and four of those employees perform clerical functions. Local 77 of the International Brotherhood of Electrical Workers represents about 30 METRO employees, none of them clerical.

DISCUSSION

Statutory Unit Determination Criteria

The criteria for determining or modifying an appropriate bargaining unit are set forth in RCW 41.56.060, which states that we must:

> consider the duties, skills and working conditions of the 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.

In a recent Commission decision on similar facts, we discussed at some length the principles regarding unit determination, successorship, accretion, and their relationship with one another Ben Franklin Transit, Decision 2357-A (PECB, 1986). That case also involved the acquisition of a previously independent transit-related function by an existing transit operation. We found, on the facts of that case, both that the acquired operation could constitute a separate appropriate bargaining unit or that a "wall to wall" transit system bargaining unit could be appropriate. We held that, although both units could be appropriate, the facts of the case supported the maintenance of a separate unit within the successor organization, and not an accretion. In addition, to protect the rights of an incumbent representative who had not enjoyed the benefits of a full year of bargaining following certification, we invoked the certification-bar rule to prohibit raising a question concerning representation.

In the instant case, with respect to the determinations of bargaining unit or units, accretion, and successorship, we note that some of the relevant facts, inferences therefrom, and

their application to certain legal principles are vigorously disputed by the parties. Those disputed items are as follows:

Effect of the Transfer Agreement

The first area of contention is the significance of the transfer agreement between the City of Seattle and METRO. As METRO points out, unit determination is a function reserved to the Commission by statute, and we are not necessarily bound by agreements of parties as to an appropriate unit configuration. City of Richland, Decision 279-A (PECB, 1978), aff'd sub. nom. Fire Fighters Local 1052 v. PERC, 29 Wn. App. 599 (1981); cert. den. 96 Wn.2d 1004 (1981). Similarly, the obligation of an employer (including, by extension, a new employer under a successorship clause) to perpetuate the status quo ante with respect to a unit and its representative may not be enforceable when significantly changed circumstances render the unit in question inappropriate. See: South Kitsap School District, Decision 1541 (PECB, 1983).

We view agreements such as the transfer agreement at issue here as having significant probative value with respect to statutory unit determination criteria regarding the bargaining history and desires of employees. In other words, the disputed provisions of the transfer agreement (which, as the Executive Director stated, probably were obtained by the city to assuage Local 17), when considered along with the historical representation of commuter pool employees by Local 17, support a separate unit of those employees. Conversely, these same facts do not support the inclusion of those employees in the much larger transit unit.

In the context of a unit clarification proceeding, it is not significant that the transfer agreement might be read literally

to bind METRO to Local 17 with respect to commuter pool "employees", as opposed to "positions". When making a unit determination, we do not need to interpret that agreement. Rather, we consider it as a whole as one factor to be reviewed.[2]

Effect of METRO's Classification of the Employees

Another area of dispute concerns the classification of the commuter pool employees under METRO's personnel classification system. The statute requires us to evaluate "duties and skills" when making a unit determination. The title attached to a position or classification is less important than the duties performed and skills required.

Our unit determination policy is to avoid unnecessary fragmentation of bargaining units. Tacoma School District No. 10, Decision 1908 (PECB, 1984). The application of this policy, along with a consideration of the duties and skills of the commuter pool clerical employees, weighs against a separate unit of commuter pool clericals. The skills required for the commuter pool jobs appear to be relatively similar, and their duties would suggest a community of interest with clerical employees elsewhere in the METRO organization. This evaluation lends some support to (but does not compel) inclusion of the commuter pool clerical employees in the transit system unit represented by Local 587, which includes a number of METRO's clerical employees. Since METRO also has approximately 75 unrepresented clerical employees, it is also arguable that the commuter pool clerical employees do not fit into any existing bargaining unit.

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2 The transfer agreement does require interpretation when considering the successorship issue, discussed below.

Effect of METRO's Organizational Structure

Perhaps the most heatedly contested issue in this case, and the most critical, is the employer's organizational structure, which is a significant element of the statutory working conditions criteria.

METRO contends that being charged by statute to create a "comprehensive transit system", it is required to, fully intends to, and is in the process of, integrating the commuter pool function with its other transit services. A primary allegation of METRO's petition for review is:

> Because the "commuter pool operation" ... has been integrated into METRO's Transit Departures and functions previously performed by City's "Commuter Pool" have been reassigned to various of Metro's Transit's departments, and because the employees transferred from the City of Metro have been integrated into Metro Transit's operations performing a full panoply of transit services--bus, vanpool and carpool--rather than being limited to one type of transportation as they were with the City, those employees transferred from the City do not constitute "a separate [appropriate] bargaining unit". Additionally, because the clerical functions previously performed by employees in the City's Commuter Pool have been integrated with other clerical functions pre-existing in Metro, it is impossible to segregate personnel performing clerical functions for other of Metro's transportation functions who are represented by ATU Local 587.

METRO maintains that the Executive Director ignored these facts, and that it is left in the impossible situation of having employees who only partly perform commuter pool functions in a unit of commuter pool employees.

If there was persuasive evidence showing that commuter pool clerical employees at the time of the hearing were, or were about to be, performing functions related to METRO's other transit activities, and that METRO has built or was in the process of building an integrated operation, METRO's case would be considerably strengthened. A scenario such as that described in METRO's petition for review would lend strong support to the accretion of the commuter pool employees to the ATU unit.

The record submitted to us in this appeal does not, however, support METRO's arguments. The only testimony presented on this issue was given by Eugene Matt, METRO Personnel Director, at Tr. 53. Mr. Matt stated that it had been METRO's intent to maintain the commuter pool as a separate entity for six months to a year after the transfer, and then the managers would meet to:

> . . . determine how to integrate and redistribute positions throughout the transit department where there had been a duplication of effort.
>
> That committee and those managers are currently meeting, and have been meeting for about a month and a half now.

No further evidence was offered as to what conclusions, preliminary or otherwise, were reached, including whether those managers even thought a reorganization was advisable. No evidence was offered as to how any reorganization would be carried out, under what time frame it would take place, what new duties would be assigned to commuter pool employees, how reporting relationships would be affected, which employees might be laid off, transferred or retrained. No evidence was offered which would allow us to more than speculate as to the commuter pool employees' future.

Contrary to METRO's assertion, testimony given by two employees does not support METRO's argument. Mika Bucholtz, at Tr. 192, stated that 20% of her time is spent fielding general information calls from the public. She stated that although she is learning more about METRO's bus route system, she "usually" refers non-commuter pool calls to a METRO information number. Thus, her testimony shows that no effort had been made to integrate her position into the larger transit system. Similarly, Monica Rife, at Tr. 193 et seq., indicated that she refers calls not within her commuter pool specialty to the customer service department. She also testified that she never has been told of plans to integrate the commuter pool operation with other transit operations.

Also belying METRO's position is its own organizational chart, (Ex. 1), which shows the commuter pool as a separate operational entity, reporting directly to the head of the transit division. According to testimony and exhibits, the commuter pool continued to function at the time of hearing much as it had under the City of Seattle, with the same manager.[3]

While evidence of integration of an organization and job functions is persuasive on unit determination/accretion issues, we must be presented with more than speculative evidence that such integration has occurred or is occurring. The burden of proving such integration, which in effect would call for an

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[3] In its petition for review, METRO contends that further progress has been made with respect to reorganization since the February 4, 1985 hearing, and it attached a new partial organization chart. The employer did not move, however, to reopen the hearing at any time. We cannot receive or consider additional evidence at this time. METRO's predicament illustrates a problem with bringing a unit clarification proceeding early in a reorganization process.

accretion, would be on the party asserting it, and we would require a preponderance of the evidence. Ben Franklin Transit, supra. Evidence of such integration is lacking here.

Accretion to Transit Unit

In light of our evaluation of the disputed matters previously discussed, we turn to the determination of whether an accretion has occurred. In 1 Developing Labor Law (2nd ed. 1983), at 370, it is stated:

> [A] new facility would likely be treated as an independent operation and not an accretion where (1) new employees are hired specifically for the new facility, (2) the facility is separately managed, (3) there is no interchange of employees between the new and previous operations, and (4) either the facilities are geographically distant or the operation of the new facility is autonomous despite close geographical proximity.

See, e.g., Safeway Stores, 276 NLRB 99 (1985), Western Cartridge Co., 1343 NLRB 67 (1961). See also, Ben Franklin Transit, supra. Significantly changed circumstances are needed for a unit clarification based on an accretion. See: Toppenish School District, Decision 1143-A (PECB, 1981). Facts negating an accretion predominate in this case. At the time of the hearing, the commuter pool was separately managed, appearing as a separate operation on METRO's organizational chart. There is no substantial evidence that there had been an interchange of employees or job functions between the commuter pool and other transit operations. No employees had been performing duties relating to both the commuter pool and another of METRO's transit operations. Although the commuter pool employees are in the same building as some other transit employees, they are functionally autonomous. Whether or not

these facts have since changed is not at issue. We must accept the facts as presented at hearing. Thus, assuming, without deciding that a combined bargaining unit of commuter pool employees and other transit employees is appropriate, we feel the quantum of proof here is insufficient to support an accretion of the commuter pool employees to the larger unit.

Appropriateness of Commuter Pool Unit and Metro Successorship

This leaves us with the task of determining whether the commuter pool clerical employees, by themselves, constitute an appropriate bargaining unit and, if so, whether METRO is a successor employer bound to the contract which Local 17 had with the City of Seattle.

The transferred commuter pool employees were part of a much larger bargaining unit with the city. Therefore, we cannot presume that the commuter pool employees constitute an appropriate bargaining unit by themselves. On the other hand, the skills, duties and working conditions of the employees at issue are very similar. The positions are clerical in nature and, at the time of hearing, they were part of a separate METRO operation. The bargaining history of the commuter pool positions as part of a unit represented by Local 17, considered along with the transfer agreement, lend strong support to their maintenance as an appropriate bargaining unit. Testimony presented at the hearing indicates that at least two of the employees at issue desire continued representation in a separate bargaining unit. Accordingly, the application of the statutory criteria for unit determinations points to a finding that the commuter pool positions at issue would constitute an appropriate bargaining unit.

The question remains as to whether METRO has succeeded to the City of Seattle's bargaining obligations, and if so, what METRO's responsibilities are. Federal decisions have held that an employer assumes the bargaining obligations of its predecessor if a majority of employees continue with the new employer, in an appropriate bargaining unit, within an acquired operation that is comparable to the former employer's operation. Burns International Detective Agency, Inc. v. NLRB, 406 U.S. 272 (1972). 1 The Developing Labor Law, supra, at 729 states:

> Where the new employer acquires only one of a multistore or multiplant unit, successorship will normally be established if the acquired unit itself is an appropriate unit.

In the instant case, METRO acquired one department of a multi-departmental unit. By analogy, METRO would be a successor employer. In addition, the assumption of obligations by METRO in the transfer agreement lends strong support to a determination that METRO is a successor employer. As noted in 1 The Developing Labor Law, supra, at page 744, "a successor who assumes or adopts a labor contract is, of course, bound by it."

METRO argues that in the transfer agreement, it only agreed to succeed to the city's obligations as to the employees transferred, which is a result one could reach if the transfer agreement is read literally. Under METRO's view, it would be bound to the Local 17 agreement as to the employees who were formerly with the city, but not as to new employees in transferred positions. (At the time of hearing there was one employee brought in after the commuter pool transfer.) In a bargaining unit, however, there is but one collective bargaining agreement, and it is highly unlikely that the parties intended for the unit to be bifurcated in a manner suggested by

METRO. We find that METRO's transfer agreement obligations apply to the bargaining unit as a whole.

The written assumption by an employer of a predecessor's labor agreement will operate as a bar. 1 The Developing Labor Law, supra, at 746. In Ben Franklin Transit, supra, we held that the policies supporting the certification-bar rule require the rule to be applied to bar a question of representation in a bargaining unit under a successor employer. Similarly, we believe that the policies favoring the contract-bar rule require that rule to be invoked in this case, since METRO assumed, in writing, the obligations of its predecessor.

The findings of fact, conclusions of law and order of the Executive Director are affirmed.

ISSUED at Olympia, Washington, this 23rd day of September, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R Wilkinson
JANE R. WILKINSON, Chairman

Mark C. Endresen
MARK C. ENDRESEN, Commissioner

Joseph F. Quinn
JOSEPH F. QUINN, Commissioner