

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
TEAMSTERS UNION, LOCAL 760)	CASE NO. 6739-C-87-353
For clarification of an existing bargaining unit of employees of:)	DECISION 2800 - PECB
OKANOGAN COUNTY)	ORDER CLARIFYING BARGAINING UNIT
_____)	

J. Allen Hobart, Administrative Assistant, appeared on behalf of the union.

Associated Industries, Inc., by Duane Wilson, Labor Relations Consultant, appeared on behalf of the employer.

On January 22, 1987, Teamsters Local 760 (union) filed a petition with the Public Employment Relations Commission (PERC) seeking clarification of an existing bargaining unit of employees of Okanogan County. The petitioner questions the continued propriety of an existing bargaining unit composed of all employees of the employer's sheriff's department, and seeks creation of two separate bargaining units. One of the units proposed by the union would be limited to field deputies in the department; the second unit would be composed of jail dispatch and clerical personnel. A pre-hearing conference was held April 28, 1987, wherein certain matters were stipulated. A hearing was held on May 26, 1987, before Hearing Officer J. Martin Smith. Briefs were filed by the parties to complete the record.

BACKGROUND

The Okanogan County Sheriff's Department is managed by Sheriff S. R. "Johnny" Johnston, Undersheriff Robert Hull and Chief Criminal Deputy Toney Fitzhugh. The department headquarters and the county jail are located at Okanogan, which is the county seat. The department is organized into three principal divisions: Civil division, jail division and field division. The sheriff and undersheriff administer all three divisions. Each of the divisions has one or more clerical employees.

The "field division" is supervised by the chief criminal deputy. Its workforce presently includes some ten field deputies and two sergeants.¹

The "jail division" workforce under the direction of a jail administrator includes seven radio dispatchers, seven correctional officers and one cook-matron, and is responsible for dispatch, jail security and jail food functions.

There is a mix of duties, skills and working conditions within the department and among the divisions. The field deputies and sergeants carry full law enforcement commissions, have the power of arrest, and carry weapons in the course of their patrol and criminal investigation duties. The corrections officers carry limited commissions, have responsibility for the restraint of prisoners, and may carry weapons during prisoner transport. The dispatchers and the clerks in the department are not commissioned, have no power of arrest, and carry no

¹ As was noted in an earlier case, Okanogan County is the largest, by geographical area, of Washington's counties. Okanogan County, Decision 2252 (PECB, 1985). The field deputies perform patrol and criminal investigation work throughout that large area.

weapons in their function as support personnel. There have been a few examples of employees starting in the corrections officer classification and later becoming a field deputy. Although there is no formal line of progression between those classes, it was indicated that exposure to department procedures might give corrections officers an advantage in taking examinations for field positions.

Teamsters Local 760 has been the exclusive bargaining representative for the department's employees since 1972. The present bargaining unit covers 31 employees, excluding only the sheriff (an elected official) and the undersheriff, chief civil deputy, chief criminal deputy and jail administrator (as supervisors). The shop stewards and principal members of union bargaining teams came primarily from the ranks of the field deputies until November, 1985, when a dispatch employee was named chief local spokesperson for the union in bargaining. There is no evidence of discussion or sentiment to sever the bargaining unit into constituent groups prior to the filing of the petition in the instant case.

Okanogan County completed a new jail facility in 1985. Prior to that time, the county jail and the sheriff's department offices were in the same area of the old courthouse building, such that jail cells, jail kitchen, dispatch center and deputy offices were within a few yards of each other. The new jail is located adjacent to the old facility along a common wall, but utilizes a separate lobby/waiting area. The dispatch center, where emergency calls are processed on a 24-hour basis, has been relocated to the new building, adjacent to the lobby/waiting area. The space vacated in the old facility has been converted into a law library, eating area for police officers, administrative offices and conference rooms for the sheriff's department.

The new dispatch center handles calls for a variety of emergency response services in the county in addition to the sheriff's department. Those include fire and ambulance services, local police services for the towns of Brewster, Tonasket, Omak, and Okanogan, and coordination with State Patrol and federal police agencies. Teletype information is also received and monitored at the dispatch center.

During negotiations in 1986 for a successor collective bargaining agreement, there appear to have been some incidents of unhappy feelings and frustrations being vented by members of the bargaining unit at one another, dividing generally along lines of jail/dispatch versus field deputy. There was general suspicion among the field deputies, who had come to comprise a numerical minority within the bargaining unit, that their particular interests were not being reflected in discussion at the bargaining table. Notwithstanding the lack of harmony, dispatcher Tommye Robbins and business agent J. Allen Hobart represented the union during negotiations and reached a tentative agreement in October, 1986. That agreement was not ratified by the membership, although changes in the insurance plan were approved. The petition to sever the bargaining unit was filed soon after the tentative agreement was rejected.

POSITION OF THE PARTIES

The exclusive bargaining representative contends that a significant change in the physical work locations of bargaining unit members justifies a severance of the existing bargaining unit into two separate units. The union also calls attention to the special statements and preferences of the sheriff's department employees as justification for a split of the unit.

The employer opposes the proposed split of the existing unit, asserting that only one bargaining unit (consisting of all sheriff's department employees) is appropriate under RCW 41.56.060. The employer points out that, despite the construction of a new jail facility, the field deputies maintain radio contact with the dispatchers at the courthouse in the same manner as before, and that the level of communication between field deputies and the dispatchers is greater than the communications among the field deputies. The employer argues that the 16-year bargaining history supports the continuation of one bargaining unit, and that severance should not be granted merely because of internal union disputes.

DISCUSSION

The statute provides guidance for defining bargaining units in RCW 41.56.060, as follows:

The Commission . . . shall decide . . . 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

As in Thurston County, Decision 2574 (PECB, 1986), the petition here is relatively unusual, because the incumbent union seeks to divide its existing bargaining unit into two separate bargaining units without intervention of a rival union or of a decertification movement. As in Thurston County, the employer resists a change which would obligate it to maintain an

additional collective bargaining relationship and negotiate an entire separate collective bargaining agreement for the second unit. In the absence of agreement between the parties, the issue is one for the Commission to decide.

It is clear that there has been a history of bargaining, and that it must be dealt with. An existing unit structure may be disturbed if it is concluded that the unit is no longer appropriate, but:

Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed.

City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wn.App 599 (Division III, 1981), cert. den., 96 Wn.2d 1004 (1981). [emphasis supplied]

Thus, the initial inquiry in this case is whether the existing unit has ceased to be an appropriate unit. If the existing unit remains appropriate, then, as in Thurston County, the "severance" criteria set forth by the Commission in Yelm School District, Decision 704-A (PECB, 1980) [citing Mallinckrodt Chemical Works, 162 NLRB 387 (1966)] would be applied in this case.

The Propriety of the "Mixed" Unit

A number of decisions are found among Commission precedent which stand for the proposition that a "mixed" bargaining unit consisting of "commissioned" personnel and "civilian" personnel is, under certain circumstances, inappropriate. Care must be taken, however, in putting reliance on those cases, to be certain that the circumstances are the same.

RCW 41.56.030 contains a definition of "uniformed personnel" which has very little to do with what type of clothing employees wear in the course of their employment. Rather, by reference to both the Law Enforcement Officers and Fire Fighters (LEOFF) Retirement System, Chapter 41.26 RCW, and the size of the employing entity, the definition of "uniformed personnel" creates a sub-set of public employees that includes some, but not all, law enforcement officers. The definition of "uniformed personnel" contained in RCW 41.56.030 implements coverage under the "interest arbitration" impasse resolution procedures of RCW 41.56.430, et seq. It is the availability of those separate impasse resolution procedures (and the concomitant unavailability of interest arbitration to public employees who are not "uniformed personnel" within the meaning of RCW 41.56.030) which led to a passing reference in Thurston County Fire District No. 9, Decision 461 (PECB, 1978) [non-LEOFF "student" volunteer firefighters not to be included in same unit with uniformed personnel of the employer] and to the decisions in City of Yakima, Decision 837 (PECB, 1980) [dispatcher, mechanical and clerical employees spun off from firefighter bargaining unit and included in separate bargaining unit within fire department] and King County Fire District No. 39, Decision 2638 (PECB, 1987) [employees performing dispatch functions removed from "mixed" unit with firefighters and placed in separate unit within fire department]. Following enactment in 1984 of amendments to RCW 41.56.030 which extended the interest arbitration process to law enforcement employees in additional, but not all, counties, the parties stipulated in Cowlitz County, Decision 2067 (PECB, 1984) and Benton County, Decision 2221 (PECB, 1985) to divide historical "mixed" units in county sheriff departments, thus separating bargaining units along lines similar to those proposed by the union in the instant case.

The problem with the "mixed unit" precedent in this case is that Okanogan County, despite its large geographical size, is not now (and will not in the foreseeable future be) within the "second class or larger" criteria of the "uniformed personnel" definition contained in RCW 41.56.030. The "mixed unit" cases are thus inapposite in this case.

Application of the Statutory Criteria

Duties, Skills, and Working Conditions -

The existing unit may be described as a "vertical" unit encompassing everybody who reports to the sheriff. As such, it covers an integrated operation essential to the overall conduct of the law enforcement functions of the county. The differences of details notwithstanding, the field deputies, jailers, dispatchers and clerical employees are all involved in the same law enforcement effort, with the sheriff ultimately responsible.

Among the field deputies, dispatchers and jailers, none can be called "skilled journeymen craftsmen" in the industrial sense. The training for these positions is prescribed not by a "craft" or union, but by the State of Washington under its obligation to train police officers and those who are to incarcerate criminal offenders. County sheriff's deputies receive basic training as police officers in a standardized, 11-week course. The record reveals that correctional officers must complete a two-week training course. Although changed standards and the new jail facility have created the need for more training for corrections officers, the job has not become so complex that a deputy sheriff cannot comprehend it. Jail and deputy personnel are still integral to the "booking" procedure for new prisoners. It would be more accurate to describe the field deputies, corrections officers and dis-

patchers as "technical" employees rather than "skilled craftsmen", because their skills and training are so closely monitored by civilian authority with an eye towards statewide law enforcement standards. See, also, City of Wenatchee, Decision 911 (PECB, 1980).

The field deputies, jailers and dispatchers work most closely with one another. They have situational contact with fire suppression and law enforcement personnel elsewhere in the area served, and from time to time with clerks in the courts, but almost never with other departments of the county. Unlike the employees in other departments of the county, employees from the field deputy, jailer and dispatcher groups in the sheriff's department remain on duty 24-hours per day.

The History of Bargaining -

The testimony revealed a history of bargaining in the wall-to-wall departmental unit which has persisted for at least 15 years and six collective bargaining agreements. There has been more than one elected sheriff in that time, but there have been no petitions to modify, clarify or otherwise change the composition of the department-wide bargaining unit. The field deputy, jail, dispatch and clerical groups have all existed and have all been included in the existing bargaining unit from the onset of the bargaining relationship.

Yelm, supra, and Mallinckrodt Chemical Works, supra, both look to the group of employees which seeks to split away from a larger historical unit, and apply the following questions: (1) Do the position[s] meet the criteria for a "skilled journeyman craftsman"? (2) Would severance interrupt labor relations in the employer's jurisdiction? (3) Does the bargaining history reveal any separate treatment or identity from the entire bargaining unit? (4) Are all of the employees

in the existing bargaining unit involved in an integrated operation essential to the function of the employer? (5) Does the petitioner seeking severance have any special qualifications compared to those of the current bargaining representative? It is pertinent here to call attention to the NLRB's rationale for applying such criteria on a case-by-case basis:

The cohesiveness and special interest of a craft or departmental group seeking severance may indicate the appropriateness of a bargaining unit limited to that group. However, the interests of all employees in continuing to bargain together in order to maintain their collective strength, as well as the public interest and the interest of the employer and the plant union in maintaining overall plant stability in labor relations . . . may favor adherence to the established patterns of bargaining.

Mallinckrodt at 64 LRRM 1011 at 1014.

Although the Mallinckrodt ruling is by no means clear as to whether the list of factors is to be disjunctive or conjunctive, it seems clear from subsequent opinions that a petitioner wanting to sever one craft group from a larger unit must provide positive answers to at least two of those criteria.² In the case at hand, the "skilled crafts", "separate treatment"

² As with many "famous" labor law cases, the factual holding is often forgotten in discussions of the Mallinckrodt precedent. The petitioner there sought to sever an identifiable group of "instrument mechanics" from a unit of all "maintenance and production" employees at a plant which produced one product: uranium metal. The NLRB ruled by a 4-1 vote that the case for a separate craft unit was not made out, even though the Board had allowed split-off units for stationary engineers, electricians, and powerhouse employees in prior cases. See dissent of member Fanning at 64 LRRM 1020.

and "integrated operation" questions are already answered, in the negative, by the foregoing discussion concerning duties, skills and working conditions.

It is concluded that severance of the existing bargaining unit would be disruptive of labor relations. Separate bargaining would be required for the additional unit, which would tend to involve additional personnel and effort, as well as complicate comparisons to "road" and "courthouse" bargaining units referred to in the record. Unnecessary division of the work force in a law enforcement agency historically organized along lines of management's table of organization was rejected in City of Redmond, Decision 2324 (PECB, 1985).

Since the petitioner would evidently desire to continue as the exclusive bargaining representative of both of the units that would result from a severance, it cannot claim (and, in fact, did not argue) that it has any special qualifications to represent the field deputies which do not presently exist.

In sum, the criteria for severance are not met.

Extent of Organization -

As noted above, the existing unit was evidently organized along lines of management's table of organization. It continues to encompass all of the non-supervisory employees reporting to the sheriff. The division of the unit proposed by the union could only fragment the workforce and bargaining relationships among employees reporting to a common supervisor.

Desires of the Employees -

The record contains some testimony as to the preferences of the employees, but the testimony of a few is not conclusive. In Kent School District, Decision 127 (PECB, 1976), a group of

mechanics signed cards with a rival union to obtain severance from an inclusive classified employee bargaining unit, and then voiced their complaints about having been commingled with other types of employees. In ruling against such a severance, the Commission held that:

. . . there is no indication that [the incumbent union] has at any time unfairly or ineffectively represented the mechanics. While employee wishes are a factor to be considered, they are not the controlling factor absent some showing that statutorily protected rights are being denied or infringed.

In a more recent case, minor intramural disputes regarding bargaining strategy were rejected as a basis for a severance where all sub-groups were afforded representation in bargaining and leadership in the local union. Highline School District, Decisions 2685, 2686 (PECB, 1987).

If two or more unit structures could each be appropriate, the rules of the Commission provide for the conduct of a "unit determination election". WAC 391-25-530(1). Thus, when appropriate, ALL of the affected employees are afforded an opportunity to express their views by secret ballot, insulated from the coercive potential of public testimony and cross-examination. Such an election may be directed, however, only where each of the choices to be offered is an appropriate unit. Clark County, Decision 290-A (PECB, 1978). Based on the conclusions reached above, the severance of the existing unit into two separate units as proposed by the union would not be appropriate and there is no occasion to conduct a unit determination election in this case.

CONCLUSION

The burden of proof is on the party which seeks to disturb the status quo to demonstrate the viability of a proposed severance of one group of employees from an otherwise appropriate bargaining unit. That burden of proof has not been met here. The future of labor-management relations in Okanogan County will be better served by implementing the statutory "history of bargaining" criteria for unit determination in the absence of substantially changed circumstances and carrying on with one common bargaining unit for employees in the Okanogan County Sheriff's Department.

FINDINGS OF FACT

1. Okanogan County is a political subdivision of the State of Washington, and is a public employer within the meaning of RCW 41.56.030(1).
2. Teamsters Local 760, a bargaining representative within the meaning of RCW 41.56.030(3), is the recognized exclusive bargaining representative of an existing unit consisting of all non-supervisory employees of the sheriff's department of Okanogan County. That unit currently includes all field deputies, dispatchers, correctional officers and secretarial-clerical employees. The sheriff, undersheriff, chief and civil and criminal deputy and jail administrator are excluded from the bargaining unit.
3. The bargaining relationship between Teamsters Local 760 and Okanogan County has existed for at least 15 years.

4. The county opened a new jail facility in late 1985, which altered some of the procedures for jailing prisoners. A new position of jail administrator was created to serve as the immediate supervisor of the employees performing jail and dispatch functions, although the sheriff and under-sheriff retain ultimate authority over the entire department.
5. There has been no history of separate representation for field deputies. Since the onset of the bargaining relationship, field deputies, jailers, dispatchers and clerical employees have been included in the existing bargaining unit.
6. Chief spokespersons for the union in bargaining and union offices have been drawn from the several occupational groups within the bargaining unit. There is no indication that employees from any of these groups have been excluded from participation in union affairs or treated unfairly under the existing bargaining unit structure.
7. The creation of a separate bargaining unit of field deputies would unnecessarily and unduly fragment the existing bargaining unit and would disrupt collective bargaining in Okanogan County.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.

2. The existing bargaining unit described in paragraph 2 of the above findings of fact is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

3. A separate bargaining unit limited to field deputies in the Okanogan County Sheriff's Department would not be an appropriate unit for severance under RCW 41.56, inasmuch as such employees continue to share a community of interest with jail, dispatch and clerical employees of the sheriff's department as part of an integrated law enforcement operation for which a history of bargaining exists.

ORDER

The proposed severance of the existing bargaining unit into two separate units is DENIED.

DATED at Olympia, Washington, this 2nd day of November, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

This Order may be appealed by filing a petition for review with the Commission pursuant to WAc 391-35-210.