

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON STATE COUNCIL OF COUNTY	)	
AND CITY EMPLOYEES, LOCAL 176,	)	CASE 8970-C-91-512
AFSCME, AFL-CIO	)	
	)	DECISION 3938 - PECB
For clarification of an existing	)	
bargaining unit of employees of:	)	
	)	ORDER CLARIFYING
SKAGIT COUNTY	)	BARGAINING UNIT
	)	
	)	

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Lori Province, Staff Representative, appeared on behalf of the union.

Heller, Ehrman, White & McAuliffe, by Bruce L. Schroeder, Attorney at Law, appeared on behalf of the employer.

On January 7, 1991, Washington State Council of County and City Employees, Local 176, AFSCME, AFL-CIO filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission. The union sought inclusion of certain employees working at a solid waste incinerator included in an existing bargaining unit of Skagit County employees represented by the union. A hearing was held at Mount Vernon, Washington, on August 14, 1991, before Hearing Officer Walter M. Stuteville. The parties filed post-hearing briefs.

BACKGROUND

Skagit County (employer) and the Washington State Council of County and City Employees (union) have had a collective bargaining relationship since approximately 1959, involving a bargaining unit of public works employees. The bargaining unit is described in the parties' most recent collective bargaining agreements as:

... all full-time employees in the Public Works Department within the bargaining unit of the Public Works Department ... [excluding]:

1. Director of Public Works
2. Assistant directors of Public Work
3. Cost Analyst - Section of Manager ER&R
4. Section Managers
5. Superintendent
6. Supervisors
7. Administrative Assistant
8. Civil Engineer
9. Office Engineer
10. Solid Waste Supervisor

Historically, the approximately 174 employees in that bargaining unit have been primarily responsible for the design, construction and maintenance of county roads, bridges and drainage facilities. The list of job titles taken from the attachment to the parties collective bargaining agreement includes: flagperson, clerical aide, maintenance aide and maintenance technician, office assistant, scale house attendant, staff assistant, survey technician, traffic technician, accounting technician, engineering technician, pits and quarries operations-lead, mechanic and special operations-lead.

The employer has a second bargaining relationship within its Public Works Department, covering a bargaining unit of seven employees who operate a county-owned ferry providing transportation between the mainland and Guemes Island. From the parties' collective bargaining agreement the two job classifications covered by this contract are: purser-deckhand and operator. These employees are represented by the Inlandboatmen's Union of the Pacific.

In 1988, Skagit County built a solid waste incinerator. Also referred to as a "resource recovery facility", this state-of-the-art incinerator was designed to burn garbage at temperatures in excess of 1800<sup>o</sup> Fahrenheit, and to produce steam that is used to run an electricity-producing turbine. The facility was constructed

by a private company, Energy Resource Recovery. The facility is highly automated, self-contained and computer-controlled. It consumes approximately 72% of the solid waste generated in the county. During its initial operation, the facility was staffed entirely by employees of the private firm.

On May 1, 1990, Skagit County took over the operation of the incinerator. Approximately 20 employees were added to the employer's workforce at that time. They were assigned to the Solid Waste Division of the employer's Public Works Department. The director of the Public Works Department is Rich Medved; the assistant director for the Solid Waste Division is Jeff Monsen. The manager of the incinerator operation is Don King.

The incinerator facility has operated since 1990 under the general direction of Medved and Monsen, but King testified that the facility is independent of other Public Works Department operations. King testified, further, that Medved and Monsen have been included in staff meetings at the incinerator, but there have never been any department-wide staff meetings involving both incinerator and road maintenance/engineering employees.

King's immediate subordinates are four operations supervisors. The incinerator is currently staffed by 22 employees, which includes eight regular operators, four utility operators (whose function is to support the operators and to become qualified to eventually become operators themselves), four maintenance employees, one office-clerical employee, and two truck drivers.

The incinerator employees are covered by the same insurance programs, holiday schedules and vacation and sick leave benefits as are other Public Works Department employees. Similarly, the employer's personnel policies and pay classification plan cover all employees in the Public Works Department.

The incinerator facility operates 24 hours per day, 7 days per week, with employees scheduled as follows:

The supervisors and operators are scheduled on a "rolling" schedule consisting of 12-hour shifts for three or four consecutive days.<sup>1</sup> During a shift, the supervisor and operators staff the incinerator control room, and are responsible for efficient refuse processing, which includes power generation, weight reduction, environmental emission control and conforming plant operation to the requirements and restrictions of the facility's operating permit. The operators must have knowledge in a variety of technical subjects related to kiln operation and power generation.

The maintenance crew is scheduled for eight-hour shifts, five days per week. Those employees are responsible for maintenance of all incinerator equipment.

The truck drivers work four ten-hour days each week. Their duties involve driving dump trucks to haul residual ash produced by the incinerator to a landfill.

There is little interchange between employees of the incinerator operation and other Public Works Department employees. Apart from benefits administration and payroll,<sup>2</sup> all financial, data processing and support functions for the incinerator operation are handled at the incinerator site, not at the Public Works Department administrative offices in the county courthouse.<sup>3</sup> Likewise, all electrical and mechanical maintenance related to the operation of the incinerator is done by employees at the incinerator, not by

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<sup>1</sup> The "roll" occurs because employees might, for example, work three days on, three days off, three days on, four days off, etc. Employees work split schedules on Wednesdays, when crew changes occurs.

<sup>2</sup> The payroll for the incinerator operation is done in the county auditor's office.

<sup>3</sup> The administrative arm of the Public Works Department, housed at the courthouse, does data processing and the payroll for all other Public Works Department activities.

employees dispatched from the Public Works Department. While the Public Works Department has other employees who drive dump trucks, they do not haul ash from the incinerator, and the drivers employed at the incinerator haul only the residual. None of employees assigned to the incinerator ever works temporarily outside of the incinerator operation; none of the other employees of the Public Works Department are ever temporarily assigned to work at the incinerator. All equipment utilized at the incinerator site, including dump trucks, are used exclusively in support of the incinerator operation. In King's memory, a dump truck was borrowed from the road shop only once, for three days when one of the incinerator's trucks was out of service.

King testified that, from his perspective, the staff positions at the incinerator require substantially different skills than those required by other Public Works Department functions. Incinerator supervisors, operators and maintenance personnel need to have a background in pressure boiler operations, kiln combustion technology, power generation equipment, computer operation and pollution equipment and testing. According to King's uncontradicted testimony, none of that specialized expertise is transferable to or from other county or Public Works Department positions.

Employee support facilities (e.g., lunchroom and break facilities) at the incinerator are not shared with any other public works employees. The incinerator facility is located at some distance from most other county operations. The single exception is a scalehouse located at the entrance to the incinerator, where the attendant who operates the truck scale is a member of the Public Works Department bargaining unit. Even in that instance, however, the scalehouse is functionally independent from the incinerator operation, and employees from the incinerator do not share any facilities with the scalehouse attendant.

POSITIONS OF THE PARTIES

The union argues that the employees in the newly created Public Works Department positions at the incinerator possess duties, skills and working conditions similar to those of employees in the existing bargaining unit, such that creation of a new bargaining unit would lead to undue fragmentation. It argues that the incinerator employees should be automatically placed into the existing bargaining unit, as has been done with other "new" employees in that department in the past. Furthermore, the union asserts that bargaining unit employees and incinerator employees interact with and work adjacent to bargaining unit employees and that the employer's argument of "separate and distinct" characteristics is only an attempt to avoid its bargaining obligation.

The employer argues that the union is attempting to subvert the statutory right of the incinerator employee to vote on union representation, by seeking an accretion of the incinerator employees into the public works bargaining unit. Furthermore, the employer alleges that the union has failed to sustain the burden of proving that the incinerator employees cannot or should not stand on their own as a bargaining unit, using traditional community of interest principles and analysis.

DISCUSSIONPrecedent Concerning "Accretion"

The doctrine of "accretion" grew originally out of decisions of the National Labor Relations Board (NLRB) administering the National Labor Relations Act. Selected federal precedents were summarized and cited in Municipality of Metropolitan Seattle (METRO), Decision 3563 (PECB, 1990), as follows:

Under [the accretion] doctrine, employees added to an existing operation may be included in an existing bargaining unit under some circumstances. A pre-existing contract may then be extended to cover the employees in the new operation, and will bar an election in the expanded unit. Great Atlantic & Pacific Tea Co. (A & P Stores), 140 NLRB 1011 (1963); Horn and Hardart Co. 173 NLRB 1077 (1968); Renaissance Center Partnership, 239 NLRB 180 (1979); and Panda Terminals, 161 NLRB 1215 (1966).

The earlier decision in Kitsap Transit Authority, Decision 3104 (1989), had included a discussion of the accretion doctrine:

Employees ordinarily are permitted to vote on their choice of exclusive bargaining representative. RCW 41.56.040; RCW 41 56.060. Accretions are an exception to the norm, and will be ordered only where changed circumstances lead to the presence of positions which logically belong only in an existing bargaining unit, so that those positions can neither stand on their own as a separate bargaining unit or be logically accreted to any other existing bargaining unit. See, Ben Franklin Transit, Decision 2357-A (PECB, 1986). Since accretion is accomplished without giving the affected employees an opportunity to vote on their representation, the party proposing an accretion has the burden to show that the conditions for an accretion are present.

In Kitsap Transit, the group of employees at issue could arguably have been included in any one of the three bargaining units then existing within the employer's workforce, so accretion was denied.

In METRO, supra, the record established that the employer had expanded its operation, and was performing work which had never been performed in the past. The union in METRO saw the new work as merely an extension of the work already performed by its existing bargaining, while the employer argued that the disputed positions were a new breed of employee performing completely new and different tasks from what existing employees had ever performed.

The decision concluded that the new classification performed duties generally in support of the employer's primary transportation function, and that the tasks involved were generally similar to those of employees working in an existing bargaining unit classification. Thus, a community of interest was found to exist between the new classification and the existing bargaining unit, and the new classification was accreted into the bargaining unit.

An early case, also involving a county public works department, is San Juan County, Decision 358 (PECB, 1978). There, a newly-created "office engineer" classification was basically doing road design, had never bargained separately, and had a clear community of interest with the remainder of the employees in the employer's road department. The duties, skills and working conditions of the engineering employees were comparable to those of the road maintenance employees, and all road department employees were subject to transfers or assignments throughout the county, as needed. The method of paying wages, wage increases and benefits were identical for engineering and maintenance employees. The new classification was also accreted into the existing bargaining unit in that case.

#### Application of Precedent In This Case

The incinerator employees at issue in this case are involved in work that is very different from the assignments of the employees in the existing bargaining unit. The incinerator itself is an entirely new facility, and a new type of enterprise for this employer. The disputed employees are not involved in any way with the traditional transportation design/construction/maintenance functions of the Public Works Department.

The working conditions and work schedules of the incinerator employees are vastly different from, and even in sharp contrast with, those of the road crew and other Public Works Department employees. Incinerator employees work inside, monitoring the



incineration and power generation facility with computers and high-tech equipment on an around-the-clock basis. The employees in the existing bargaining unit generally work outside, performing road construction and maintenance work on the day shift with weekends off, except perhaps in emergencies.

The incinerator operation is functionally and operationally distinct and self-contained, and is independent from other public works functions. There is virtually no interchange of personnel or equipment in day-to-day operations, and there has been only one employee transfer since the employer took over the incinerator operation.<sup>4</sup>

Virtually the only connections between the incinerator employees and the rest of the Public Works Department is that they share a division manager (who is not on-site with either the incinerator employees or road crew employees), and that they share a wage and benefit structure that is used by the employer for all of its employees, both inside and outside of the Public Works Department.

Likewise, there is a diversity of expertise and educational qualifications between the existing and petitioned-for groups. The incinerator employees are focused on a single mission of maintaining a solid waste incinerator and power generation operation. The public works employees are focused on an entirely different mission, and there is no effective crossover between functions.

The union's reliance on Oak Harbor School District, Decision 1319 (PECB, 1981), requires close analysis of that case, but ultimately is not persuasive. In Oak Harbor, the employer took over driver training tasks that had formerly been contracted out to a private

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Both parties acknowledged that the only transfer since the county took over the incinerator operation involved one office-clerical employee who transferred from the union's bargaining unit into the incinerator operation.

firm. The employees were not "certificated" in the usual sense,<sup>5</sup> and the union involved in that case represented a wall-to-wall bargaining unit of the school district's "classified" employees, including instructional aides. The accretion of employees with specialized and distinct job responsibilities to the existing unit in that case was justified with the following analysis:

Were this an attempt to sever a three member bargaining unit of driver training instructors from a unit in which they had previously been included, previous decisions of the Commission in school district cases would strongly suggest rejection of the severance as inappropriate, as the Commission has endorsed the preservation of broad units of employees in an integrated support operation essential to the overall discharge by a school district of its primary educational function. Yelm School District, Decision 704-A (PECB, 1980). This is not a severance case on its face, but failure to accrete the disputed employees to the existing bargaining unit would in fact fragment what has been a single support unit inherently containing a broad diversity of employees types.

The situation prevailing in Oak Harbor can be distinguished from that existing in the instant case in multiple ways, however:

First, county and municipal bargaining units, particularly in larger employers, are frequently divided along lines of the employer's table of organization (e.g., "all of the employees in the sheriff's department" or "all of the employees in the public works department"), while occupational (horizontal) bargaining units are more common among school district "classified" employees (e.g., transportation, custodial-maintenance, food service, aide, or office-clerical). Going even farther along those lines, the

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Had they been "certificated" the employees would have been entitled to coverage under the Educational Employment Relations Act, Chapter 41.59 RCW, and necessarily would have been accreted to the teacher bargaining unit under RCW 41.59.080(1).

existing bargaining unit involved in Oak Harbor was an "all of the employees of the employer" grouping which excluded only management personnel and teachers covered by a different statute.

Second, and more pertinent to this case, is the diverse nature of the employer's enterprises. Both the Oak Harbor decision and the Yelm School District decision which it cited had described the existing bargaining units as: "[An] integrated operation essential to the discharge of its primary educational function". The common school districts of this state have a Constitutional, but narrow, function of educating children in kindergarten through high school, and exist for no other purpose. Taken as a whole, Skagit County performs a multiplicity of governmental functions for its citizens. Even within the Public Works Department, the diverse functions of solid waste incineration, power generation, road maintenance, and ferry operation cannot be characterized as "integrated", let alone as the "primary" function of the employer. The most that can be said is that the design of the new facility inherently relates solid waste incineration to power generation. The ferry operation has historically been recognized as separate, even though it is administratively within the Public Works Department. One must go within the existing bargaining unit to find engineering, road construction/maintenance, flood/drainage, and administrative services that are somewhat interdependent on one another.

Third, the group at issue in Oak Harbor was limited to three "instructor" employees, and could hardly be characterized as a viable group for collective bargaining within a vastly larger workforce which included both "instructional aides" within the existing bargaining unit and a separate unit of "teachers". In contrast, the group of more than 20 employees at issue here comprises a medium-sized, homogenous work force with a defined community of interest and some capacity to bargain effectively.

The fact of there being occupational types, or even job titles, in common between the existing bargaining unit and the petitioned-for group is worthy of consideration, but is not compelling. There

are, indeed, truck drivers and clerical employees at both the incinerator site and in the road maintenance operation, but each such group is performing functions related exclusively to their own work unit, and there is no interchange. In City of Centralia, Decision 3495-A (PECB, 1990), the Commission affirmed the viability of bargaining units organized (vertically) along lines of the employer's table of organization. Were such a unit to be sought by a labor organization within the incinerator operation, there is a substantial likelihood that it would be found to be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060. The possibility of standing alone as their own separate bargaining unit precludes their accretion to any existing bargaining unit.

#### FINDINGS OF FACT

1. Skagit 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. Washington State Council of County and City Employees, Local 176, AFSCME, AFL-CIO, is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. The union is the exclusive bargaining representative of certain employees of the Public Works Department of Skagit County, in a bargaining unit described in the parties' collective bargaining agreement as:

[A]ll full-time employees in the Public Works Department within the bargaining unit of the Public Works Department . . . [excluding]:

1. Director of Public Works
2. Assistant directors of Public Work
3. Cost Analyst - Section of Manager ER&R
4. Section Managers
5. Superintendent

6. Supervisors
7. Administrative Assistant
8. Civil Engineer
9. Office Engineer
10. Solid Waste Supervisor

The employees in that bargaining unit are primarily engaged in the construction and maintenance of roads within the county, and related support functions.

4. Notwithstanding the inclusive language of the bargaining unit description contained in the parties' collective bargaining agreement, as set forth in paragraph 3 of these findings of fact, the existing bargaining unit does not include, and historically has not included, Public Works Department employees engaged in the operation of a ferry, and such employees are represented for the purposes of collective bargaining by a different labor organization.
5. During or about 1988, Skagit County built a solid waste incinerator and electric power generating facility. That facility was operated initially by a private firm.
6. On May 1, 1990, Skagit County took over the operation of the incinerator and electric power generating facility. The administration of that operation was placed under the Public Works Department, and approximately 20 employees were added to the department workforce at that time. The employer declined to accrete the added employees to the existing bargaining unit described in paragraph 3 of these findings of fact, leading to this proceeding before the Commission.
7. Employees working at the incinerator facility monitor the operation of that facility, maintain all the electrical and mechanical equipment used in the incineration and power generation operation, perform all clerical and data processing

functions related to the incinerator operation and collect and haul the residue from the incineration process to a landfill. There is no interchange of functions or personnel between the existing bargaining unit and the incinerator operations, and there is only minimal evidence of interchange of equipment.

8. The incinerator operations are conducted on an around-the-clock basis, and operators working at that facility have "rolling" work schedules based on 12-hour work shifts. Those arrangements are different from the hours of employees in the existing bargaining unit.
9. The employees engaged in the operation of the incinerator facility must have and maintain specialized skills in the operation of the facility, including kiln operation and weight reduction, power generation, environmental emission control and conformity with operating permit restrictions. None of those skills are utilized in the road maintenance and engineering functions performed by the employees in the existing bargaining unit.
10. The employees engaged in the operation of the incinerator facility have a community of interests separate and distinct from that of the employees in the existing bargaining unit, based upon the separate nature of the operations and upon the separate and distinct duties, skills and working conditions of the employees.

#### CONCLUSIONS OF LAW

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

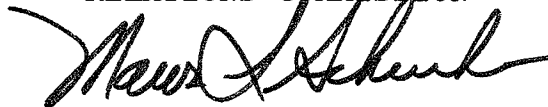
2. The operation and maintenance of a solid waste incinerator and electric power generation facility by Skagit County is a separate and distinct function from all other functions of the Public Works Department.
3. The non-supervisory employees of Skagit County assigned to the operation of the incinerator facility share a community of interest among themselves, and could be found to constitute an appropriate separate bargaining unit under RCW 41.56.060, if such a unit were petitioned for under Chapter 391-25 WAC.
4. The petition in this proceeding raises a question concerning representation which cannot be processed under Chapter 391-35 WAC.

ORDER

The petition for clarification of an existing bargaining unit filed in this proceeding is DISMISSED.

DATED at Olympia, Washington, this 18th of December, 1991.

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 391-35-210.