

City of Seattle, Decision 6145 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SEATTLE POLICE DISPATCHERS GUILD	)	CASE 12232-C-95-763
	)	
For clarification of an existing	)	DECISION 6145 - PECB
bargaining unit of employees of:	)	
	)	ORDER CLARIFYING
CITY OF SEATTLE	)	BARGAINING UNIT
	)	
	)	

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Christopher K. Vick and Associates, P.S., by Christopher K. Vick, Attorney at Law, appeared on behalf of the union.

Mark Sidran, City Attorney, by Leigh Ann Collings Tift, Assistant City Attorney, appeared on behalf of the employer.

On December 18, 1995, Seattle Police Dispatchers Guild filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking a ruling as to the bargaining unit status of an employee of the City of Seattle. An amended petition was filed on December 26, 1995. A hearing was held at Seattle, Washington, on January 22, 1997, before Hearing Officer Jack T. Cowan. The parties filed post-hearing briefs.

BACKGROUND

The City of Seattle (employer) provides law enforcement through the Seattle Police Department, and operates its own communications /

emergency dispatch center for its law enforcement functions. Historically, a sworn police officer from the Seattle Police Department held the position of Equipment Maintenance Officer (EMO) in the police dispatch center.

The Seattle Police Dispatchers Guild (SPDG) is the exclusive bargaining representative of non-supervisory employees of the police dispatch center. The employer and SPDG have been parties to a collective bargaining agreement, and were engaged in negotiations for a successor agreement when the petition was filed to initiate this proceeding.

An interest arbitration award issued in 1994, in a dispute between the City of Seattle and the Seattle Police Officers Guild,<sup>1</sup> authorized the employer to replace the EMO position held by a sworn police officer with a non-uniformed, civilian employee. A job description provided by Communication Center Director Randy Tibbs was processed through the employer's classification system, resulting in reclassification of the EMO position as a "systems analyst", effective December 29, 1995.

On January 8, 1996, the employer allocated the new "systems analyst" position at the police dispatch center to a bargaining unit represented by International Federation of Professional and Technical Engineers, Local 17. That action was based on the fact that Local 17 represents all other "systems analyst" positions throughout the employer's workforce.

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<sup>1</sup> The Seattle Police Officers Guild represents the employer's police officers who, as law enforcement officers employed by a city having a population in excess of 2,500, are "uniformed personnel" within the meaning of RCW 41.56.030(7) and have access to interest arbitration under RCW 41.56.430, et seq. to resolve impasses in negotiations for collective bargaining agreements.

During 1995, even prior to the completion of the employer's classification process, the SPDG requested that the employer recognize it as exclusive bargaining representative for the new civilian position. The SPDG filed the petition to initiate this proceeding after the employer refused the SPDG recognition on the basis that the position had been classified as a "systems analyst".

#### POSITIONS OF THE PARTIES

The SPDG contends that the EMO position, by whatever title, belongs in the bargaining unit it represents when the tests used by the Commission for making unit determinations are applied. It urges that all non-supervisory, non-commissioned employees that work with radios or other dispatch equipment in the police dispatch center constitute a single unit. It notes that "vertical" units have been found appropriate in the workforces of other large municipal employers, and are present in Seattle. It contends the subject position shares a community of interest with its bargaining unit, rather than with other positions using the "systems analyst" title, and that the assignment of the "systems analyst" title was an arbitrary employer action motivated by the employer's desire to assure an appropriate level of pay for the position.

The employer contends the former EMO position was properly classified as a "systems analyst", and was properly placed in the bargaining unit which includes all other "systems analyst" positions. It notes that the SPDG represents only police dispatchers.

Local 17 was apathetic regarding this proceeding. Despite adequate notice and opportunity to participate, it did not take part in this proceeding, and expressed no interest in the outcome.

DISCUSSION

The Legislature delegated authority to the Public Employment Relations Commission to determine bargaining units. As set forth in RCW 41.56.060:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT - BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, **modifying**, or combining the bargaining unit, **the commission shall consider the duties, skills and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among employees; and the desire of the public employees ....**

[Emphasis by **bold** supplied.]

In King County Fire District 39, Decision 2038 (PECB, 1987), a six-part test set forth in Pacific Southwest Airlines vs. NLRB, 587 F.2d 1032 (9<sup>th</sup> Circuit, 1978), was adapted for evaluating the existence of a "community of interest". Those inquiries are:

1. Similarity of skills, interests, duties and working conditions.
2. Functional integration of the plant, including interchange and contact among employees.
3. Employer's organizational and supervisory structure.
4. Employee's desires.
5. Bargaining history.
6. Extent of union organization among the employees.

The case at hand involves a "modification" of bargaining units following a change of circumstances regarding the work jurisdiction of the uniformed personnel bargaining unit.<sup>2</sup> The dispute involves the allocation of the newly-created civilian position to an appropriate bargaining unit, and is not an appeal from the classification assigned under the employer's personnel system.

#### Duties, Skills and Working Conditions

##### History of the Disputed Work -

In the late 1970's, the Seattle Police Department had one computer technician to service the dispatch computers. During the period from 1976 until 1982, the technician was located in the same work area with the dispatchers.

In 1982, the employer created a data processing unit, and moved the technician position to that unit, where it remains to this day. The EMO was created and filled with a commissioned police officer in the same year.

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<sup>2</sup> This controversy was triggered by, but is in no way controlled by, the interest arbitration award issued in 1994. The Public Employment Relations Commission does not "defer" unit determination issues to either interest arbitrators or grievance arbitrators. The exclusive bargaining representative of a bargaining unit has, however, a right to protect the work jurisdiction of its unit and, under South Kitsap School District, Decision 472 (PECB, 1978) and other Commission precedents, an employer has a duty to bargain transfers of bargaining unit work to persons outside of the bargaining unit. Since WAC 391-35-310 prohibits inclusion of employees who are not uniformed personnel in the same bargaining unit with uniformed personnel, the question before the interest arbitrator was limited to whether work historically performed by police officers should be removed from the uniformed personnel unit.

The EMO managed the procurement and maintenance of various dispatch and communications equipment used by the dispatchers and police officers. The EMO reviewed and made recommendations on radio equipment, automated call directors, computer-assisted dispatch programs, radio consoles, and the mobile data terminals installed in patrol cars. The EMO acted as a liaison between the department and its dispatchers, programmers, and vendors.

Incumbents who Performed the Disputed Work -

The EMO position was occupied for a time by Bill McKenna for an unspecified period of time.

Robert Waltier became the EMO on January 4, 1988,<sup>3</sup> and remained in that position until January 8, 1996. When the position was "civilianized" in 1996, Waltier retired from commissioned service and was hired for the re-classified position.<sup>4</sup>

Duties and Skills -

Waltier's responsibilities as a civilian are the same as those he had while he was serving in the EMO position, and his working relationships with other employees are unchanged. No new or different skills are required for work under his new title. In his daily work, he primarily interacts with Director Tibbs and two senior dispatchers within the SPDG bargaining unit. His basic job continues to be taking responsibility for all 9-1-1 equipment. Waltier testified, "[W]hether it be computers, phones, system maintenance, it is my responsibility that if it doesn't work to

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<sup>3</sup> Waltier had worked for the employer as a commissioned police officer since 1966, and worked as a dispatcher from 1970 until he took the EMO position.

<sup>4</sup> The record indicates that Waltier applied for and competed for the position through normal channels.

either repair it or see that it gets repaired or replaced." His knowledge and familiarity with the dispatch activity was necessary, and was utilized. That utilization did not change because the position was civilianized.

Having successfully civilianized the EMO position, the department requested its reclassification as a "systems manager". Use of that title was denied, however, since Waltier had no one to supervise. The personnel analyst proposed classifying the position as a "radio communication specialist", but the department voiced concern about the comparatively low salary of that classification. Following receipt of additional information from the Police Department, indicating the position would be responsible for maintaining software and performing systems enhancements to the radio communication system, it was concluded that an existing "systems analyst" job classification matched the duties on a best fit basis. The only position identified as truly comparable to the former EMO is a position in the Seattle Fire Department filled by a lieutenant within a bargaining unit of uniformed personnel represented by yet another organization.

The SPDG does not contest the classification, but it does contest placement of the position in the Local 17 bargaining unit. There is no persuasive evidence of a community of interest with employees who truly perform computer work in the bargaining unit represented by Local 17. There is no contact or interaction between Waltier and any other systems analyst, and Waltier testified he has no expertise in computer programming.<sup>5</sup> The line between communications equipment and computers has become somewhat blurred as

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<sup>5</sup> The personnel analyst testified he was not aware of that deficiency when he classified the disputed position as a systems analyst.

computers have increasingly been integrated into dispatching, but the EMO was a manager of communications equipment rather than a computer systems analyst. It is clear that the disputed employee writes no code and installs no equipment; he purchases pre-packaged software from third-party vendors.

Working Conditions -

Waltier's work location had been, and remains, in a corner office in the dispatch center. He has routine contact with dispatchers in the SPDG bargaining unit, and participates in their training on the use of equipment. In Waltier's absence, one of the two senior dispatchers, Peggy Garcia or Bob Berglund, fill in and perform his duties. Both of the senior dispatchers have years of experience in the dispatch activity, and have been trained on portions of Waltier's duties. The senior dispatchers assist by performing some of Waltier's administrative assignments, on occasion. Thus, there is clear indication of a community of interest with employees already represented by the SPDG.

Providing an adequate level of pay for the position was a major consideration for the employer in selecting the "systems analyst" classification for the disputed position, but therein lies an element of circular reasoning. The employer's estimate of an appropriate wage level is not binding on the Commission in the exercise of the unit determination authority conferred by RCW 41.56.060. Moreover, since wages are first and foremost among the mandatory subjects of bargaining in RCW 41.56.030(4), the fact that the employer has set a wage level would not preclude either the SPDG or Local 17 from demanding bargaining on the wages to be paid to an employee within a bargaining unit it represents.



The employer placed the disputed position in the bargaining unit with the other systems analysts, and considered the activity a job well done. The employer now urges that fragmentation of its job classifications should be avoided, but the argument is not persuasive. Since the employer jumped the gun with a classification analysis, and has argued this case from that perspective, it is easy to understand why the employer might see a fragmentation of classifications issue in this case. In implementing the collective bargaining process outlined by Chapter 41.56 RCW, however, the allocation of employees to appropriate bargaining units precedes good faith bargaining on the employees' wages, hours and working conditions.

Extent of Organization -

The employer's reasons for wanting the EMO position "civilianized" are not established in this record.<sup>6</sup> It does appear, however, that six "chief dispatcher" positions which were civilianized at the same time have been included in the bargaining unit represented by the SPDG, and are not at issue in this proceeding. The possibility of stranding one employee of the dispatch operation in a different bargaining unit undermines the employer's arguments.

Assuming there would be no change of classification, the recognition clauses of existing collective bargaining agreements and related appendices would have to be changed, Local 17 would no longer represent all systems analyst positions, and a change of the recognition clause of the SPDG contract would be necessary to accommodate the systems analyst. Those concerns suffer, however, from an excessive focus on a classification title which could,

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<sup>6</sup> The interest arbitration decision likely contains a discussion of that issue, but it was not placed in evidence in the instant case.

itself, be changed. While an employer move to perform a new job evaluation or change the job classification with participation by Local 17 might have been controversial while this case was pending, such processes would be entirely appropriate once the disputed position is allocated to a bargaining unit. Creation of a dispatch-related classification and negotiation of a proper wage rate would then be entirely within the realm of possibility. Problems of logistics are left for the parties, however, as the issue now before the Commission concerns only the unit placement of the disputed position.

To leave the disputed position "as is" creates awkward problems for the SPDG. Only the job title has been changed; the incumbent and the job duties remain the same. Another union with no previous involvement in the dispatch operation has, without any effort or actions of its own,<sup>7</sup> been given work jurisdiction over a position which is located in and an integral part of the dispatch activity. The historical and ongoing interchange of work between the disputed position and the senior dispatchers suggests a potential for the type of interweaving of bargaining units found inappropriate in South Kitsap School District, Decision 1541 (PECB, 1983). Both unions are entitled to a structure from which they can discern their respective work jurisdictions.

#### Conclusions

Waltier's duties, skills, and working conditions are closely tied to the dispatch center and his community of interest lies with the dispatch employees represented by the SPDG. He is not aligned in any way with systems analysts in other city departments, and has no discernable community of interest with the unit represented by

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<sup>7</sup> Literally, Local 17 has stood still.

Local 17. In the absence of being included in the bargaining unit represented by the SPDG, leaving the position in a "one person unit" would improperly preclude the incumbent from implementing the rights conferred by Chapter 41.56 RCW.

FINDINGS OF FACT

1. City of Seattle is a "public employer" within the meaning of RCW 41.56.030(1).
2. Seattle Police Dispatchers Guild, a "bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory employees in the police dispatch center operated by the City of Seattle.
3. The SPDG has filed a timely petition with the Commission, seeking accretion of a position to its existing bargaining unit following a change of circumstances.
4. The disputed position was excluded from a bargaining unit of "uniformed personnel" upon being changed to a civilian position. Thereafter, the employee who held the position as a commissioned police officer applied for and was appointed to the position as a civilian employee.
5. The employer classified the disputed position as a "systems analyst" and purported to place it in a bargaining unit represented by International Federation of Professional and Technical Employees, Local 17, which includes data processing and computer-related positions titled "systems analyst".

6. The duties and skills of the disputed position relate to the purchase and maintenance of equipment used in the employer's dispatch operation, and is unrelated to positions performing computer-related functions.
7. The disputed position is within the employer's police dispatch operation, and interacts regularly with the dispatchers in the bargaining unit represented by the SPDG.

CONCLUSIONS OF LAW

1. Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25-WAC.
2. The position at issue in this proceeding has a community of interest with, and is properly allocated under RCW 41.56.060 to, the existing bargaining unit represented by the Seattle Police Dispatchers Guild.

ORDER

The bargaining unit represented by the Seattle Police Dispatchers Guild is clarified to include the position of EMO systems analyst.

Dated at Olympia, Washington, this 5<sup>th</sup> day of December, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.