

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

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.

On September 28, 1984, the Municipality of Metropolitan Seattle (METRO) filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit of its employees represented by Amalgamated Transit Union, Local 587. Signed by METRO Personnel Manager Eugene Matt, the petition alleged:

On April 5, 1984, an agreement was finalized between the City of Seattle and Metro transferring Commuter Pool responsibility

to Metro's Transit Department. At the time of transfer there were five (5) employees represented by the International Federation of Professional and Technical Engineers, Local 17. Of the five, one elected to stay with the City, one terminated and three transferred. Since that time, one has promoted to a non-represented position. Pursuant to the agreement between Metro and the City, all transferred employees were placed into appropriate Metro classifications. As a result these employees are performing along side, and in the same classification as employees represented by ATU, Local 587. In addition, the transferred employees have received all wage increases required under the ATU, Local 587 contract. The agreement between the City of Seattle and Metro was negotiated in good faith, however, the representatives of the City and Metro were unaware of language in the existing labor agreement between Metro and ATU, Local 587 as the sole bargaining representation (sic).

International Federation of Professional and Technical Engineers, Local 17, moved for intervention in the proceedings, based on its claim that it is the exclusive bargaining representative of the employees involved. A pre-hearing conference was held, and a statement of results was issued. A hearing was conducted on February 4, 1985, before Kenneth J. Latsch, Hearing Officer. The employer and Local 17 submitted post-hearing briefs.

#### BACKGROUND

##### Parties and Relationships

The City of Seattle is not a party to these proceedings, but is a municipality located in King County, and is a public employer

subject to the provisions of Chapter 41.56 RCW. Among other municipal services, the city operated a "Commuter Pool" activity prior to April of 1984. The city employed approximately 21 persons in connection with the Commuter Pool activity, including clerical employees.

International Federation of Professional and Technical Engineers, Local 17, is a labor organization headquartered in Seattle. It is the exclusive bargaining representative of a number of bargaining units of City of Seattle employees, including a city-wide unit of clerical employees which numbers approximately 700 employees. The clerical employees in the city's Commuter Pool activity were included in the city-wide clerical unit. The city-wide clerical unit is covered by a collective bargaining agreement effective for the period from December 22, 1983 through August 31, 1986.

The Municipality of Metropolitan Seattle (METRO) is a municipal corporation of the State of Washington, organized pursuant to Chapter 35.58 RCW, and is also a public employer subject to the provisions of Chapter 41.56 RCW. Under the general supervision of a board of directors and an executive director appointed by the board, METRO has several operational departments: Finance, Budget and Administration; Public Services; Technical Services; Water Pollution Control; and Transit. Each department is headed by a director who reports to METRO's executive director. Ronald Tober manages the Transit Department. The table of organization for the Transit Department indicates five branches with direct lines to Tober: Marketing & Customer Information; Transit Development; Commuter Pool; Downtown Seattle Transit Project; and Operations (which is, in turn, divided into sections designated as: Service Control; Safety & Training; Vehicle Maintenance; Base Operations; and Power & Facilities).

METRO has approximately 574 unrepresented professional, technical and clerical employees scattered among all of its departments, including the transit planning section of the Transit Department. Of that number, approximately 75 are in clerical occupations.

METRO has a collective bargaining relationship with Service Employees International Union, Local 6, which represents approximately 125 operations and maintenance employees and some, but not all, clerical employees in METRO's water pollution control department.

METRO has a collective bargaining relationship with International Brotherhood of Electrical Workers, Local 77, which represents approximately 30 craft employees within METRO's transit department who service overhead power lines used by electric trolley busses.

METRO has a collective bargaining relationship with Amalgamated Transit Union, Local 587, which represents approximately 2836 METRO employees. That bargaining unit includes transit drivers, maintenance employees and certain clerical employees in METRO's transit department, as well as six clerical employees in the Finance, Budget and Administration Department. METRO and the ATU were parties to a collective bargaining agreement effective for the period from November 1, 1981 through October 31, 1984 which contained the following provisions pertinent hereto:

ARTICLE I  
RECOGNITION OF BARGAINING UNIT

SECTION 1 - SOLE BARGAINING AGENT

A. METRO recognizes the UNION, Division 587, as the sole bargaining agent for those Employees working in the job classifica-

tions listed in Articles XV through XXII and Exhibit A of this AGREEMENT. Current or future Employees assigned to perform work which has 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.<sup>1</sup>

There are 130 to 140 clerical employees in the bargaining unit represented by Local 587, including approximately 30 employees who are classified as "intermediate clerks".

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<sup>1</sup> Article XV sets forth a definition of "full-time transit operator", including "regular operators" and "extra board operators". Article XVI sets forth a definition of "part-time transit operator". Article XVII sets forth a definition of "vehicle maintenance employees" which includes various crafts. Article XVIII defines "facilities maintenance employees" to include a range of skills from "custodian" to various skilled crafts. Article XIX refers to "transit cashiers", but does not contain a definition similar to those found in the preceding articles. Article XX, entitled "Miscellaneous Employees", states:

Section 1 - Definition of Employees

Miscellaneous Employees shall mean all Employees in the following classifications: Accounting Clerk; Accounting Technician; Clerk I; Clerk II; Clerk Typist II; Senior Clerk; Customer Assistance Clerk; Duplicating Equipment Operator; Information Distributor; Information Operator; Senior Information Operator; Intermediate Clerk; Lost and Found Clerk; Mileage Clerk; Monitor; Senior Monitor; Stores Clerk; and Supply Distributor.

Article XXI deals with "supervisors" who are included in the bargaining unit. Article XXII defines "temporary employees" and places limits on their length of service.

The Transfer of the Commuter Pool

The circumstances of the transfer of the commuter pool operation from the City of Seattle to METRO are succinctly described in a February 22, 1984 memorandum from Eugene Avery, director of engineering for the City of Seattle, to Seattle Mayor Charles Royer:

The Commuter Pool program is a grant-funded regional program providing and promoting ride share services, operating a vanpool program and providing parking management in the City. The City has administered the program since its inception in 1973, funding it primarily with Federal Aid to Urban Systems (FAUS) grants. The program receives regional oversight through the King Subregional Council (SRC) of the Puget Sound Council of Governments which makes a formal allocation of the regional FAUS funding.

In 1982 the SRC asked Metro to contribute to the program because future FAUS funding appeared to be uncertain. In response, Metro offered a financial contribution and also requested that the administration of the program be transferred to Metro. This issue moved toward resolution in July 1983 when the SRC appointed a task force of elected representatives to work out the principle (sic) points of the transfer. City Council members Jeanette Williams and George Benson served on the task force. The task force reached agreement on transfer in December, 1983 and Metro and City staff have negotiated a formal agreement to effect the transfer.

Going on in the same letter to describe the provisions of the transfer agreement, Avery stated:

All twenty-one (21) current employees of the Commuter Pool will transfer to Metro. The collective bargaining unit (sic),

Local 17, represents the clerical positions, and the agreement provides for Metro to succeed to this agreement as it relates to the transferred employees. The City retains four existing authorized full-time positions to conduct the business of the Seattle Ride Share Office (SRO). New employees will have to be hired for these positions and the agreement provides for Metro Commuter Pool staff to train these new employees. There will be no disruption of City services during the transition.

Attached to Avery's letter was a document headed "SOP 100-014", which contained the following:

#### IV. PERSONNEL

Twenty-one employees will transfer to Metro. Metro will succeed to collective bargaining provisions for represented employees.

On February 22, 1984, Assistant City Attorney Jorgen G. Bader directed a letter to the Seattle City Council covering transmittal of an ordinance providing for the transfer of most Commuter Pool activities to the Municipality of Metropolitan Seattle. That correspondence states, in pertinent part:

The agreement will have four exhibits. The Director of Engineering, a representative of Metro, and the manager of the Commuter Pool Program are currently in the process of finalizing three of the four. The Director of Engineering will present to your honorable body a copy of each of the three exhibits no later than the first meeting of the City Council Committee assigned to consider this Ordinance.

Exhibit "A" will contain a roster of the positions and employees transferred and a list of the positions and employees retained by the City. Some of the affected

positions are shown in the 1984 Budget of the Engineering Department at pages 330-331.

Exhibit "B" is the collective bargaining agreement with Local 17 of the International Federation of Professional and Technical Engineers, AFL-CIO. A copy is attached as Attachment "II". We anticipate that Metro and Local 17 will negotiate suitable changes to reflect the transfer, such as substituting "Metro" for "City" where appropriate and revising sections which are peculiar to City employment with respect to those employees transferred.

A formal document entitled: "Commuter Pool Transfer Agreement between The City of Seattle and the Municipality of Metropolitan Seattle" was signed by the Mayor of Seattle on April 5, 1984,<sup>2</sup> and was signed by the Executive Director of METRO on April 10, 1984.<sup>3</sup> In addition to providing for the transfer of commuter pool activities such as vanpooling, ride-sharing incentives, ride-matching, employer contact/sales, flexible working hours programs and parking management to METRO, the transfer agreement provided for the transfer of commuter pool employees to METRO with service credit for their time worked with the city. The transfer agreement also contained the following provisions pertinent hereto:

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 arbitra-

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<sup>2</sup> With reference to Seattle Ordinance No. 111613.

<sup>3</sup> With reference to Metro Council Resolution No. 4338.



tion proceeding involving transferred employees.

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11. Integrated Document.

This agreement consists of eleven (11) sections covering \_\_\_ pages, including the signature page, and the following exhibits:

\* \* \*

Exhibit "A": Roster of positions and Employees Transferred and Retained;

Exhibit "B": Collective Bargaining Agreement with Local 17;

\* \* \*

The transfer agreement was implemented, and the employees involved were relocated to a METRO facility in Seattle. The commuter pool program continues to perform the same functions as it did when it was conducted by the City of Seattle, and the activity is under the supervision of the same individual that headed the activity as when it was conducted by the City of Seattle. Commuter pool employees continue to work in close proximity to one another, and they continue to work primarily, if not exclusively, on tasks associated with the commuter pool program.

The Positions At Issue

Dawn Billingsley, Filomena Brainer, Mika Bucholtz, Laurel Cruce, Monica Rife, and Judy Niver were classified as "Administrative Specialist I" or "Administrative Specialist II" while employed by the City of Seattle. In anticipation of the transfer, METRO requested that each of the affected

employees complete METRO's "Position Description Questionnaire" (PDQ) form. The completed PDQ forms were then reviewed through the METRO personnel system, and new classifications were given to the employees when they went to work for METRO.

Billingsley was classified as an "Accounting Assistant" within the Commuter Pool operation. She performs a variety of bookkeeping duties and keeps daily accounting records for the commuter pool function.

Brainer was classified in a supervisory position titled "Clerical Service Coordinator" for the commuter pool. Brainer oversees the work of a receptionist, a word processing specialist, and a secretary, and she assumed general supervision of the commuter pool's office administration.

Niver was classified as an "Office Assistant", performing a variety of clerical functions designed to support the overall administration of the commuter pool. Apparently, Niver is considered to be a "utility" employee performing work such as word processing or secretarial duties as needed.

Rife, Bucholtz, and Cruce all held positions titled "Ride Match Services Representative" while employed by the City of Seattle. As a result of the transfer and PDQ process, these three employees were initially given a data entry title but were later given the METRO classification of: "Intermediate Clerk". All three employees spend at least 25% of their work time providing personalized car pool, van pool and bus "ride matching" for county residents. Such services are derived through the use of computers which are programmed to provide maps and other information needed to accommodate the individual's particular transportation needs. The intermediate clerks also provide information to the public, take

applications to enter certain commuter pool activities, and contact van pool drivers to insure that vans are operating correctly. These three employees operate word processors to maintain and update driver availability lists. To a lesser degree, the commuter pool intermediate clerks run periodic checks on computer software used in the program, compile statistics and, if extra help is available, monitor and direct "work study" and temporary employees.

Subsequent to their transfer to METRO employment, the disputed "intermediate clerks" receive the same benefits as do the intermediate clerks in Local 587's bargaining unit. The record indicates that all intermediate clerks are paid on the same salary range, and that the "intermediate clerk" title is a generic one found throughout METRO's transit department. Employees holding that classification perform a wide range of clerical functions, such as inventory control, customer assistance, data entry and bookkeeping.

#### Demands for and Refusal of Recognition

Local 17 was aware of the transfer transaction. On March 13, 1984, Local 17 Business Representative Daniel O'Donnell spoke with METRO Personnel Manager Eugene Matt about the upcoming transfer. O'Donnell expressed a concern that several "temporary" employees should still be covered under the collective bargaining agreement after the transfer. Matt told O'Donnell that he would check into the matter. Apparently for the first time, Matt brought up the potential of a "jurisdictional" problem that could arise between Local 17 and ATU Local 587 as a result of the transfer of the commuter pool. Matt apparently stopped short of indicating a refusal to recognize Local 17 as the exclusive bargaining representative of commuter pool clerical employees, and O'Donnell did not pursue specific

questions about the issue at that time.

After the transfer agreement took effect, a series of correspondence ensued which explains the position maintained by Local 17 in this matter.

On April 24, 1984, O'Donnell wrote to METRO Transit Director Ron Tober, advising that Local 17 wanted to discuss the status of the "temporary" employees and the classification of "program assistant" as used in city personnel policies. On the same day, O'Donnell sent a letter to Matt, announcing the appointment of a shop steward for the "clerical unit". O'Donnell relied upon provisions of the collective bargaining agreement between Local 17 and the City of Seattle in announcing the appointment.

On May 4, 1984, O'Donnell sent another letter to Tober. Quoting from the collective bargaining agreement between Local 17 and the City of Seattle, O'Donnell notified Tober that he was filing a grievance alleging violations of the collective bargaining agreement by METRO in filling a clerical position.

On May 7, 1984, Local 17 sent METRO information concerning union dues deductions for the transferred employees.

METRO evidently failed to make immediate responses to any of the union's letters described above.

On May 17, 1984, O'Donnell sent a letter to Matt entitled "Step III Grievance", wherein the union maintained that METRO had committed a number of contractual violations:

Specifically the violations involve the misuse of temporary employees, failure to recognize the jurisdiction of the Union,

failure to perform dues notification and remittance obligations, failure to provide required information, failure to notify employees of their union obligations, failure to compensate according to the agreed rate of pay, failure to consult or negotiate, and failure to observe either R.C.W. 35.58.265 or the Commuter Pool Transfer Agreement, between the City of Seattle and the Municipality of Metropolitan Seattle.

Local 17 seeks to have Metro, agree to refrain from committing further violations of the Agreement, agree to perform in accordance with its contractual obligations, and make whole both the Union and any member of the bargaining unit for any financial losses suffered as a result of Metro's failure to observe the Agreement.

On May 18, 1984, O'Donnell wrote to Matt, suggesting that a meeting be scheduled so the parties could discuss "mutual concerns regarding our newly acquired contractual relationship".

On May 21, 1984, Matt responded to O'Donnell's May 4, 1984 allegations about contract violations. Matt stated that the position in question was "non-represented" within METRO's personnel system, and went on to assert that:

. . . Section 4, of the transfer Agreement limits any claim Local 17 may have to representing only those represented employees transferred. The recruitment to fill a vacant Metro position does not fall within the scope of the Agreement made between Metro and the City of Seattle. Any rights Local 17 may have to represent

Commuter Pool employees would, in our view, be limited to those who transferred.

Accordingly, Matt denied the grievance.

On May 22, 1984, Matt sent O'Donnell a second letter more fully explaining METRO's position on the transferred employees. With respect to two named individuals, Matt asserted that they had been hired by METRO prior to the transfer to perform METRO duties which existed previously. With respect to those transferred with the classification of "program assistant", Matt asserted that the affected employees were properly placed according to METRO's personnel policies.

On May 29, 1984, Matt sent O'Donnell a detailed response to Local 17's allegations concerning contractual violations and METRO's alleged refusal to deal with Local 17 as exclusive bargaining representative of transferred employees. In pertinent part, the letter detailed METRO's position concerning the status of the transferred positions:

In applying the terms of the Agreement between Metro and the City of Seattle which resulted in the transfer of Commuter Pool, the question of proper jurisdiction has indeed arisen. The transfer agreement states that 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, as to the represented employees transferred. The Agreement also states that all transferred employees shall be covered by Metro's personnel system. Metro's personnel system includes provisions for the classification and compensation of Metro employees. The transfer agreement acknowledges four (4) Local 17 bargaining unit employees assigned to Metro with the transfer. One of those employees chose to

remain with the City, thereby reducing the number of represented employees transferring to three.

Matt's response did not satisfy Local 17's concerns.

On June 19, 1984, ATU Local 587 directed a letter to Matt, inquiring as to why it was being provided with carbon copies of the correspondence between Local 17 and METRO.

On September 10, 1984, Local 17's business manager, Michael Waske, complained about the situation in a letter to Alan Gibbs, METRO's executive director. In response, Gibbs sent Waske a letter on September 26, 1984, suggesting that the dispute should be submitted to the Public Employment Relations Commission for resolution.

Shortly after the petition for clarification of an existing bargaining unit was filed in this case on September 28, 1984, Local 17 filed suit against METRO on October 2, 1984, seeking relief including that METRO be compelled to recognize Local 17 as exclusive bargaining representative of the commuter pool employees.<sup>4</sup> On February 4, 1985, Local 17 filed a complaint charging unfair labor practices with the Commission, alleging that METRO has unlawfully refused to recognize and bargain with Local 17 as the exclusive bargaining representative of the disputed employees. Case No. 5661-U-85-1037. The parties to the unfair labor practice proceeding were notified on February 26, 1985 that the existence of a cause of action in that case depended on resolution of the successorship/accretion question in the instant case, and that proceedings on the unfair labor practice case would be withheld pending this decision.

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<sup>4</sup> That lawsuit was still pending at the time of the hearing held in this matter.

POSITIONS OF THE PARTIES

METRO seeks an order including the disputed employees in the existing bargaining unit represented by Amalgamated Transit Union, Local 587. The employer argues that the disputed clerical positions have been properly placed in METRO work classifications, that the classifications properly reflect the kind of work performed by the recently transferred employees, that the ATU represents other METRO employees having the title which has been assigned to the disputed employees. Accordingly, the employer argues that the employees are properly part of the ATU unit. The employer further argues that Local 17 does not have standing to challenge METRO's classification policies. The employer asserts that it fulfilled its obligations under the transfer agreement, and that Local 17 should not be permitted to use the unit clarification process to argue a "contract violation" theory.

Local 17 argues that the employer's unit clarification petition should be dismissed. Claiming that there is no jurisdictional dispute between it and ATU Local 587, Local 17 maintains that this unit clarification case has been initiated by METRO to avoid any dealings with Local 17. The union contends that the commuter pool is an autonomous operation within METRO's administrative structure, and that the affected employees do not share a community of interest with the clerical employees represented by Local 587.

Amalgamated Transit Union, Local 587, has never asserted a claim to represent the disputed clerical employees. Local 587 was represented by counsel at the pre-hearing conference and at the hearing in this matter, but it did not take an active role in the hearing. Local 587 did not file a post-hearing brief in this matter.



DISCUSSION

METRO and Local 17 have built a record in this case which is replete with references to the classification system operated by METRO. The employer appears to be particularly impressed with its own personnel system, and has sought to maintain the focus of attention on the individuals transferred to METRO from the City of Seattle. In doing so, it demonstrates an unfortunate, but fundamental, misconception of the process of bargaining unit determination. For its part, Local 17 has spoken of wanting to focus on the "functions" performed by transferred employees, but it, too, has fallen into the trap of spending a great deal of energy on comparisons to other METRO classifications. This case is controlled by statutory principles. The legislature has delegated authority to the Public Employment Relations Commission to determine appropriate bargaining units. RCW 41.56.060. Parties may agree on units, but their actions and agreements are not binding on the Commission. City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wa.App. 599 (1981); cert. den., 96 Wn.2d 1004 (1981).

Unit clarification proceedings conducted under Chapter 391-35 WAC are administrative proceedings limited to a very narrow range of issues. A unit clarification petition will not be processed if there exists (or if the petition raises) a question concerning representation involving the same employees. WAC 391-35-010. Nor will a unit clarification be made during the life of a collective bargaining agreement unless the moving party can demonstrate that a change of circumstances has taken place since the contract was signed. See: Toppenish School District, Decision 1143-A (PECB, 1981). The Commission takes situations as it finds them, and makes rulings which ordain future relationships between the parties. The proceedings do not result in remedy of contract violations

or unfair labor practices which may be demonstrated by the record, but the actions of parties which affect the creation or continued existence of collective bargaining relationships are subject to Commission scrutiny in unit clarification proceedings.

This case involves a collision between "successorship" and "accretion" precedents in the field of unit determination. The positions of parties distinguish this case from Ben Franklin Transit, Decision 2272 (PECB 1985). There, a dispute existed between two unions, each claiming under established labor law precedent that it should be the exclusive bargaining representative of a group of employees affected by a change of employer entity, while the employer took no position on the matter. Here, the employer argues for something along the lines of an "accretion", while the union which would acquire representation rights to the employees by an accretion order (the ATU) has taken no steps to advance such a result. The relative postures of the parties in the instant case are more akin to those which pertained in City of Redmond, Decision 2324 (PECB, 1985), where an employer sought to have employees removed from an existing unit and added to a unit represented by an organization which had shown no interest in such a transaction.

#### Accretion

METRO's perception of a "jurisdictional" problem emanating from its contract with the ATU is unfounded and is rejected. The ATU contract would support an accretion claim for employees "assigned to perform work which has historically or traditionally" been work of the ATU unit at METRO, but it is clear from this record that METRO had not operated a commuter pool activity prior to the transfer at issue here. Further,

the ATU has not made any claim to the work or employees involved in the transfer.

Voluntary Recognition / Successorship

Next to be addressed is the question of whether there has been a voluntary recognition of Local 17 by METRO, or a right of Local 17 to recognition by METRO as the successor employer of the commuter pool employees. Voluntary recognition is contemplated by RCW 41.56.050. Successorship will be found where there is continuity in the employing industry and continuity in the workforce following a transfer of operations from one employer entity to another. Spokane Airport Board, Decision 919 (PECB, 1980).

The City of Seattle undoubtedly had some obligation to bargain with Local 17 concerning the effects and/or decision to transfer bargaining unit work from the city-wide bargaining unit of clerical employees to another employer. From examination of the transfer agreement between the City of Seattle and METRO, and from examination of the background documents developed by officials of the City of Seattle, it is clear that the city intended that METRO both voluntarily recognize Local 17 and become the successor to the city in the bargaining relationship concerning the organized employees of the commuter pool operation.

The seeming inaction of Local 17 can be viewed as completely consistent with the documented intentions of the city. Local 17 was clearly aware of the steps being taken towards transfer of the commuter pool operation to METRO. So far as it appears from this record, Local 17 did not make bargaining demands on the city. It can be inferred that it was induced by the terms of the transfer agreement to waive its potential bargaining

rights vis-a-vis the City of Seattle, or that any bargaining was taken care of quietly (perhaps with the result that the city was to assure the continuity of the bargaining relationship).

It is clear that METRO was to continue operating the commuter pool activity, even to the extent of providing training for future City of Seattle employees to be hired for a related function. It is clear that there was to be continuity of the workforce, with METRO undertaking to employ all of the city's commuter pool employees, both organized and unorganized.

METRO now advances a significantly different interpretation. In doing so, METRO's actions, both before and after the effective date of the transfer agreement, appear to be self-serving and lacking in good faith. It can be inferred that METRO official Eugene Matt had different intentions concerning Local 17 even before the transfer agreement was approved by the city council, but did not call them to the attention of either the city or Local 17. It is clear from the record that Matt, who was not involved in the negotiations between the City of Seattle and METRO, did not welcome another bargaining unit to deal with. Matt met with a Local 17 official on March 13 or 19, 1984. His own explanation of the purpose of the meeting was to "feel one another out". There would have been no such purpose for a meeting unless both parties anticipated having an ongoing relationship. Consistent with the union's anticipation of an ongoing bargaining relationship, the union official dealt in that conversation with details affecting particular employees. Matt made reference to a potential "jurisdictional" problem between Local 17 and the ATU, but Matt's own testimony as to the conversation is capable of multiple interpretations. Among them is that both unions would be on the property and would have to work out any border skirmishes that might arise

at the edges of their respective bargaining units. The veiled and ambiguous reference to a potential "jurisdictional" problem made in March of 1984 can hardly be deemed sufficient notice to either Local 17 or the City of Seattle of a plan by METRO to include the transferred employees in the bargaining unit represented by the ATU.

METRO's interpretation of the transfer agreement is also beyond credibility. METRO says, in essence, that it was only obligated to provide wages, hours and working conditions to the individual employees involved at levels equal to or greater than were provided for them under the collective bargaining agreement between Local 17 and the city. METRO argues that it has complied with those obligations in its reclassification of the individuals into the METRO personnel system. The language of the transfer agreement provided, however, for Metro to succeed to the city's obligations under its collective bargaining agreement with the International Federation of Professional and Technical Engineers, Local 17, AFL-CIO. The collective bargaining agreement between the City of Seattle and Local 17 was attached to, and specifically incorporated by reference into, the transfer agreement. It is ludicrous at this juncture for METRO to claim that the "obligations" of that contract did not include its preamble, its recognition clause, its dues checkoff provisions, its union security provisions, its grievance procedure, its grievance arbitration procedures, its "no strike" clause, its provisions for joint study committees, its provisions for stewards and visitation by union officials, its provisions for union bulletin boards, its detailed provisions for a labor-management training and conference committee, its duration and its

provisions for submission of proposals for bargaining future contracts.

It is concluded that METRO extended voluntary recognition to Local 17 for a separate bargaining unit of clerical employees in the Commuter Pool operation. METRO is, and undertook to be, the successor to the City of Seattle as to both bargaining obligations and contractual obligations of the city towards Local 17. Under these circumstances, METRO's petition in the instant proceeding might as aptly be described as a "unit demolition" attempt vis-a-vis Local 17 as it can be described as an effort to accrete employees to the bargaining unit represented by the ATU.

#### Change of Circumstances

Next to be addressed is the question of whether there has been a change of circumstances subsequent to the transfer which warrants a change of the status or description of the commuter pool unit in a unit clarification proceeding. If merged into a broader workforce so as to lose its identity and its separate community of interest, even a certified unit may cease to be appropriate.

When METRO first went about the task of reclassifying the transferred employees into METRO's personnel system, it assigned a title other than "intermediate clerk". Later, when it settled on the title of "intermediate clerk" for the transferred employees, it reasoned that they should be in the ATU unit because other employees holding the "intermediate clerk" title are in the ATU unit. Beyond changes of classification titles, METRO effected numerous changes of wages, hours and working conditions without giving notice to or bargaining with Local 17. These same changes are the subject

of the pending unfair labor practice charges filed by Local 17, so giving weight to the employer's challenged personnel actions here would be at risk of inconsistency with the enforcement of the employer's bargaining obligations under the statute. Beyond the legalities, however, the mass of personnel office documents are found to be without persuasive value in the instant case. The employer has raised a "don't throw us in that split-class briar patch" argument, but the briar patch is a glass house. The employer has a large number of unrepresented clerical employees in its organization, including unrepresented clerical employees in the transit development section of the transit department. The ATU unit is not a "horizontal" unit grouping clerical employees together on an occupational basis, but rather is primarily a "vertical" unit composed of transit operations and maintenance personnel. The ATU unit includes some clerical employees in the transit department, together with an unexplained blip over into the budget department. Omission of the commuter pool employees from the ATU unit would not be the first breach in the dike of fragmentation.

While the employer espouses an intention to integrate the commuter pool operation into its transit department workforce in the future, it is clear that the commuter pool operation (and bargaining unit) retained their separate identity at least through the time of the hearing in this case. The commuter pool is listed as a separate branch on METRO's organizational chart. Interestingly, it appears to have equal status on that table of organization with transit operations base and transit maintenance sections that have thousands more employees. Its employees appear on the organization chart with the same status as the separately represented overhead power people and the unrepresented transit planning people. The commuter pool continues under the same supervisor who headed the operation

when it was run by the City of Seattle. The commuter pool employees continue to work in close proximity to one another, but separated even from the ATU-represented employees assigned to METRO headquarters in downtown Seattle.

Compounding the problem of any personnel office sleight of hand with the titles, the employer has confused the situation by its focus on the transferred individuals rather than considering their functions. The clearest example is the case of a Ms. Cruce, a clerical employee who transferred from a clerical position in the ATU unit to a position in the commuter pool operation, but was still regarded by METRO as a member of the ATU unit. Unit descriptions list groupings of classifications or positions, not individuals. The employer's failure to recognize the continued existence of the separate commuter pool bargaining unit will not be credited as evidence that the unit no longer exists.

It is concluded that the separate commuter pool unit still exists as an identifiable unit, and that it has not undergone significant changes of circumstances since the effective date of the transfer agreement. The policy enunciated in Toppenish School District, Decision 1143-A (PECB, 1981) controls. The petition for clarification of an existing bargaining unit is untimely filed and is dismissed.

#### Contract Bar

The normal presumption of a union's continued majority status which attaches during the term of a contract applies to a successor employer as well as to the original employer. NLRB v. Band-Age, Inc., 534 F.2d 1 (1st. Circuit, 1976); Spokane Airport Board, supra. A successor employer is thus limited by RCW 41.56.070 from asserting a doubt of its obligations to



bargain with an incumbent union so as to raise a question concerning representation. The employer has not shown, by objective considerations, a good faith doubt in this case as to the majority status of Local 17 within the commuter pool unit. Thus even if this case were thought of as having been filed in error or docketed in error as a unit clarification case, it would not be timely or appropriate at this time as a representation case.

#### FINDINGS OF FACT

1. The municipality of Metropolitan Seattle (METRO) is a political subdivision of the state of Washington organized under Chapter 35.58 RCW, and is a "public employer" within the meaning of RCW 41.56.030(1). METRO provides a number of services, including mass transit, to residents in the greater King County area.
2. Amalgamated Transit Union, Local 587 represents approximately 2800 METRO employees and is a "bargaining representative" within the meaning of RCW 41.56.030(3). Local 587 represents some employees of METRO's transit department, including some clerical employees.
3. International Federation of Professional and Technical Engineers, Local 17 represents several bargaining units of employees of the City of Seattle, and is a "bargaining representative" within the meaning of RCW 41.56.030(3). Among the various bargaining units it administers, Local 17 represents approximately 700 clerical employees in a separate bargaining unit.

4. As early as December, 1982, the City of Seattle and METRO entered preliminary discussions concerning the transfer of "commuter pool" operations from the city to METRO. The actual transfer finally took place in April, 1984.
5. Apart from transferring the equipment necessary to run the commuter pool, a number of employees were also transferred. According to the transfer agreement signed by the city and METRO, none of the affected employees were to suffer any diminution of wage and benefit levels as a result of the transfer.
6. Local 17 had represented clerical employees of the commuter pool as part of the city-wide clerical bargaining unit. The transfer agreement made specific reference to Local 17's relationship with those clerical employees:

... 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 as to the represented employees transferred.
7. Just prior to the transfer, METRO had the affected clerical employees complete "Position Description Questionnaire". After several reviews, the employees were given METRO clerical classifications.
8. The employees in the affected clerical positions continue to perform the same generic type of work, and the commuter pool activity continues as an identifiable separate operation with METRO.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The Municipality of Metropolitan Seattle is the successor to the City of Seattle and has voluntarily recognized International Federation of Professional and Technical Engineers, Local 17 as exclusive bargaining representative of a separate bargaining unit of clerical employees of the commuter pool operation now conducted by METRO.
3. There has been no substantial change of circumstances since April of 1984 to justify clarification of the bargaining unit during the term of the collective bargaining agreement.

ORDER

The petition for clarification of an existing bargaining unit is dismissed as untimely.

DATED at Olympia, Washington, this 21st day of March, 1986.

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.