STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
TEAMSTERS UNION, LOCAL 117	)	CASE 10247-C-93-603
	)	
For clarification of an existing bargaining unit of employees of:	)	DECISION 4880 - PECB
	)	
CITY OF AUBURN	)	ORDER CLARIFYING BARGAINING UNIT
	)	
	)	

Schwerin, Burns, Campbell and French, by John Burns, Attorney at law, appeared on behalf of the petitioner.

Perkins Coie, by Charles N. Eberhardt, Attorney at Law, appeared on behalf of the employer.

On February 9, 1993, Teamsters Union, Local 117, filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, seeking to have seasonal employees and two full-time job classifications included within a bargaining unit of City of Auburn employees represented by the union. A hearing was held at Kirkland, Washington, on May 17, 1994, before Hearing Officer Vincent M. Helm. The parties submitted briefs on July 11, 1994.

BACKGROUND

The parties have a bargaining history which dates to at least the 1970's.[1] The historical bargaining unit has included employees in five job classifications who are employed in the employer's

[1] A search of the Commission's docket records, including records transferred to the Commission by the Department of Labor and Industries pursuant to RCW 41.58.801, fails to disclose the precise origins of the bargaining unit.

cemetery, equipment rental, golf course, parks, sewer, streets and water and storm departments or divisions. This unit currently contains approximately 57 employees, and is generically described as the "outside unit".

The employer's Parks and Recreation Department is divided into six sections; bargaining unit employees work in three of the sections, and compose less than one-half of the department's employees. The employer's Public Works Department has three major divisions; bargaining unit employees work in the maintenance and operations (M & O) division, and compose less than one-half of the employees of the department.[2]

The employees in the bargaining unit are responsible for maintaining the employer's water and sewer systems, streets, parks, cemetery and golf course. Apart from the work performed by employees in the "outside unit", maintenance work of various kinds and degrees of complexity is performed by employees who are represented for the purposes of collective bargaining in other bargaining units or are non-represented.[3]

The Technician Classifications

The two "technician" job classifications which the union seeks to have included in the bargaining unit are designated as building systems technician and electrical technician. The historical background of these two positions dates back more than 10 years.

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[2] Within the M & O division are clerical employees and custodians who are represented by the same union, but in separate bargaining units. Other employees in the M&O division are non-represented.

[3] Among the facilities or equipment maintained by employees who are not in the outside unit, are fire equipment, building maintenance, printing equipment, airport facilities, vehicles and traffic signals.

In approximately 1987, the employer's building official asked the sewer supervisor to review all of the employer's heat/ventilation/air-conditioning (HVAC) systems in order to enhance the maintenance of those systems. Over the next four years, a bargaining unit employee classified as a maintenance worker II spent the majority of his work time in performing many of the maintenance tasks involved in the operation of the HVAC systems, as well as other routine maintenance work at the employer's city hall. More skilled maintenance work was contracted out during this time period. Ultimately, the sewer supervisor recommended the hiring of a skilled mechanic to perform this work, in order to reduce the costs associated with extensive reliance on outside contractors to work on the HVAC systems. In March of 1991, the employer hired an individual in the newly created position of building systems technician. This individual performed the work which theretofore had been performed through contract maintenance or by the maintenance worker II.

The electrical technician position came into existence in June 1989. The individual in this position is responsible for maintaining electrical systems in various employer-owned buildings, street lights, and water/sewer pumps. He also works with a traffic signal technician as part of a two person crew.[4] This work had never been previously performed by employees of the employer, but had been contracted out, in part to the individual ultimately placed in the classification.

The electrical technician has a state journeyman electrical license and a traffic signal level I certification.[5] The building maintenance technician has a CFC license, which is required for handling

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[4] The traffic signal technician is not included in any bargaining unit.

[5] This certification is also required of the traffic signal technician.

refrigerants, and has a higher level boiler license than is required of maintenance worker represented by the union. Both of these positions require the incumbents to utilize tools and equipment never before utilized by employees of this employer. The employer therefore purchased such tools for the two technicians. In addition, both technicians were assigned service vehicles outfitted for performance of their specific jobs.

At times, bargaining unit maintenance workers and the two technicians will work together on projects. In particular, the electrical technician will perform specialized electrical services for operations normally maintained by bargaining unit employees, and will work with bargaining unit employees at various employer facilities. The majority of the time, however, the two technicians work either independently or jointly or in support of other classifications, some of which are not included in the bargaining unit. Each spends about one-half time in maintenance of city building equipment.[6]

Until January of 1994, both technicians reported to work at the same facility as certain M & O employees in the bargaining unit.[7] The technicians were supervised, until January of 1994, by two individuals who also supervised certain bargaining unit employees. In January of 1994, however, both technicians were placed under the supervision of the building division manager, who does not supervise any bargaining unit employees, and they began reporting to work at the employer's city hall.

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[6] For about two years after the building maintenance technician was hired, the bargaining unit employee who had previously performed routine HVAC maintenance tasks was assigned to provide vacation relief for the building systems technician. The record does not indicate that such assignments have continued beyond that initial two-year period.

[7] Other bargaining unit employees report to work at other facilities.

The Summer Help

For at least 10 years, the employer has hired varying numbers of individuals, ranging up to 40 or more, as maintenance helpers to work during the summer. The bulk of those hired are students. Individuals working in these summer help positions are employed for a maximum of four months, and perform unskilled work. There is a good deal of turnover, with perhaps only 30 percent working more than one summer. These employees are paid less than one-half the lowest wage rate for a bargaining unit job. One or two individuals may have obtained full-time employment in the bargaining unit following working for the employer during the summer. The parties' collective bargaining agreement excludes temporary employees with less than 120 calendar days per year.

POSITIONS OF THE PARTIES

The union contends that the two technician classifications are properly within the bargaining unit. It claims they are functionally related to bargaining unit classifications, and that they perform work previously accomplished at least in part by the bargaining unit, and that the employer agreed at one time to include the two positions in the bargaining unit. It thus claims the classifications should be included in the existing bargaining unit under Commission precedent.[8] With respect to the seasonal maintenance helpers, the union argues that employees in this classification meet the Commission's one-sixth standard, and should be included within the bargaining unit. It supports a change at this time, even though they have historically been excluded by the parties, and notwithstanding that employees in this classification are generally students with no expectation of employment on a full-

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[8] The union cites Bremerton - Kitsap County Health Department, Decision 2984 (PECB, 1988).

time basis. The union relies upon Skagit County, Decision 3828 (PECB, 1991); City of Seattle, Decision 781 (PECB, 1980); Aberdeen School District, Decision 4138 (PECB, 1992); and Municipality of Metropolitan Seattle, Decision 2986 (PECB, 1988).

The employer argues that the Commission's standards concerning accretions have not been met with respect to the technician classifications. It maintains there is no showing that these positions belong only in the existing bargaining unit, and that there are significant dissimilarities in community of interest, duties, skills and working conditions. The employer cites Kitsap Transit Authority, Decision 3104 (PECB, 1989); Spokane School District 81, Decision 3719 (PECB, 1991); Ben Franklin Transit, Decision 2357-A (PECB, 1986); South Columbia Basin Irrigation District, Decision 2894 (PECB, 1988); and Pierce County, Decision 2419 (PECB, 1985), in support of its position. Moreover, the employer urges that the bargaining history of the parties renders inappropriate the inclusion of the technician classifications within the bargaining unit, citing City of Vancouver, Decision 3160 (PECB, 1989); Tacoma School District, Decision 1908 (PECB,1984); City of Prosser, Decision 3157 (PECB, 1989); Spokane School District, Decision 3719 (PECB, 1991); City of Dayton, Decision 1432 (PECB, 1982); King County, Decision 3939 (PECB, 1991); and Pierce County, Decision 2319 (PECB, 1983). The employer denies there was any prior agreement with the union to include the technician classifications in the bargaining unit. It also contends the seasonal maintenance helpers should not be included in the bargaining unit, because they have no continuing expectancy of employment. It cites Columbia School District, Decision 1189-A (EDUC, 1982), and relies upon precedent of the National Labor Relations Board (NLRB) regarding students who only work during summer vacations, particularly citing Coplay Cement Company, 292 NLRB 309 (1989), and Pacific Tile and Porcelain Company, 137 NLRB 1358 (1962). The employer distinguishes this case from Skagit County, Decision 3828 (PECB, 1991).

DISCUSSION

The Criteria for Accretion

The issues presented herein are broadly covered by Commission precedent regarding accretions to bargaining units. Those precedents have evolved over time, to accommodate sometimes potentially conflicting considerations. While the Commission has the obligation, by statute, to ensure that the bargaining units it certifies are appropriate, it also has the obligation, by statute, to maximize the opportunity of public employees to freely express their choice regarding a bargaining representative. RCW 41.56.040 and .060.

An inappropriate bargaining unit may be clarified at any time, but the Commission indicated early in its history that the status of job classifications included or excluded from an appropriate unit by agreement of the parties should not be disturbed except upon a change in circumstances. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). The availability of unit clarification was further limited in Toppenish School District, Decision 1143-A (PECB, 1981), with respect to changes of unit status sought mid-term in a collective bargaining agreement. See, WAC 391-35-020.

Accretions to bargaining units can be accomplished in appropriate circumstances. In Skagit County, Decision 3828 (PECB, 1991), it was made clear that a decade-long history of exclusion would not prevent the re-attachment of a class of regular part-time employees to the bargaining unit in which they necessarily belonged. In that instance, the alternatives would have been to either leave the employees stranded without any possibility of representation, or to sanction the creation of another bargaining unit which would provide a fertile ground for work jurisdiction disputes at the border between the existing and new units.

Accretions are an exception to the general rule, however, inasmuch as they inherently preclude the affected employees from expressing their wishes concerning the selection of a bargaining representative. Therefore, the moving party in such a proceeding bears a heavy burden of persuasion. Kitsap Transit Authority, Decision 3104 (PECB, 1989); Spokane School District, Decision 3719 (PECB, 1991). The recent decision in Seattle School District, Decisions 4868, 4869 (PECB, 1994), reviewed the guiding principles on accretion issues. It was noted that a fundamental objective of Chapter 41.56 RCW is to assure employees the right of free choice, and that there are relatively few circumstances once a bargaining relationship is established to disturb the unit as agreed upon by the parties or certified by the Commission. Accretions are thus limited to exceptional cases where the employees involved can only be properly placed in an existing unit, so that depriving them of a vote on the matter is warranted. An accretion is particularly inappropriate where the currently-disputed classifications existed in their present form when the bargaining unit was created, but the union and employer had agreed to leave them out of the unit.

In accord with the latter view of the accretion process, the Commission has not looked favorably upon accretion efforts where parties having knowledge of subsequently-created positions or classifications have chosen to refrain, for a significant period of time, from taking steps to add them to the existing bargaining unit. The Commission views such inaction as, in effect, waiving claims that the newly-created positions should be in the existing bargaining unit. The passage of time will inherently create a history of separateness for the employees in the affected classifications, providing support for a conclusion that they could either be claimed by other units or constitute a separate appropriate bargaining unit. Spokane School District, supra; City of Dayton, Decision 1432 (PECB, 1982); Tacoma School District, Decision 1908 (PECB, 1984); City of Prosser, Decision 3157 (PECB, 1989); South Columbia Basin Irrigation District, Decision 2894 (PECB, 1988).

Even when a unit clarification petition is filed in a timely manner, the Commission will rule against accretion of a new or changed classification to an existing bargaining unit unless skills levels are similar, operations are integrated with some degree of employee interchange, and working conditions are essentially the same, so that the existing unit appears to be the only appropriate unit placement for the affected employees. Pierce County, Decision 2319 supra; South Columbia Basin Irrigation District, supra; Skagit County, supra; Spokane School District, supra.

The Two Technical Classifications

History of Bargaining -
The evidence is clear that the electrical technician position has existed since 1989, and that the building systems technician position has existed since 1991. The evidence also supports a conclusion that the union was aware of the existence of those classifications soon after their creation.

In contract negotiations in 1989 and 1990, the parties negotiated about the inclusion of the position of electrical technician in the bargaining unit. Their collective bargaining agreement for 1990-92 did not include the electrical technician classification, however. Because of the lapse of time between the creation of the technician classification and the union's first effort to include it within the existing bargaining unit, it could be argued that the union waived its claim to inclusion of that classification in the bargaining unit.[9]

There was correspondence between the parties in 1991 relative to the two technician classifications, which indicated there was

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[9] An argument available then, but perhaps no longer apposite, is that failure to include the electrical technician could have stranded a lone employee without any possibility of representation.

mutual consideration of the status of these positions. While the union contends that agreement was reached to include the two classifications in this bargaining unit, the evidence adduced on this point falls far short of demonstrating agreement.

In negotiating their 1993-95 labor agreement, the parties discussed the status of both technician classifications. The union's filing of this unit clarification petition prior to signing the current agreement satisfied the procedural requirements of Toppenish, supra, and WAC 391-35-020, but that does not necessarily fulfill the substantive requirements for an accretion.

Duties, Skills and Working Conditions -
There are other compelling reasons to exclude the technician classification from the bargaining unit. Employees in these classifications have relatively little in the way of a community of interest with employees in the existing unit. They possess skills and perform work of a nature not characteristic of employees in the bargaining unit. They most often work alone, or with each other, performing specialized tasks throughout various employer facilities and projects. They report to a different work location, are separately supervised, have unique tools and equipment, and have licensing requirements not applicable to other bargaining unit employees.

The individuals in the two job classifications could form an appropriate bargaining unit, either together or perhaps combined with certain other skilled job classifications which are not currently covered by a collective bargaining unit. While it might be argued that considerations of undue proliferation of bargaining units should compel a different result, the lack of an underlying community of interest between these classifications and the existing unit, coupled with the historically fragmented nature of the employer's workforce, leads to a conclusion that there is no

rational basis for deciding this case in a manner inconsistent with the facts and Commission precedent.

The Seasonal Employees

As noted by the parties, the Commission has developed criteria in various contexts, to determine whether employees working less than full-time have a sufficient interest in terms and conditions of employment to be included within a bargaining unit. The criteria to be applied have been determined upon analysis of the factual considerations involved in particular cases, but such employees are categorized as either "casual employees" or as "regular part-time employees".

Casual employees are those who have only sporadic contacts with a particular employer and bargaining unit, so as to suggest that they have a series of separate, terminated employment relationships. They lack a continuity and expectancy of continued employment that is necessary to have a community of interest with a bargaining unit, and are not deemed to be employees for purposes of collective bargaining. Columbia School District et al., Decision 1189-A (EDUC, 1982). Neither an employer nor a labor organization should be burdened with an obligation to bargain upon behalf of casual employees who have only a passing interaction with the employer and the bargaining unit, no reasonable expectancy of an ongoing employment relationship and, therefore, lack a community of interest with regular full or part-time bargaining unit employees.

Regular part-time employees are those who have sufficient contact with an employer and bargaining unit to provide a basis for finding that they have a community of interest. Thus, on-call employees who worked 15 days in three months, where the work week involves seven days, were included in the bargaining unit in City of Seattle, Decision 1142 (PECB, 1981); extra help relief workers were included in a bargaining unit where they worked one-sixth of a

full-time schedule in Kitsap County, Decision 4314 (PECB, 1993). The intent in each case is to balance the rights and interests of public employees and employers. Individuals who have an ongoing interest in terms and conditions of employment unquestionably have a right to the protection afforded by a collective bargaining statute.

The Commission has not had occasion to rule upon the status of students who work only during periods of vacation or holidays. In one case involving students who worked part-time for 16 hours per week, the Commission regarded such individuals as regular part-time employees whose primary interest in being employed was pecuniary, rather than educational. Municipality of Metropolitan Seattle, supra. The Commission applied the "one-sixth of full-time" test it had used in other industrial settings, after considering precedents developed by the both the NLRB and state labor relations agencies.

While there have been some variations in the manner in which the NLRB has regarded the employment status of students, it is fair to state that it has rather consistently maintained, with court approval, that students who only work during vacation periods or substantially only during such times are not regarded as employees for purposes of the Act. Crest Wine and Spirits, Ltd., 168 NLRB 754 (1967). Davis Supermarkets, 2 F.3d 1173 (DC Cir. 1993). The NLRB view appears supported by logic, and comports with the intent of the Commission in ascertaining the status of individuals who are not full-time employees and whose work history reflects an interest to obtain temporary employment to assist in reaching their educational goals, rather than an expectation of indefinite employment. The tendency in most state jurisdictions had been to include students as regular part-time employees, but that conflicts with the Commission's view as stated in Columbia, supra.

Where students, as in this case, are not employed on a basis which meets the one-sixth test during the regular school year, they will

be regarded as "casual employees". It follows that they are not regular part-time employees eligible to be included in the bargaining unit.

FINDINGS OF FACT

1. The City of Auburn is a "public employer" within the meaning of RCW 41.56.030(1).

2. Teamsters Union, Local 117, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the City of Auburn performing work in various departments or divisions of the employer.

3. The classifications of electrical technician and building systems technician were created in 1989 and 1991, respectively. The bulk of the work of both classifications had previously been performed by outside contractors.

4. The employees in the technician classifications are required to possess skills and licenses not required of employees in the bargaining unit represented by Local 117.

5. The employees in the technician classifications generally work independently of bargaining unit employees, and perform tasks which for the most part are not within the work of bargaining unit employees.

6. The employees in the technician classification report to a different work area and have a different immediate supervisor than bargaining unit employees.

7. The employees in the technician classifications have never been included in the bargaining unit represented by Local 117, and have established a history of separation which could form the basis for creation of a separate bargaining unit composed of those classifications and perhaps others which are not currently represented for purposes of collective bargaining.

8. The collective bargaining agreement between the employer and union contains an agreed exclusion of temporary employees who work less than 120 days.

9. The employer hires a varying number of temporary employees each year as maintenance helpers. Those individuals are generally full-time students who may work up to four months on a seasonal basis, during periods basically coinciding with summer vacations. Those individuals perform unskilled tasks to augment the work of employees in the bargaining unit, and frequently work with and assist bargaining unit employees.

10. For the most part, the temporary employees do not work for more than one employment cycle, and do not possess the requisite skills for full-time employment in the bargaining unit.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC. Authority to determine these eligibility issues has been delegated by the Executive Director to the Hearing Officer pursuant to WAC 391-35-190.

2. The classifications of electrical technician and building systems technician have duties, skills, working conditions, and a community of interest separate from employees in the

bargaining unit described in paragraph 3 of the foregoing finding of fact, so that their inclusion in that bargaining unit is not appropriate under RCW 41.56.060.

3. The seasonal maintenance helpers hired by the employer from time to time are casual employees who do not share a community of interest in the bargaining unit described in paragraph 3 of the foregoing findings of fact, so their inclusion in that bargaining unit is not appropriate under RCW 41.56.060.

ORDER

1. The classifications of electrical technician and building systems technician and seasonal maintenance helpers are excluded from the existing bargaining unit.

2. The seasonal maintenance helpers are excluded from the existing bargaining unit.

ISSUED at Olympia, Washington, this 20th day of December, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Vincent M. Helm

VINCENT M. HELM, Hearing Officer

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