

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

EVERGREEN WATER/SEWER  
DISTRICT 19

For clarification of an existing bargaining  
unit represented by:

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 77

CASE 22667-C-09-1415

DECISION 10648 - PECB

ORDER REVOKING CERTIFICATION

Robblee Brennan & Detwiler, P.L.L.P., by *Richard H. Robblee*, Attorney at Law,  
for the union.

Inslee, Best, Doezie & Ryder, P.S., by *Katherine F. Weber*, Attorney at Law, for  
the employer.

On August 26, 2009, the Evergreen Water/Sewer District 19 (employer) filed a petition for clarification of a bargaining unit represented by International Brotherhood of Electrical Workers, Local 77 (union). Specifically, the employer alleged that the existing bargaining unit was no longer appropriate because it includes only one employee. Hearing Officer Jessica J. Bradley conducted a hearing on October 22, 2009. The employer filed a post-hearing brief which was considered.

ISSUE

Is the existing bargaining unit an appropriate unit?

Only one employee is employed by the employer in the existing bargaining unit. The record established that the reduction in the size of the bargaining unit is not temporary in nature. Under WAC 391-35-330, a bargaining unit including only one employee is inappropriate. The existing certification for the unit is revoked.

### LEGAL PRINCIPLES

Collective bargaining, under Chapter 41.56 RCW, is the term used to describe the process whereby employees with a community of interest join together to bargain with their employer as a single bargaining unit over terms and conditions of their employment. Accordingly, the Commission stated, "a one-person unit is inappropriate for collective bargaining." *Port of Bellingham*, Decision 1570-A (PECB, 1983). The Commission codified this standard in 2001 at WAC 391-35-330: "A bargaining unit cannot be considered appropriate if it includes only one employee." In situations where a proposed bargaining unit would include only one employee, the Commission will dismiss the representation petition as the unit is inappropriate. *City of Sultan*, Decision 7722 (PECB, 2002).

In determining whether an existing bargaining unit has become an inappropriate one-person unit, the Commission considers whether the reduction in unit size to one employee is temporary or permanent. "A temporary reduction in force of a small unit to a single employee does not . . . relieve an employer of its bargaining obligation." *Port of Bellingham*, Decision 1570-A, citing *Crispo Cake Cone Co.*, 190 NLRB 352 (1971). In situations where an employer is alleging a unit is no longer appropriate because it includes only one employee, the employer has the burden to establish that the reduction in unit size is permanent, not temporary, in nature. If an employer can establish that the unit has been permanently reduced to one employee, the unit becomes inappropriate and the employer no longer has a bargaining obligation. *Crescendo Broadcasting, Inc.*, 217 NLRB 697 (1975).

### ANALYSIS

Evergreen Water/Sewer District 19 is a public water district located approximately 30 miles east of Bellingham, Washington. The district provides water to approximately 1,380 customers in a residential housing development. The district does not provide sewer services.

On August 1, 2006, in *Evergreen Water/Sewer District 19*, Decision 9311-A (PECB, 2006), the Commission issued a final certification for a bargaining unit described as:

All full-time and regular part-time employees of the Evergreen Water/Sewer District 19, excluding supervisors and confidential employees.

At the time of certification, the bargaining unit consisted of one office receptionist and two field operators.

#### Office Reception Work

In or around July of 2007, the office receptionist quit her position. The employer notified the union of its desire not to fill the office receptionist position and instead have a private contractor perform the work previously performed by the office receptionist. The employer and union negotiated the contracting out of the office work. Ultimately, the union agreed that the office worker employed by the contractor would not be part of the bargaining unit, but that should the employer hire an office receptionist in the future, the position would be in the unit. On May 22, 2008, the employer signed an agreement with Cedarstone Services, LLC (Cedarstone), a private company that provides management services for the employer, including provision of reception services. Cedarstone has continued to provide office reception services. The union did not file an unfair labor practice complaint over the contracting out of the office reception work.

#### Field Operator Work

Field operators are responsible for overseeing the operation of the water system, performing checks of the water system at least five days a week, maintaining a log of well water production, providing consumers with notification of pending shut-offs, repairing leaks, answering questions about metering and water usage, carrying a pager and responding to off-hour emergencies, and providing water turn-on and shut-off services.

Until the spring of 2009, the employer employed two full-time field operators, Tom Ulmer and Robert Straka. During contract negotiations the union and employer disagreed over what staffing levels were necessary to complete field operation work. The employer took the position that its

newly updated and highly automated water distribution system no longer necessitated the work of two full-time operators. The employer proposed reducing both field operator positions to half-time.

In April or May of 2009, Ulmer voluntarily retired. The employer decided to continue employing Straka in a full-time field operator position, and declined to fill Ulmer's position. The employer notified the union of this decision in a letter dated May 30, 2009. In or around June 2009, the water district commissioners passed a resolution to the effect that Ulmer's position would not be filled. The employer withdrew its proposal to make the two field operator positions half-time and informed the union of its intent to keep Straka working full-time and not fill Ulmer's position. No unfair labor practice complaints were filed with the Commission over this action.

Since May 2009, Straka has been the only field operator employed by the employer. Cedarstone, the management company with the contract to manage the water district, made an agreement with Northwest Water Works, LLC (Northwest Water Works), another private company, for a substitute field operator to fill in when Straka is unavailable. This would include occasions when Straka uses sick or annual leave. From May 2009 through October 22, 2009, Straka missed three days of work to attend trainings. On each of those days Cedarstone paid Northwest Water Works to cover routine services. The substitute field operator performed the daily system checks and maintenance that are required by the State of Washington, which took two hours per day. Cedarstone also paid Northwest Water Works for one hour of additional labor to shut-off and restore water service so a homeowner could perform repairs. The remainder of Straka's daily work was not performed in his absence. The employer and its management contractor, Cedarstone, explained that they will only be using Northwest Water Works to perform required system checks or respond to emergencies in Straka's absence.

Although a substitute field operator performs bargaining unit work, the individual is employed by Northwest Water Works and is not an employee of the employer. Moreover, even if the substitute were an employee of the employer, the substitute does not work enough hours to qualify as a

regular part-time employee under WAC 391-35-350.<sup>1</sup> The substitute field operator is not included in the existing bargaining unit.

### CONCLUSION

The bargaining unit, as currently certified, includes a single field operator, and the employer established that this reduction in unit size is not temporary in nature. Accordingly, because the bargaining unit has only one employee, the bargaining unit is no longer an appropriate unit and the certification is revoked.

### FINDINGS OF FACT

1. Evergreen Water/Sewer District 19 is a public employer within the meaning of RCW 41.56.030(1).
2. International Brotherhood of Electrical Workers, Local 77, is a bargaining representative within the meaning of RCW 41.56.030(3).
3. On August 1, 2006, in *Evergreen Water/Sewer District 19*, Decision 9311-A (PECB, 2006), the Commission certified the International Brotherhood of Electrical Workers, Local 77 as the exclusive bargaining representative of a bargaining unit described as:

All full-time and regular part-time employees of the Evergreen Water/Sewer District 19, excluding supervisors and confidential employees.

4. At the time of certification, as described in Finding of Fact 3, the bargaining unit consisted of one office receptionist and two field operators.

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<sup>1</sup> The substitute field operator works an average of 2.33 hours per day when replacing the full-time field operator. Even if the full-time field operator used two months of leave during the course of a year, the substitute would not work enough hours to meet the more than one-sixth test in WAC 391-35-350.

5. In or around July of 2007, the office receptionist quit her position. The employer and union negotiated the contracting out of the office work, and the union agreed that the office worker employed by a contractor would not be part of the bargaining unit, but that should the employer hire an office receptionist in the future, the position would be in the unit. On May 22, 2008, the employer signed an agreement with Cedarstone Services, LLC, which included provision of reception services. Cedarstone continues to provide office reception services.
6. In April or May of 2009, bargaining unit field operator Tom Ulmer voluntarily retired.
7. In or around June 2009, the water district commissioners passed a resolution to the effect that Ulmer's position would not be filled.
8. Since May 2009, Robert Straka has been the only field operator employed by the employer.
9. Although a substitute field operator performs bargaining unit work, the individual is employed by Northwest Water Works, LLC, is not an employee of the employer, and is not included in the existing bargaining unit.
10. The reduction in the size of the bargaining unit is not temporary in nature.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The unit clarification petition was timely filed under WAC 391-35-020(1)(f).
3. As described in Findings of Fact 3 through 10, the bargaining unit has only one employee and is no longer appropriate under WAC 391-35-330.

ORDER

The certification issued by the Public Employment Relations Commission in *Evergreen Water/Sewer District 19*, Decision 9311-A (PECB, 2006), is revoked.

Issued at Olympia, Washington, this 26<sup>th</sup> day of January, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Cathleen Callahan".

CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the agency under WAC 391-35-210.