

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PORT OF SEATTLE

For clarification of an existing bargaining unit represented by:

PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 160 AND LOCAL LODGE 289

CASE 25892-C-13-1563

DECISION 11903-A - PORT

CORRECTED ORDER  
DENYING MOTION

Robblee Detwiler & Black, by *Terry Jensen*, Attorney at Law, for the International Association of Machinists and Aerospace Workers, District Lodge 160 and Local Lodge 289.

DeCarlo & Shanley, by *Alice Chih-Mei Chen*, Attorney at Law, for the Pacific Northwest Regional Council of Carpenters.

*Milton B. Ellis*, Labor Relations Manager, for the employer.

On August 14, 2013, the Port of Seattle (employer) filed a unit clarification petition concerning the allocation of marine maintenance work between two different bargaining units. One bargaining unit is represented by the Pacific Northwest Regional Council of Carpenters (Carpenters), and the other bargaining unit is represented by the International Association of Machinists and Aerospace Workers, District Local 160 and Local Lodge 289 (Local 289). The employer's petition indicates that it is currently assigning the marine maintenance work to both bargaining units. Local 289 is challenging the assignment of marine maintenance work to the Carpenters through the grievance provision of its current collective bargaining agreement with the employer. The work at issue involves maintenance on fleet equipment, small motorized equipment, and all fixed equipment.

On August 26, 2013, Local 289 filed a motion to dismiss the employer's petition. Local 289 asserts that the dispute between the parties is a matter of contract interpretation and not a unit determination or representation matter that would invoke this agency's unit determination authority. The parties were asked to brief the issue of whether the employer's petition invokes this agency's unit determination authority or if this matter should be handled through the contract's grievance provision. Each party filed a response.

This decision only addresses whether this agency has jurisdiction to consider the unit clarification petition filed by the employer. This agency routinely processes unit clarification petitions that concern work jurisdiction disputes such as the one brought by the employer. Chapter 41.56 RCW and RCW 41.56.060 grant this agency the exclusive authority to determine appropriate bargaining units. Questions regarding the scope of work performed by a particular bargaining unit is included with this agency's unit determination authority as those questions are directly related to the appropriateness of the bargaining unit. Accordingly, Local 289's motion to dismiss is denied.

#### BACKGROUND

Neither Local 289's nor the Carpenters' bargaining units were certified by this agency and were instead apparently established through voluntary recognition by the employer. The recognition agreement between the employer and Local 289's bargaining unit states that the bargaining unit shall be composed of employees performing "the various functions of maintenance of Port-owned vehicles, as assigned and in accordance with historical jurisdiction." The parties' collective bargaining agreement does not state any specific job classes that are included in the bargaining unit.

The recognition agreement between the employer and the Carpenters' bargaining unit states that the bargaining unit shall be composed of employees:

[W]ho are employed in crafts or job classifications which would otherwise be covered by collective bargaining agreements between the [Carpenters] and other employers performing similar scopes of work in the Puget Sound region, for the following purposes and subject to the following conditions:

The Port recognizes the [Carpenters] as the sole and exclusive bargaining agent for all employees of the port performing work historically covered by this agreement or agreement prior to this agreement of which the Port and the [Carpenters] were parties hereto.

The parties' collective bargaining agreement does not state any specific job classes that are included in the bargaining unit.

The employer claims that this agency has exclusive jurisdiction to resolve work jurisdiction disputes through the unit clarification process. The employer cites to existing agency precedent holding that grievance arbitration is not the appropriate forum for resolving work jurisdiction issues under Chapter 41.56 RCW. The employer also points out that any arbitration that would occur between the employer and Local 289 would be exclusively between those parties and the Carpenters would not be able to intervene in that proceeding to protect its rights. Finally, the employer also points out that the Carpenters would be excluded from any arbitration which arises from the collective bargaining agreement between the employer and Local 289. The Carpenters joined the employer's position.

Local 289 argues that the question to be answered is whether the marine maintenance work falls within the scope of the recognition clause of the collective bargaining agreement. Local 289 claims that by assigning the marine maintenance work outside of its bargaining unit, the employer has breached the collective bargaining agreement. Local 289 cites to National Labor Relations Board (NLRB) decisions which stand for the proposition that where an employer is responsible for moving work outside of a bargaining unit, the NLRB will decline jurisdiction over the dispute. *See, e.g., Seafarers (Recon Refractory & Construction)*, 339 NLRB 825 (2003). Local 289 asserts that because it is not seeking to include any positions represented by the Carpenters, no question concerning representation is raised by this dispute.

#### DISCUSSION

Chapter 53.18 RCW allows port districts to collectively bargaining with their public employees. RCW 53.18.015 states that the provisions of Chapter 41.56 RCW govern the collective bargaining relationship between the parties except as otherwise provided by Chapter 53.18 RCW. Nothing

in Chapter 53.18 RCW governs the creation or modification of bargaining units. Although RCW 53.18.030 specifies that port employees are to be given “maximum freedom” in selecting a bargaining representative, the statute does not provide any guidance as to how work jurisdiction issues should be resolved. Because Chapter 53.18 RCW provides no guidance, the unit determination standards found at RCW 41.56.060 have been applied to the creation and modification of bargaining units at port districts. *See Port of Tacoma*, Decision 10093 (PORT, 2008); *Port of Seattle*, Decision 6181 (PORT, 1998).

This agency has previously rejected requests to follow the NLRB’s precedent and allow parties to resolve work jurisdictional issues through the grievance arbitration provisions of their collective bargaining agreements. *Port of Seattle*, Decision 6181. Rather, this agency has exercised a firm hand in the resolution of disputes concerning the scope of bargaining and the allocation of positions where two or more bargaining units have colorable claims to the work of those positions. *Seattle School District*, Decision 5220 (PECB, 1995), *citing King County*, Decision 4569 (PECB, 1993). *Seattle School District* addressed a jurisdictional dispute similar to the one presented in this case. One of the competing labor organizations submitted to arbitration a work jurisdiction claim under the terms of the existing bargaining agreement. The argument that this agency should defer to an arbitrator’s ruling regarding the work jurisdiction of the bargaining unit was rejected.

Specifically, the Executive Director stated:

Parties may agree on unit matters, but such agreements are not binding on the Commission. . . . Arbitrators only draw their authority from the agreements of parties, so the Commission does not defer “unit” matters to arbitrators, and is not bound to consider or accept decisions issued by arbitrators on such matters.

*Seattle School District*, Decision 5220 (citations omitted). This result has been applied to cases involving port districts such as *Port of Seattle*, Decision 6181. In that case, the union submitted to arbitration a work jurisdiction issue and the employer filed a unit clarification petition with this agency. Although the union argued the arbitrator should be allowed to resolve the dispute, that approach was rejected. The decision specifically noted that even though the dispute involved the

assignment of work, the dispute also involved the scope of appropriate bargaining units under RCW 41.56.060. The *Port of Seattle* decision reiterated once again that this agency will not delegate bargaining unit determination authority to grievance arbitrators.

The fact that this jurisdictional dispute does not involve any positions does not change the outcome of this decision. While certain cases, such as *Port of Seattle* and *Port of Tacoma*, involved both positions and the work performed by those positions, the *Seattle School District* decision only involved the assignment of a specific kind of work to a bargaining unit. No positions were at issue in that case. The *Seattle School District* holding is consistent with this agency's historical tradition of describing bargaining units by the work performed.

Finally, this agency's exercise of jurisdiction over this matter ensures that the Carpenters have the opportunity to present arguments in this matter. While the Carpenters' participation in any arbitration between the employer and Local 289 would require the consent of both parties, no such limitation exists for cases processed by this agency. The provisions of Chapter 391-35 WAC ensure that any party that has a colorable interest in the disputed work will have an opportunity to present evidence and arguments at hearing. See *State – Natural Resources*, Decision 9388-A (PSRA, 2006).

ORDERED

Local 289's motion to dismiss the above-entitled action is DENIED. Processing of this matter shall be remanded to agency staff for further processing.

ISSUED at Olympia, Washington, this 29<sup>th</sup> day of October, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 10/29/2013

The attached document identified as: DECISION 11903-A - PORT has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: /S/ MAJEL G. BOUDIA

CASE NUMBER: 25892-C-13-01563 FILED: 08/14/2013 FILED BY: EMPLOYER  
DISPUTE: COMMUNITY INT  
BAR UNIT: OPER/MAINT  
DETAILS: -  
COMMENTS:

EMPLOYER: PORT OF SEATTLE  
ATTN: GARY SCHMITT  
2711 ALASKAN WAY  
PO BOX 1209  
SEATTLE, WA 98111  
Ph1: 206-787-3775 Ph2: 206-419-2916

REP BY: MILTON ELLIS  
PORT OF SEATTLE  
2711 ALASKA WAY  
PO BOX 1209/LR  
SEATTLE, WA 98111  
Ph1: 206-787-6802

PARTY 2: IAM AND AW DISTRICT 160  
ATTN: DAN MORGAN  
9135 15TH PL S FLR 2  
SEATTLE, WA 98108  
Ph1: 206-764-0473 Ph2: 206-762-7990

REP BY: TERRY JENSEN  
ROBBLEE DETWILER BLACK  
2101 4TH AVE STE 1000  
SEATTLE, WA 98121  
Ph1: 206-467-6700

PARTY 3: PACIFIC NW REGIONAL COUNCIL OF CARPENTERS  
ATTN: DOUG TWEEDY  
25120 PACIFIC HWY S STE 200  
KENT, WA 98032  
Ph1: 253-945-8800

REP BY: DANIEL M SHANLEY

DECARLO CONNOR & SHANLEY  
533 S FREMONT AVE 9TH FL  
LOS ANGELES, CA 90071-1706  
Ph1: 213-448-4100

REP BY:

ALICE CHIH MEI CHEN  
DECARLO AND SHANLEY  
533 S FREMONT AVE 9TH FL  
LOS ANGELES, CA 90071-1706  
Ph1: 213-488-4100