

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES

Involving certain employees of:

CITY OF BELLINGHAM

CASE 134604-E-21

DECISION 13588 - PECB

ORDER OF DISMISSAL

Bill Keenan, Director of Organizing, for the Washington State Council of County and City Employees.

John Lee, Attorney at Law, Summit Law Group PLLC, for the City of Bellingham.

Dean Tharp, Staff Representative, for the Guild of Pacific Northwest Employees.

On November 1, 2021, the Washington State Council of County and City Employees (WSCCCE) filed a representation petition to sever and change representation for approximately 24 police support employees at the City of Bellingham (employer). The police support employees are currently represented by the Guild of Pacific Northwest Employees (GPNWE). A hearing was held on May 18, 19, and 25, 2022, and the parties filed post-hearing briefs to complete the record. Representation Administrator Emily Whitney conducted the investigatory process and hearing.

The issue at hearing was whether it is appropriate to sever the petitioned-for police support employees from the existing wall-to-wall bargaining unit. Severance is not appropriate. The petitioned-for employees continue to share a community of interest with the employees in the existing bargaining, and GPNWE has adequately represented the petitioned-for employees. WSCCCE's representation petition is dismissed.

BACKGROUND

The City of Bellingham (employer or city) employs approximately 880 employees. Approximately 400 of those employees are currently represented by GPNWE in a wall-to-wall bargaining unit.¹ The wall-to-wall bargaining unit is currently described as, “All regular and nonuniformed public employees except the Professional Engineers in the Engineering department, Professional Librarians, Planners, Assistant Planner, City Attorney’s and Mayor’s confidential secretaries as per RCW 41.56.030, of the City of Bellingham, Washington.” *City of Bellingham*, Decision 13202 (PECB, 2020).

In 1976, the Washington State Council of County and City Employees (WSCCCE) was originally certified as the exclusive bargaining representative of the wall-to-wall bargaining unit.² *City of Bellingham*, Decision 144 (PECB, 1976). WSCCCE remained the exclusive bargaining representative until 2020. In January 2020, GPNWE filed a change of representation petition for the wall-to-wall bargaining unit. On May 21, 2020, after an election, the Public Employment Relations Commission certified GPNWE as the exclusive bargaining representative of the wall-to-wall bargaining unit.

On November 1, 2021, WSCCCE filed a change of representation petition to sever approximately 24 employees in the wall-to-wall bargaining unit. The 24 employees are employed in the following classifications: Records Specialist, Neighborhood Code Compliance Officer, Warrant Officer, Parking Enforcement Officer, Technical Support Specialist at What-Comm Dispatch, Technical Support Specialist in the Records Bureau, and Accounting Technician.

¹ The record identifies GPNWE under several names including the Guild of Pacific Northwest Employees, Local 1937, Local 1937, GPNW, or NPWE.

² The record identifies WSCCCE under several names including the American Federation of State, County and Municipal Employees, Local 114; AFSCME; AFSCME Local 114, and Council 2.

GPNWE currently represents the petitioned for employees in the wall-to-wall bargaining unit. The work of the petitioned-for employees has remained the same since at least the bargaining unit was last certified in May 2020. The Records Specialists manage police records, assist officers with accessing and storing information, process evidence, and conduct public disclosures. The Records Specialists work at the police department.

The Neighborhood Code Compliance Officers are tasked with enforcing Bellingham municipal codes including litter, trash, public noise disturbances, and graffiti ordinances. At the time the petition was filed, the Neighborhood Code Compliance Officers worked in the police department. Due to changes in police reform legislation that became effective in July 2021, the positions were transferred to the public works department and the positions' supervisor changed. All other existing working conditions of the Neighborhood Code Compliance Officer have not changed.

The Warrant Officers' duties are directed by the court and can include court security, transportation of offenders, and verifying probation status. The Warrant Officers work at the police department.

The Parking Enforcement Officers' duties include enforcing the Bellingham Municipal Code with respect to parking laws, rules, and regulations. They work at the police department.

The Technical Support Specialists work on technology hardware issues, troubleshoot technology issues, and train other employees on how to use the technology. The positions work in the What-Comm Dispatch Center and the police department. The Accounting Technicians' duties include reconciling budgets, processing paperwork, double checking time sheets, and other fiscal responsibilities. The Accounting Technicians work at the police department. The Technical Support Specialist and Accounting Technician classifications are used in other departments throughout the city including in the fire department, information technology department, municipal court, public works department, and parks department. Because the classifications are used throughout the city, the positions have seniority and bumping rights between departments throughout the city. Employees have used these rights to change positions.

Prior to the filing of the current change of representation petition, GPNWE engaged in collective bargaining negotiations with the employer. The initial negotiations took place during the COVID-19 pandemic and economic downturn after GPNWE was certified as the exclusive bargaining representative. The GPNWE bargaining team included Dean Tharp, Jael Komac, Andy Wojcieszowski, Tyler Rouse, and Anne Boerner. Anne Boerner is a police support employee and included in the petitioned-for bargaining unit.

During negotiations the employer proposed several concessions to GPNWE. Those concessions impacted floating holidays, comp time, pay freezes, a change from estimated work hours to actual hours worked, furloughs, and a change to the records rotating shift approval process. While GPNWE opposed all the concessions, the parties had to work toward reaching a tentative agreement. The parties were able to reach a tentative agreement, which included some furloughs, a change to the floating holiday, limits on comp time, changes from assumed hours of work to actual hours of work, and the employer compensation the union agreed with.

The furloughs impacted all employees in the bargaining unit except for plant operators at the water and sewer treatment plant but were limited by regular review between GPNWE and the employer to determine if they continued to be necessary. The comp time restrictions affected employees who work overtime, including some of the police support employees and employees in public works. The floating holiday concessions impacted employees in the bargaining unit who had to work on holidays, including parks employees, sewer employees, and some police support employees.

Once the parties reached a tentative agreement on the 2020–21 collective bargaining agreement, the union took the tentative agreement to the dues-paying bargaining unit members for a ratification vote. Employees who are dues-paying members can attend membership meetings and vote on the ratification of the collective bargaining agreements. The union held a contract information meeting to explain the proposal to the membership. The membership was provided a copy of the track-changed collective bargaining agreement.

At least one of the petitioned-for employees in the police department participates on the bargaining team, attends membership meetings, and is able to vote on the ratification of the collective

bargaining agreement. Some of the petitioned-for employees are non-dues-paying members of GPNWE. Non-dues-paying members cannot hold union positions, attend membership meetings, or vote on the ratification of collective bargaining agreements. The 2020–21 collective bargaining agreement was ratified by the membership.

In 2021, GPNWE and the employer began negotiations for the successor 2022–23 collective bargaining agreement. The union's bargaining team included Dean Tharp, Jael Komac, Anne Boerner (police department), Tony Powers (public works), and Julie Olson (finance). At one point Tyler Rouse took Powers' place. The union had various proposals including some specific to the police support employees. The parties were not able to continue bargaining for the petitioned-for employees once the change of representation petition was filed on November 1, 2021.

In addition to negotiating collective bargaining agreements, GPNWE has also represented employees in grievances, including those in the petitioned-for bargaining unit. GPNWE has represented at least four employees in investigative disciplinary proceedings. Based on the testimony at hearing, GPNWE represented at least one non-dues-paying member on an individual investigatory matter.

After the 2021–22 collective bargaining agreement was implemented, issues arose with holiday pay. Employees were not being paid properly for the holiday premium pay. An employee in the sewer treatment plant notified GPNWE about the issue. GPNWE met with the employer, and the parties were able to resolve the dispute and correct the discrepancy for the employees in the bargaining unit, including those in the police records and police department.

During the processing of GPNWE's 2020 petition, Morgan Libby, a records employee and non-dues-paying member, created a Facebook page using GPNWE's name and posted comments critical of GPNWE and in support of WSCCCE. The page continued after GPNWE was certified as the labor representative. GPNWE asked Libby to take down the Facebook page or remove GPNWE's name from the page. When the page was not removed and the name not changed, GPNWE filed a lawsuit. After the filing of the lawsuit, Libby changed the name of the Facebook

page, and GPNWE dismissed the lawsuit. Libby filed an unfair labor practice complaint against GPNWE. The complaint is pending on appeal before the Commission.³

ANALYSIS

Applicable Legal Standards

Determination of Appropriate Bargaining Unit

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The purpose of this function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

In making bargaining unit determinations, this agency is directed to consider “[t]he duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation.” RCW 41.56.060. The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors will arise in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d 435 (1984).

³ *City of Bellingham (Guild of Pacific Northwest Employees)*, Decision 13525 (PECB, 2022).

This agency's role is to determine whether there is *a* community of interest, not the *best* community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015) (citing *Snohomish County*, Decision 12071 (PECB, 2014), and *City of Winslow*, Decision 3520-A (PECB, 1990)).

Severance

A labor organization may attempt to represent a portion of an existing bargaining unit represented by a different organization by “severing” that bargaining unit into two parts. *Cowlitz County*, Decision 12115 (PECB, 2014). To attempt a severance, the petitioning labor organization must have the support of at least 30 percent of the employees that would be included in the “severed” bargaining unit. *Id.* A petition to sever employees from an existing bargaining unit seeks to disrupt the status quo of the existing bargaining unit. To obtain severance, the petitioner must overcome the stability and maturity of relationships usually present in established bargaining units that lead to sound labor relations. To do so, the petitioner must establish that either (1) the petitioned-for employees no longer share a community of interest with the existing bargaining unit or (2) the incumbent bargaining representative has inadequately represented the petitioned-for employees. *State – Social and Health Services*, Decision 12542-B (PSRA, 2016).

The petitioner must show that a change in the community of interest has occurred to make the existing bargaining unit inappropriate. This is usually demonstrated by substantial changes to the job duties or working conditions of the petitioned-for employees or substantial changes in the employer's operations. *King County*, Decision 11441-A (PECB, 2013).

To show inadequate representation, the petitioner must demonstrate more than a short-term inability of the incumbent union to achieve the bargaining goals of the petitioned-for employees or the employees' dissatisfaction with their bargaining representative's accomplishments. *State – Social and Health Services*, Decision 12542-B. Inadequate representation may be shown by factors such as lack of opportunities to participate in union affairs, lack of collective bargaining agreement provisions addressing specific concerns of the employees at issue, lack of involvement by the petitioned-for employees in negotiation processes. Inadequate representation may also be

demonstrated by a lack of any formal or informal efforts by the incumbent union to resolve issues of concern to the employees at issue. Where a bargaining relationship has been in existence, the “history of bargaining” weighs against its disruption by severing the unit into two or more components. *Cowlitz County*, Decision 4960 (PECB, 1995). These considerations should not be read as a mechanical test, as each case is fact dependent and may present different variables worthy of consideration.

If the petitioner meets its burden of proof and the conditions for severance are met, the Commission will evaluate the appropriateness of the petitioned-for bargaining unit and whether the residual unit would maintain its appropriateness. *State – Social and Health Services*, Decision 12542-B. If either of the resulting bargaining units would be inappropriate under the statute, then severance shall not be granted, and the original unit shall be maintained. *Id.*

Application of Standards

While the labor organization representing the wall-to-wall bargaining unit has changed, the wall-to-wall bargaining unit has existed since 1976. Severing the petitioned-for employees from the wall-to-wall GPNWE bargaining unit is not appropriate because the existing community of interest of the bargaining unit has not been ruptured, and GPNWE has adequately represented the bargaining unit employees.

The petitioned-for employees continue to share a community of interest with the existing wall-to-wall bargaining unit. The only change that has occurred since at least 2020 is that the Neighborhood Code Compliance Officers changed locations because of a change in legislation. The Neighborhood Code Compliance Officers now work out of the public works department and report to a different supervisor, but the Neighborhood Code Compliance Officers’ work has remained unchanged. There has not been a substantial change in the employer’s operations. The remaining petitioned-for employees have continued to work in the same location, have the same reporting structure, and have maintained the same duties, skills, and working conditions since at least 2020, if not longer. Severing the petitioned-for bargaining unit would also create work jurisdiction issues. The Technical Support Specialist and Accounting Technician classifications exist in various departments across the city. These classifications currently have seniority and

bumping rights, and those rights have been used. Severing those employees that work in the police department and What-Comm Dispatch would create work jurisdiction issues with the remaining employees in the GPNWE bargaining unit.

WSCCCE alleges that GPNWE has not adequately represented the petitioned-for employees because those petitioned-for employees who are non-dues-paying members do not have the ability to participate in union affairs or the negotiation process, and GPNWE has not addressed specific concerns of the petitioned-for employees. Additionally, WSCCCE argues that GPNWE's acceptance of concessions in the 2020–21 collective bargaining agreement and the filing of a lawsuit against one of the petitioned-for employees constitute specific attacks on the petitioned-for police support employees.

Some petitioned-for employees have expressed dissatisfaction with GPNWE's representation, alleging lack of information being provided to them specifically and lack of access to participate in membership activities. Based on the record, those employees also appear to be non-dues-paying members who have elected to not fully participate in union membership. While non-dues-paying members do not have the ability to participate in membership meetings and ratification votes, dues-paying members have the ability to participate in both. Some of the petitioned-for dues-paying members participated in the process. The dissatisfaction appears to have stemmed from the non-dues-paying members believing that issues were not adequately addressed in the contract negotiations and that the changes in the collective bargaining agreement were targeted at those employees only. The fact that some members of a bargaining unit may have unique issues not shared by others is not a basis for severance. *Thurston County*, Decision 12727 (PECB, 2017). Additionally, those changes were applied across multiple classifications within the bargaining unit.

GPNWE has adequately represented the petitioned-for employees. GPNWE successfully negotiated and ratified a collective bargaining agreement on behalf of the bargaining unit, including the petitioned-for employees. While non-dues-paying members do not have access to membership meetings and voting rights, the collective bargaining agreement does apply to their positions. Additionally, those dues-paying, petitioned-for employees did have access to participate in union board positions and in the voting process. GPNWE and the employer entered into

negotiations for the successor collective bargaining agreement for 2022–23, including specific proposals that would impact the police support employees when the negotiations were stalled for the petitioned-for employees because WSCCCE filed the instant petition.

In addition to negotiating collective bargaining agreements on the members' behalf, GPNWE has also represented petitioned-for employees in disciplinary and grievance proceedings. This representation includes the representation of one of the petitioned-for non-dues-paying members. GPNWE did file a lawsuit against one of the non-dues-paying members because the member refused to delete or change the name of a Facebook page created under the name of GPNWE. GPNWE first requested the employee change the name or remove the page. When that was unsuccessful, GPNWE filed a lawsuit, which it dismissed after the employee changed the name of the Facebook page. The facts do not support a conclusion that GPNWE is not adequately representing the petitioned-for employees.

CONCLUSION

The petitioned-for employees continue to share a community of interest with the wall-to-wall GPNWE bargaining unit. GPNWE has adequately represented the petitioned-for employees, including those employees that are non-dues-paying members. Because the petitioned-for employees continue to have a community of interest and have been adequately represented, severance is not appropriate, and the petition is dismissed.

FINDINGS OF FACT

1. The City of Bellingham is a public employer within the meaning of RCW 41.56.030(13).
2. The Guild of Pacific Northwest Employees (GPNWE) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The Washington State Council of County and City Employees (WSCCCE) is a bargaining representative within the meaning of RCW 41.56.030(2).

4. The City of Bellingham (employer or city) employs approximately 880 employees. Approximately 400 of those employees are currently represented by GPNWE in a wall-to-wall bargaining unit. The wall-to-wall bargaining unit is currently described as, “All regular and nonuniformed public employees except the Professional Engineers in the Engineering department, Professional Librarians, Planners, Assistant Planner, City Attorney’s and Mayor’s confidential secretaries as per RCW 41.56.030, of the City of Bellingham, Washington.” *City of Bellingham*, Decision 13202 (PECB, 2020).
5. In 1976, the Washington State Council of County and City Employees (WSCCCE) was originally certified as the exclusive bargaining representative of the wall-to-wall bargaining unit. *City of Bellingham*, Decision 144 (PECB, 1976). WSCCCE remained the exclusive bargaining representative until 2020. In January 2020, GPNWE filed a change of representation petition for the wall-to-wall bargaining unit. On May 21, 2020, after an election, the Public Employment Relations Commission certified GPNWE as the exclusive bargaining representative of the wall-to-wall bargaining unit.
6. On November 1, 2021, WSCCCE filed a change of representation petition to sever approximately 24 employees in the wall-to-wall bargaining unit. The 24 employees are employed in the following classifications: Records Specialist, Neighborhood Code Compliance Officer, Warrant Officer, Parking Enforcement Officer, Technical Support Specialist at What-Comm Dispatch, Technical Support Specialist in the Records Bureau, and Accounting Technician.
7. GPNWE currently represents the petitioned for employees in the wall-to-wall bargaining unit. The work of the petitioned-for employees has remained the same since at least the bargaining unit was last certified in May 2020. The Records Specialists manage police records, assist officers with accessing and storing information, process evidence, and conduct public disclosures. The Records Specialists work at the police department.
8. The Neighborhood Code Compliance Officers are tasked with enforcing Bellingham municipal codes including litter, trash, public noise disturbances, and graffiti ordinances.

At the time the petition was filed, the Neighborhood Code Compliance Officers worked in the police department. Due to changes in police reform legislation that became effective in July 2021, the positions were transferred to the public works department and the positions' supervisor changed. All other existing working conditions of the Neighborhood Code Compliance Officer have not changed.

9. The Warrant Officers' duties are directed by the court and can include court security, transportation of offenders, and verifying probation status. The Warrant Officers work at the police department.
10. The Parking Enforcement Officers' duties include enforcing the Bellingham Municipal Code with respect to parking laws, rules, and regulations. They work at the police department.
11. The Technical Support Specialists work on technology hardware issues, troubleshoot technology issues, and train other employees on how to use the technology. The positions work in the What-Comm Dispatch Center and the police department. The Accounting Technicians' duties include reconciling budgets, processing paperwork, double checking time sheets, and other fiscal responsibilities. The Accounting Technicians work at the police department. The Technical Support Specialist and Accounting Technician classifications are used in other departments throughout the city including in the fire department, information technology department, municipal court, public works department, and parks department. Because the classifications are used throughout the city, the positions have seniority and bumping rights between departments throughout the city. Employees have used these rights to change positions.
12. Prior to the filing of the current change of representation petition, GPNWE engaged in collective bargaining negotiations with the employer. The initial negotiations took place during the COVID-19 pandemic and economic downturn after GPNWE was certified as the exclusive bargaining representative. The GPNWE bargaining team included Dean

Tharp, Jael Komac, Andy Wojcieszowski, Tyler Rouse, and Anne Boerner. Anne Boerner is a police support employee and included in the petitioned-for bargaining unit.

13. During negotiations the employer proposed several concessions to GPNWE. Those concessions impacted floating holidays, comp time, pay freezes, a change from estimated work hours to actual hours worked, furloughs, and a change to the records rotating shift approval process. While GPNWE opposed all the concessions, the parties had to work toward reaching a tentative agreement. The parties were able to reach a tentative agreement, which included some furloughs, a change to the floating holiday, limits on comp time, changes from assumed hours of work to actual hours of work, and the employer compensation the union agreed with.
14. The furloughs impacted all employees in the bargaining unit except for plant operators at the water and sewer treatment plant but were limited by regular review between GPNWE and the employer to determine if they continued to be necessary. The comp time restrictions affected employees who work overtime, including some of the police support employees and employees in public works. The floating holiday concessions impacted employees in the bargaining unit who had to work on holidays, including parks employees, sewer employees, and some police support employees.
15. Once the parties reached a tentative agreement on the 2020–21 collective bargaining agreement, the union took the tentative agreement to the dues-paying bargaining unit members for a ratification vote. Employees who are dues-paying members can attend membership meetings and vote on the ratification of the collective bargaining agreements. The union held a contract information meeting to explain the proposal to the membership. The membership was provided a copy of the track-changed collective bargaining agreement.
16. At least one of the petitioned-for employees in the police department participates on the bargaining team, attends membership meetings, and is able to vote on the ratification of the collective bargaining agreement. Some of the petitioned-for employees are

non-dues-paying members of GPNWE. Non-dues-paying members cannot hold union positions, attend membership meetings, or vote on the ratification of collective bargaining agreements. The 2020–21 collective bargaining agreement was ratified by the membership.

17. In 2021, GPNWE and the employer began negotiations for the successor 2022–23 collective bargaining agreement. The union’s bargaining team included Dean Tharp, Jael Komac, Anne Boerner (police department), Tony Powers (public works), and Julie Olson (finance). At one point Tyler Rouse took Powers’ place. The union had various proposals including some specific to the police support employees. The parties were not able to continue bargaining for the petitioned-for employees once the change of representation petition was filed on November 1, 2021.
18. In addition to negotiating collective bargaining agreements, GPNWE has also represented employees in grievances, including those in the petitioned-for bargaining unit. GPNWE has represented at least four employees in investigative disciplinary proceedings. Based on the testimony at hearing, GPNWE represented at least one non-dues-paying member on an individual investigatory matter.
19. After the 2021–22 collective bargaining agreement was implemented, issues arose with holiday pay. Employees were not being paid properly for the holiday premium pay. An employee in the sewer treatment plant notified GPNWE about the issue. GPNWE met with the employer, and the parties were able to resolve the dispute and correct the discrepancy for the employees in the bargaining unit, including those in the police records and police department.
20. During the processing of GPNWE’s 2020 petition, Morgan Libby, a records employee and non-dues-paying member, created a Facebook page using GPNWE’s name and posted comments critical of GPNWE and in support of WSCCCE. The page continued after GPNWE was certified as the labor representative. GPNWE asked Libby to take down the Facebook page or remove GPNWE’s name from the page. When the page was not removed and the name not changed, GPNWE filed a lawsuit. After the filing of the lawsuit, Libby

changed the name of the Facebook page, and GPNWE dismissed the lawsuit. Libby filed an unfair labor practice complaint against GPNWE. The complaint is pending on appeal before the Commission.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 4 through 20, the petitioned-for employees continue to share a community of interest with the existing bargaining unit, have been adequately represented by the incumbent union described in findings of fact 4, and it is inappropriate to sever the petitioned-for employees from the existing bargaining unit.

ORDER

The representation petition filed by the Washington State Council of County and City Employees in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 3rd day of November, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", is written over the printed name of Michael P. Sellars.

MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.



RECORD OF SERVICE

ISSUED ON 11/03/2022

DECISION 13588 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 134604-E-21

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