

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

BENTON COUNTY SHERIFF'S OFFICE
SUPPORT STAFF GUILD

Involving certain employees of:

BENTON COUNTY

CASE 135994-E-22

DECISION 13740 - PECB

ORDER OF DISMISSAL

Daniel E. Thenell and Paige Chrz, Attorneys at Law, Thenell Law Group, P.C., for the Benton County Sheriff's Office Support Staff Guild.

Stephen J. Hallstrom, Deputy Prosecuting Attorney, for Benton County.

David W. Ballew, Attorney at Law, Reid, Ballew, Leahy & Holland, L.L.P., for Teamsters Local 839.

On October 27, 2022, the Benton County Sheriff's Office Support Staff Guild (Guild) filed a petition to represent the Records Clerks working in the Sheriff's Office for Benton County (employer). The Records Clerks working in the Sheriff's Office are included in a bargaining unit that consists of both the petitioned-for employees and the Records Clerks working in the employer's Corrections Department which are represented by Teamsters Local 839. The Teamsters and employer were parties to a collective bargaining agreement that expired on December 31, 2022. The Teamsters opposed the Guild's petition, and the employer took no position. A hearing was held on June 29 and 30, 2022. The parties filed post-hearing briefs to complete the record.¹

¹ The employer did not file a post-hearing brief in this matter.

The petition is dismissed. Severance of the Records Clerks working in the Sheriff's Office from the existing Records Clerks bargaining unit is not appropriate. The petitioned-for employees continue to share a community of interest with the employees in the existing bargaining unit. And the Guild has not demonstrated that the Teamsters are unable to adequately represent the Sheriff's Office Records Clerks.

BACKGROUND

The employer employs Records Clerks who maintain records in the Sheriff's Office and Corrections' Department. The Records Clerks maintain and update paper and electronic files, lists, records, and logs. The Records Clerks verify and input data and complete other unique needs as directed that are specific to the area assigned. They also fulfill all public records requests for their respective departments. The Records Clerks must have comprehensive knowledge of their department's public records functions and processes in order to fulfill requests and ensure that non-disclosable information is redacted, the Records Clerks must have a comprehensive knowledge of their department's public records functions and processes. The Records Clerk position requires a high school diploma and three years' experience in general office, clerical, or related duties.

The Records Clerks are currently in two distinct silos – the Sheriff's Office and the Corrections Department. The clerks in the Sheriff's Office are part of the office's support section and includes the records sergeant, records clerk, public records clerk, and evidence technician duties. The evidence technician is also responsible for animal control work and documents related to missing persons. The clerks in the Corrections Department work in the Jail Records Section and include employees performing Records Sergeant, Corrections Clerk, Jail Records Clerk, and Warrant Clerk duties.

While the Records Clerks perform the same general duties, there are some differences regarding their specific duties and working conditions. The Sheriff's Office Records Clerks are subject to a distinct policy manual that covers various topics associated with law enforcement functions, including report preparations, concealed pistol licensing, missing persons, child abuse, adult abuse,

and body worn cameras. All disciplinary matters and grievances for the Sheriff's Office Records Clerks are handled by the Sheriff and the Sheriff's Office staff. The Corrections Department Records Clerks are subject to policies that are tailored towards corrections employees, such as perimeter security, inmate records, research involving inmates, contraband watch, and reporting in-custody deaths. All disciplinary matters and grievances for the Corrections Department Records Clerks are handled by the Corrections Chief and Corrections Office staff. There is no overlap in duties between the Sheriff's Office and Corrections Department Records Clerks, and the two groups of employees do not fill in for each other in the event of staffing issues.

Prior to 2003, the employer housed the Records Clerks for both the Sheriff's Office and the Corrections Department in the same facility, and both groups reported to the Sheriff. In 2003, the employer moved the employees performing correctional records work to the employer's correctional facility. The Records Clerks working for the Sheriff's Office remained in the facility with the Sheriff's Office.

In 2019, the Board of County Commissioners (Commissioners) removed the Corrections Department from the under the supervision of the Sheriff's Office. The Commissioners then assumed supervision of the Corrections Department and appointed a Corrections Chief to oversee the day-to-day operation of the facility. The duties of the Corrections Department Records Clerks did not change because of the reorganization and the Corrections Department Records Clerks continued to report to the same first line supervisors.

The Records Clerks are in a bargaining unit represented by the Teamsters. The bargaining relationship between the Teamsters and employer dates back to at least 1992. The Teamsters appoints a Sheriff's Office shop steward and Corrections Department shop steward to serve as representatives in dealings with management. The Teamsters also conduct meetings with each work group to establish and formulate proposals that will be raised during negotiations with the employer. The Teamsters have pursued grievances on behalf of all the bargaining unit employees. The Teamsters have successfully negotiated collective bargaining agreements on behalf of the entire bargaining unit even after the removal of the Corrections Department from the Sheriff's Office in 2019. The appropriateness of the unit has not been questioned since its formation until

the filing of this petition. The Teamsters and employer are parties to a collective bargaining agreement that expired on December 31, 2022, and the Guild filed its representation petition within RCW 41.56.070 window period.

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 goal in making unit determinations is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer and avoid potential work jurisdiction disputes and fragmentation. *Quincy School District*, Decision 3962-A (PECB, 1993); *King County (Amalgamated Transit Union, Local 587)*, Decision 6696 (PECB, 1999).

In making bargaining unit determinations, this agency considers “the duties, skills, and working conditions of the public employees; the history of collective bargaining . . . ; the extent of organization among the public employees; and the desire of the public employees.” RCW 41.56.060. Bargaining unit determinations are made on a case-by-case basis, and the criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). 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).

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); *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). The petitioning labor organization seeking severance must initially demonstrate 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. 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 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 a disruption or rupture in the community of interest that renders the existing bargaining unit inappropriate. Among the types of changes that can disrupt or rupture an existing community of interest are 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. Examples of inadequate representation may be 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.

Should the petitioner meet its burden of proof required for severance are met, the appropriateness of the petitioned-for bargaining unit and whether the residual unit must still be evaluated. 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. *State – Social and Health Services*, Decision 12542-B.

Application of Standards

Severing the Sheriff’s Office Records Clerks from the larger Records Clerks bargaining unit is not appropriate because the Guild cannot meet either of the two standards for severance. The existing community of interest of the bargaining unit has not been ruptured. The existing bargaining unit remains appropriate because the petitioned-for employees continue to share a community of interest with the existing Records Clerk bargaining unit. The only changes to the bargaining unit structure occurred when the Corrections Department Records Clerks moved to the corrections facility in 2003 and when the Corrections Department moved from the Sheriff’s Office to under the purview of the Commissioners in 2019. Neither of these changes disrupted the existing community of interest to such an extent that it rendered the existing bargaining unit inappropriate.

The duties, skills, and working conditions of the employees also demonstrate that the existing bargaining unit continues to be appropriate. The Sheriff’s Office Records Clerks and Corrections Department Records Clerks perform the same kinds of record keeping and management duties, albeit for two separate operations within the employer’s workforce. Subjecting the Records Clerks in the Sheriff’s Office to different policies and lines supervision than the Records Clerks in the Corrections Department does not render the existing bargaining unit inappropriate. Numerous instances exist where this agency has certified a bargaining unit composed of two or more distinct operations within an employer’s workforce. *See, e.g., Waterville School District*, Decision 9879 (PECB, 2007) (finding a bargaining unit of maintenance and grounds, paraeducators, secretaries,

cooks, bus drivers, and sign language interpreters appropriate under the statute). The Sheriff's Office Records Clerks and Corrections Department Records Clerks have been in their separate silos for at least one contract cycle, and there is no evidence that the distinct working conditions of the two groups of employees have disrupted the bargaining process.

The extent of organization of the at-issue employees also demonstrates that the existing bargaining unit configuration continues to be appropriate. The bargaining unit includes all of the employees that perform Records Clerk work. Both sets of Records Clerks operate for their respective entity to further the employer's goal of maintaining records for their respective entity and fulfilling all public records requests received by their office. Severing the Records Clerks from the Sheriff's Office into a separate bargaining unit would not create work jurisdiction issues, but that does not render the existing unit configuration inappropriate.

The history of bargaining demonstrates that the existing bargaining unit configuration continues to be appropriate. Examining the history of bargaining requires consideration and evaluation of the length of the bargaining relationship, the potential disruption of bargaining stability if the historical unit is disturbed, and potential fragmentation of bargaining units. *Vancouver School District*, Decision 4022-A (PECB, 1993). The bargaining relationship between the employer and the Teamsters has existed for more than 30 years. The reasons for disturbing such a long-established relationship and resulting collective bargaining agreement must be compelling. *Id.* Nothing in this record demonstrates that the Teamsters lack the ability to successfully negotiate a collective bargaining agreement on behalf of both the Sheriff's Office Records Clerks and Corrections Department Records Clerks.

The Guild asserts that a separate bargaining unit of just Sheriff's Office Records Clerks is an appropriate bargaining unit configuration and, therefore, its petition is appropriate. But the Guild misapplies the standard for severance. Arguably a separate bargaining unit of Sheriff's Office Records Clerks is appropriate based upon the 2019 changes and may be more appropriate than the existing bargaining unit configuration. However, this agency has consistently declined to use severance as a means to create a more perfect unit. *Shoreline Fire Department*, Decision 12954 (PECB, 2018). Here, the Guild failed to demonstrate that the existing bargaining unit of Sheriff's

Office Records Clerks and Corrections Department Records Clerks is inappropriate under RCW 41.56.060. So, there is no need to examine the appropriateness of the Guild's proposed bargaining unit configuration.²

Likewise, the Guild also cannot demonstrate that the incumbent bargaining representative has inadequately represented the petitioned-for employees. In order to show inadequate representation by the Teamsters, the Guild needed to demonstrate that the Sheriff's Office Records Clerks lacked opportunities to participate in union affairs; that the collective bargaining agreement lacked provisions addressing specific concerns of the employees at issue; and that the petitioned-for employees lacked involvement by the petitioned-for employees in negotiation processes. They cannot do so.

The Teamsters have adequately represented the Sheriff's Office Records Clerks. The Sheriff's Office Records Clerks maintain their own shop steward, consistently held positions on the bargaining unit's negotiations team, and have provided input to establish and formulate proposals that will be raised during negotiations with the employer. The Teamsters have filed unfair labor practices and grievances on behalf of the Sheriff's Office Records Clerks.

The Guild asserts that the record demonstrates that the Teamsters have failed to adequately represent the Sheriff's Office Records Clerks. The Guild points to disagreement between the Sheriff's Office Records Clerks and Corrections Department Records Clerks about how negotiations should be handled. The Sheriff's Office Records Clerks desired to press the employer for a larger wage increase than what the Corrections Department Records Clerks sought. The Sheriff's Office Records Clerks also believe that they deserve a higher rate of pay than the

² In a severance case, the desires of employees will only be ascertained through a representation election if the petitioning bargaining representative demonstrates the existing bargaining unit is inappropriate and the Commission precludes testimony from employees concerning their preferred bargaining representative. *See Kitsap County*, Decision 8170 (PECB, 2003).

Corrections Department Records Clerks based upon differences in the amount and detail of work performed by each group.

These arguments do not show that the Teamsters have inadequately represented the petitioned-for employees but instead merely demonstrate their dissatisfaction with the Teamsters' accomplishments or the Teamsters failure to achieve the short-term bargaining goals of the Sheriff's Office Records Clerks. The present of unique issues for some members of a bargaining unit not shared by others in the bargaining unit is not a basis for severance. RCW 41.56.060 does not require that all employees in a bargaining unit be identically situated but only that they share a "common essence." *Pierce County*, Decision 8892 (PECB, 2005), *aff'd*, Decision 8892-A (PECB, 2006); *see also South Central School District*, Decision 5670-A (PECB, 1997).

Finally, both at hearing and in its brief the Guild asserted that one reason the Sheriff's Office Records Clerks sought different representation was for access to the Fraternal Order of Police's legal defense fund, which provides legal defense for criminal, civil, and administrative proceedings. The services offered or utilized by competing labor organizations are not part of the RCW 41.56.060 unit determination criteria and are not a factor for consideration in severance cases. *See State – Social and Health Services*, Decision 12542-B (identifying the factors to be considered in severance cases). Like the prohibition on eliciting testimony concerning an employee's preference of labor organizations, it would be imprudent for this Commission to consider the kind of services provided by a particular bargaining representative in the unit determination process. Employees may have various reasons for desiring the services or benefits of one particular labor organization over another. Those reasons should only be ascertained through a secret ballot and this Commission should not place itself in a position to subjectively consider the services provided by one bargaining representative over another.

CONCLUSION

Severance is not appropriate. The petitioned-for employees continue to share a community of interest with the employees in the existing bargaining unit and the Teamsters continue to

adequately represent the entirety of the existing bargaining unit. The Guild's representation petition is dismissed.

FINDINGS OF FACT

1. Benton County is a public employer within the meaning of RCW 41.56.030(13).
2. The Benton County Sheriff's Office Support Staff Guild is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Teamsters Local 839 is a bargaining representative within the meaning of RCW 41.56.030(2).
4. Teamsters represents a bargaining unit of Records Clerks working in the employer's Sheriff's Office and Corrections Department.
5. The Records Clerks maintain and update paper and electronic files, lists, records, and logs. The Records Clerks verify and input data and complete other unique needs as directed that are specific to the area assigned. In order to provide records in a timely manner while ensuring that non-disclosable information is redacted, the Records Clerks must have a comprehensive knowledge of their department's public records functions and processes. The records clerk positions require a high school diploma and three years' experience in general office, clerical, or related duties.
6. The Records Clerks are currently in two distinct silos – the Sheriff's Office and the Corrections Department. The clerks in the Sheriff's Office are part of the office's support section and includes the Records Sergeant, Records Clerk, Public Records Clerk, and Evidence Technician duties. The Evidence Technician is also responsible for animal control work and documents related to missing persons. The clerks in the Corrections Department work in the Jail Records Section and include employees performing Records Sergeant, Corrections Clerk, Jail Records Clerk, and Warrant Clerk duties.

7. The Sheriff's Office Records Clerks are subject to a distinct policy manual that covers various topics associated with law enforcement functions, including report preparations, concealed pistol licensing, missing persons, child abuse, adult abuse, and body worn cameras. All disciplinary matters and grievances for the Sheriff's Office Records Clerks are handled by the Sheriff and the Sheriff's Office staff.
8. The Corrections Department Records Clerks are subject to policies that are tailored towards corrections employees, such as perimeter security, inmate records, research involving inmates, contraband watch, and reporting in-custody deaths. All disciplinary matters and grievances for the Corrections Department Records Clerks are handled by the Corrections Chief and Corrections Office staff.
9. There is no overlap in duties between the Sheriff's Office and Corrections Department Records Clerks and the two groups of employees do not fill in for each other in the event of staffing issues.
10. Prior to 2003, the employer housed the Records Clerks for both the Sheriff's Office and the Corrections Department in the same facility, and both groups reported to the Sheriff. In 2003, the employer moved the employees performing correctional records work to the employer's correctional facility. The Records Clerks working for the Sheriff's Office remained in the facility with the Sheriff's Office.
11. In 2019, the Board of County Commissioners (Commissioners) removed the Corrections Department from under the supervision of the Sheriff's Office. The duties of the Corrections Department Records Clerks did not change because of the reorganization and the Corrections Department Records Clerks continued to report to the same first line supervisors.
12. Teamsters appoints a Sheriff's Office shop steward and Corrections Department shop steward to serve as representatives in dealings with management. Teamsters also conduct

meetings with each work group to establish and formulate proposals that will be raised during negotiations with the employer.

13. Teamsters have pursued grievances on behalf of all the bargaining unit employees. The employer and Teamsters have been able to negotiate collective bargaining agreements on behalf of the entire bargaining unit, including in 2019 following the removal of the Corrections Department from the Sheriff's Office.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 4 through 11, the bargaining unit described in finding of fact 4 continues to be an appropriate bargaining unit under RCW 41.56.060.
3. Based upon findings of fact 12 and 13, Teamsters have adequately represented the employees included in the bargaining unit described in finding of fact 4.

ORDER

The representation petition filed by the Benton County Sheriff's Office Support Staff Guild in the above=entitled matter is DISMISSED.

ISSUED at Olympia, Washington, this 5th day of December, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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 12/05/2023

DECISION 13740 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 135994-E-22

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