

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

GRAND COULEE POLICE OFFICERS
ASSOCIATION/WASHINGTON
FRATERNAL ORDER OF POLICE

Involving certain employees of:

CITY OF GRAND COULEE

CASE 136238-E-23

DECISION 13806 - PECB

ORDER OF DISMISSAL

Daniel E. Thenell and Paige Chrz, Attorneys at Law, Thenell Law Group, P.C., for the Grand Coulee Police Officers Association/Washington Fraternal Order of Police.

Julie Norton, Attorney at Law, Ogden Murphy Wallace, P.L.L.C., for the City of Grand Coulee.

David Ballew, Attorney at Law, Reid, Ballew, Leahy & Holland, L.L.P., for Teamsters Local 760.

On February 17, 2023, the Grant Coulee Police Officers Association/Washington Fraternal Order of Police (Association) filed a petition to represent the Police Officers working for the City of Grand Coulee (employer). The Police Officers are included in a city-wide bargaining unit which is represented by Teamsters Local 760 (Teamsters).

The Teamsters and employer were parties to a collective bargaining agreement that expired on December 31, 2022. The Teamsters opposed the Association's petition, and the employer took no

position.¹ Processing of this matter was held in abeyance by an unfair labor practice complaint filed by the Teamsters alleging the employer failed to ratify the recently negotiated collective bargaining agreement. Case 136316-U-23. On September 25, 2023, the Teamsters withdrew its complaint and processing of the Association's petition resumed.

On December 11, 2023, Representation Case Administrator Dario de la Rosa conducted a hearing and the Teamsters and Association filed post-hearing briefs to complete the record.²

The petition is dismissed. Severance of the Police Officers from the existing all employees bargaining unit is not appropriate. The petitioned-for employees continue to share a community of interest with the existing bargaining unit and the Association has not demonstrated that the Teamsters are unable to adequately represent the Police Officers.

BACKGROUND

The Police Officers working for the employer provides law enforcement for the city and the Grand Coulee Dam. The Police Officers work in partnership with the community to protect life and property, reduce crime, and enhance security and quality of life. The Police Officers provide emergency services, security, and protection of the citizens of the city by patrolling businesses and residential areas, responding to requests for information and assistance, investigating criminal activity and otherwise ensure enforcement of all local, state, and federal laws and regulations.

¹ During the initial investigation, the employer asserted the police sergeant is a supervisor who should be excluded from the bargaining unit under WAC 391-35-320. Prior to the hearing the employer withdrew this challenge.

² The employer elected to not file a post-hearing brief in this matter.

The Police Officers are currently included in a wall-to-wall nonsupervisory bargaining unit that includes utility workers, treatment plant operators, assistant clerks, laborers, and the deputy clerk.³ The bargaining unit was established through voluntary recognition and was not certified by this agency. The employer and Teamsters have successfully negotiated multiple collective bargaining agreements on behalf of the entirety of the bargaining unit and nothing in this record demonstrates the employer has recently reorganized its workforce to disrupt the exiting community of interest.

The Teamsters appoint a shop steward from the utility side and police side of the bargaining unit. The shop stewards participate in negotiations with a Teamsters representative. When preparing for negotiations, the Teamsters invites every bargaining unit employee to attend planning meetings where the employees were able to make suggestions for bargaining demands.

Officer Matthew Gilbert testified that the Police Officers recently had concerns about 12-hour shift scheduling. The employer was requiring the Police Officers to work day and graveyard shifts in the same week. Gilbert believes this was causing an unsafe working environment due to the erratic sleep schedules for the employees. Gilbert also testified that Police Officers are required to be on-call and remain in the city limits during this time which limits their ability to engage in other activities if they are to be called into work. The Police Officers do not know how they are being compensated for the on-call pay.

Teamsters Representative Gilbert Gallegos testified that the Teamsters and employer were able to negotiate a memorandum of understanding concerning the 12-hour shifts. Gilbert also testified that the Teamsters and employer agreed to lower the uniform allowance for employees from \$1200 to \$800 and that this might require employees to have out-of-pocket expenses to cover the costs of

³ The population of the City of Grand Coulee is less than 2,500 people and therefore the Police Officers are not eligible for interest arbitration and may be included in bargaining units with other non-interest arbitration eligible employees. RCW 41.56.030(14) and WAC 391-35-310.

uniforms. Gallegos testified that the agreement on the uniform allowance was in consideration as part of a broader package during negotiations.

The Teamsters pursued both grievances and unfair labor practice complaints on behalf of the Police Officers in the bargaining unit as well as other bargaining unit employees. Gilber testified that he was not satisfied with the outcome of a grievance that he filed, but that grievance was still being processed by the employer and union at the time of hearing.

ANALYSIS

Applicable Legal Standard

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 Standard

Severing the Police Offices from the larger wall-to-wall bargaining unit is not appropriate because the Association has not met 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 wall-to-wall bargaining unit. This record does not demonstrate any appreciable changes to the bargaining unit that disrupted the existing community of interest to such an extent that it rendered the existing bargaining unit configuration inappropriate.

The extent of organization of the at-issue employees supports a conclusion that the existing bargaining unit configuration continues to be appropriate. The bargaining unit includes all the nonsupervisory employees in the employer’s workforce. A “wall-to-wall” unit is normally thought of as an appropriate, if not the most appropriate, bargaining unit structure. *Raymond School District*, Decision 3202 (PECB, 1989). The Police Officers are the only employees in the employer’s workforce who perform law enforcement duties and severing the Police Officers into a separate bargaining unit would not create work jurisdiction issues. That fact also does not render

the existing unit configuration inappropriate. Rather, it simply indicates there is another possible appropriate bargaining unit.

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 40 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 Police Officers and the remaining bargaining unit. While there may have been some dissatisfaction with the outcome of a particular bargaining subject, this does not indicate the Teamsters were not able to negotiate on the Police Officer's behalf.

Likewise, the Association failed to demonstrate that the incumbent bargaining representative has inadequately represented the petitioned-for employees. In order to show inadequate representation by the Teamsters, the Association needed to demonstrate that the Police Officers 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 Police Officers. The Police Officers 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 Police Officers.

While there may have been some dissatisfaction with the results of negotiations with the employer, that dissatisfaction does not show that the Teamsters have inadequately represented the petitioned-for employees. The presence 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).

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. The City of Grand Coulee is a public employer within the meaning of RCW 41.56.030(13).
2. The Grand Coulee Police Officers Association/Washington Fraternal Order of Police 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. The Police Officers are currently included in a wall-to-wall nonsupervisory bargaining unit that includes utility workers, treatment plant operators, assistant clerks, laborers, and the deputy clerk.
5. The Police Officers provide emergency services, security, and protection of the citizens of the city by patrolling businesses and residential areas, responding to requests for

information and assistance, investigating criminal activity, and otherwise ensure enforcement of all local, state, and federal laws and regulations.

6. The employer and Teamsters have successfully negotiated multiple collective bargaining agreements on behalf of the entirety of the bargaining unit and nothing in this record demonstrates the employer has recently reorganized its workforce to disrupt the exiting community of interest.
7. The Teamsters appoint a shop steward from the utility side and police side of the bargaining unit. The shop stewards participate in negotiations with a Teamsters representative. When preparing for negotiations, the Teamsters invited every bargaining unit employee to attend planning meetings where the employees were able to make suggestions for bargaining demands.
8. The Teamsters pursued both grievances and unfair labor practice complaints on behalf of the Police Officers in the bargaining unit as well as other bargaining unit employees.

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 and 5, 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 6 through 8, Teamsters have adequately represented the employees included in the bargaining unit described in finding of fact 4.

ORDER

The representation petition filed by the Grand Coulee Police Officers Association/Washington Fraternal Order of Police in the above-entitled matter is DISMISSED.

ISSUED at Olympia, Washington, this 27th day of March, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MICHAEL F. 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 03/27/2024

DECISION 13806 - 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 136238-E-23

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