

Grant County, Decisions 6704 AND 6705 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
GRANT COUNTY	)	CASE 13742-C-98-0868
	)	
For clarification of an existing	)	DECISION 6704 - PECB
bargaining unit of employees	)	
represented by:	)	
	)	
TEAMSTERS UNION, LOCAL 760	)	
	)	
In the matter of the petition of:	)	
	)	
INTERNATIONAL UNION OF	)	CASE 13766-C-98-0870
OPERATING ENGINEERS, LOCAL 280	)	
	)	DECISION 6705 - PECB
For clarification of an existing	)	
bargaining unit of employees of:	)	
	)	ORDER CLARIFYING
GRANT COUNTY	)	BARGAINING UNIT
	)	
	)	

Davies, Roberts & Reid, L.L.P., by Kenneth J. Pedersen, Attorney at Law, appeared on behalf of Teamsters Union, Local 760.

Ronald A. McLean, Business Representative, appeared on behalf of Operating Engineers, Local 280.

Menke Jackson Beyer & Elofson, L.L.P., by Anthony F. Menke, Attorney at Law, appeared on behalf of the employer.

On February 27, 1998, Teamsters Union, Local 760 filed a petition with the Public Employment Relations Commission under Chapter 391-

35 WAC, seeking clarification of an existing bargaining unit of employees of Grant County (employer). In its petition, Local 760 asserted that three job classifications assigned to a new repair facility perform work historically and currently performed by members of the public works bargaining unit it represents, and that those classifications should be included in that bargaining unit.

On March 9, 1998, International Union of Operating Engineers, Local 280 filed a petition with the Commission under Chapter 391-35 WAC, also seeking clarification of an existing bargaining unit of employees of Grant County (employer). In its petition, Local 280 asserted that a lead/diesel mechanic position formerly located at the employer's landfill has been relocated to the new Central Equipment Repair Facility, so that position and two others at the new facility should be included in the solid waste division bargaining unit it represents.

A hearing was set in Case 13742-C-98-0868 for July 9, 1998. A representative of Local 280 entered an appearance at that hearing, and moved for intervention. Upon learning that the above-captioned cases approached the same problem from different perspectives, and upon Local 280 waiving the notice required by WAC 391-35-090, the cases were consolidated for hearing and decision. The employer and Local 760 filed briefs. Local 280 did not file a brief.

Based on the evidence and arguments presented, the Executive Director concludes that the positions at issue are properly allocated, under RCW 41.56.060, to the bargaining unit represented by Teamsters Union, Local 760.

BACKGROUND

Grant County encompasses a large, and relatively sparsely populated, area in central Washington. The county seat is in Ephrata and the largest city in the county is Moses Lake. Other population centers include the cities of Othello and Quincy. The economy is agrarian, and is heavily dependent on a network of federal, state, and county highways to move people and produce both within and outside of the county.

To fulfill its responsibilities for the construction and maintenance of county roads, the employer has divided its land area into three road districts:

- Road district 1 is to the north, and has a facility in the town of Hartline.
- Road district 2 covers the central portion of the area, and has a facility located in Moses Lake.
- Road district 3 is to the south, and has facilities in Quincy and Mattawa. Both employ approximately the same complement of employees as does District 1.

Each of the road districts is staffed by a mechanic, foremen, and employees classified as drivers or equipment operators. The mechanics in the district facilities work on dump trucks, pickup trucks, road graders, chip sealing equipment, and other equipment used in the construction and maintenance of roads. All those employees are represented by Local 760. The bargaining relation-

ship between the employer and Local 760 has been in existence for many years.¹

The Solid Waste Division of the Grant County Department of Public Works operates a landfill. Local 280 is the exclusive bargaining representative of employees working at the landfill.² That bargaining unit has historically included a mechanic who worked at the landfill, as well as employees in landfill operator and landfill attendant classifications.

In addition to the employees working at the district facilities and the landfill, the public works department workforce also includes engineering technical employees and clerical employees.

In 1997, the employer began construction of a "Public Works Center" in Ephrata. One of the two new buildings houses the administrative, engineering, and traffic divisions, which were formally housed in the county courthouse at Ephrata; the second building houses the "road shop" and a central shop. The new center was intended to be the central repair facility for all county-owned equipment, so that repair work would no longer be done at the

¹ Notice is taken of the Commission's docket records, which indicate cases for a Teamster-represented "operations and maintenance" bargaining unit dating back to Case 259-M-76-62, filed in May of 1976.

² See, Grant County, Decision 301 (PECB, 1977). IUOE, Local 370 was certified as exclusive bargaining representative of "All employees of the Grant County, Washington, Solid Waste Department", excluding foremen, supervisors and office employees. There were eight employees in the bargaining unit at that time.

district facilities. Similarly, it was envisioned that the individual road supervisors would no longer be supervising the mechanics, and that a central shop / equipment maintenance supervisor would coordinate equipment maintenance and supervise the mechanics. An additional component of the change to a centralized facility was that the mechanics would work on all county-owned equipment, not just road equipment or just solid waste equipment. This includes county-owned vehicles operated by other departments, such as the sheriff's department, assessor, and coroner.

Early in 1997, the employer informed Local 280 that it was opening the new equipment repair facility, and that the position and work of the diesel mechanic historically employed at the landfill was being transferred to the new facility. While mechanic and service mechanic positions at the new facility were to be filled with new hires from the outside, the employer advised Local 280 that it was filling the new lead / diesel mechanic position by transferring the employee who had held the diesel mechanic position at the landfill. Negotiations for a 1997-1999 collective bargaining agreement were then ongoing between the employer and Local 280.

On May 28, 1997, Director of Public Works Michael A. Murray sent a letter to Business Representative Victor Serna of Local 760, as follows:

As you may be aware Grant County has recently completed the construction of a New Central Equipment Repair Facility at the Port of Ephrata and is in the process of manning this facility. This facility will provide equipment/vehicle repair and maintenance services for all Grant County owned equipment, and may provide such

services to other agencies on a contractual basis.

For informational purposes the positions and the corresponding rates of pay are as follows (Copy of Job Descriptions enclosed):

Central Shop Manager/ Equipment Maint. Supervisor	\$2400-\$3000/Month
Lead/Diesel Mechanic	\$2172-\$2715/Month
Mechanic	\$1980-\$2474/Month
Service Mechanic	\$1584-\$1980/Month

The position of Cental Shop manager is an entirely new Supervisory position and the rate of pay was set by the County Commissioners. **The Lead/Diesel Mechanic position is basically the same position as Diesel Mechanic and has been filled with a transfer from the landfill at the current rate of pay.** The mechanic and Service Mechanic are in the process of being filled from the outside at current rate of pay for these positions.

As a result of these changes there will no longer be a mechanic at the landfill. Equipment repairs at the Landfill will be performed by Central Shop personnel or private shops. Operations at the Road District Shops will remain unchanged except that most major repairs will be performed at the Central Shop or with the assistance of Central Shop personnel.

[Emphasis by **bold** supplied.]

At the time Murray sent that letter, the employer and Local 760 were also engaged in negotiations for a successor agreement. Serna testified that the issue of which union represented which employees was not raised, and Local 760 apparently believed that the three referenced positions would be incorporated into its existing bargaining unit and that there were no issues left to bargain.

The employer and Local 760 signed their successor contract under date of July 3, 1997. Serna testified that it was some time thereafter that he was told by bargaining unit members that the mechanics working in the new central shop were not considered to be members of the bargaining unit represented by Local 760.

Beginning in September of 1997, Local 280 identified recognition as exclusive bargaining representative of the three central equipment employees as an issue for its 1997 contract negotiations. It apparently reiterated its position in several letters to the employer, but that correspondence was not put into evidence.

Serna eventually wrote a letter to Murray on December 18, 1997, as follows:

As per the current Collective Bargaining Agreement (CBA) please be advised that all mechanics, service mechanics and diesel mechanics are part of the Bargaining Unit. Therefore, the Union requests that all employees under these classifications become members in good standing as stated in Article 1 of the Labor Agreement.

Please refer to the job descriptions enclosed for your consideration, as well as Appendix "A", page 31, of the CBA, which denotes the classification in question.

If you have any questions, please feel free to contact me.

Murray replied with a letter to Serna dated December 23, 1997, as follows:

In response to your letter dated December 18, 1997 at this time it is our opinion that the mechanics in the Central Shop are not part of any Bargaining Unit. The Grant County Central Shop is not part of the Road, Traffic, Administrative or Engineering Divisions of the Public Works Department. The Central Shop employee's wages are not paid by County Road Funds and they provide equipment repair services for all County owned equipment. The Central Equipment Repair Division is separate and distinct from the Divisions recognized by the bargaining agreement.

After an additional delay of two months, Local 760 and Local 280 each initiated a unit clarification proceeding.

POSITIONS OF THE PARTIES

Local 760 argues that the "accretion" doctrine should apply in this case. It urges that the factors spelled out in City of Seattle, Decision 6145 (PECB, 1997) apply in this instance, and clearly justifying a decision that Local 760 should be the exclusive bargaining agent for these newly-created positions.

Local 280 points out that the mechanic position transferred from the landfill has historically been included in the bargaining unit it represents. It contends that the physical relocation of that position away from the rest of the solid waste bargaining unit does not justify removing it from the bargaining unit.

The employer argues that the employees in the new central equipment repair facility have a separate community of interest unto

themselves, and that it should be "up to the mechanics to decide their destiny in terms of representation." The employer contends there has been a substantial change in operations, whereby all county-owned vehicles will now be repaired in new facility.

DISCUSSION

Community of Interest

The determination of appropriate bargaining units under Chapter 41.56 RCW is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060. In King County, Decisions 5910-A (PECB, 1997), the Commission described the purpose of the unit determination process, as follows:

The purpose is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. See, City of Pasco, Decision 2636-B (PECB, 1987); City of Centralia, Decision 3495-A (PECB, 1990); Quincy School District, Decision 3962-A (PECB, 1993), affirmed 77 Wn.App. 741 (Division III, 1995); and Ephrata School District, Decision 4675-A (PECB, 1995).

Some care is warranted, as bargaining unit configurations often outlast the individuals who participate in their creation.³ At the

³ The applicability of such concerns in this case is evidenced by the fact that both of the local unions involved appear to be successors to the locals (of the same international unions) that originally represented these bargaining units.

same time, Commission precedent recognizes the need to alter unit configurations on the basis of changed circumstances,⁴ and Chapter 391-35 WAC establishes procedures for such situations. In particular, WAC 391-35-020(3) provides: "Disputes concerning the allocation of employees or positions between two or more bargaining units may be filed at any time."

A six-part test for evaluating the existence of a "community of interest" that was set forth in Pacific Southwest Airlines vs. NLRB, 587 F.2d 1032 (9th Circuit, 1978), was adapted in King County Fire District 39, Decision 2038 (PECB, 1987). Those inquiries are:

- Similarity of skills, interests, duties and working conditions.
- Functional integration of the plant, including interchange and contact among employees.
- Employer's organizational and supervisory structure.
- Employee's desires.
- Bargaining history.
- Extent of union organization among the employees.

The Executive Director is also mindful of National Labor Relations Board (NLRB) precedents on post-merger situations, which include cases cited in City of Mount Vernon, Decision 4199-B (PECB, 1992), as follows:

In Boston Gas Co., 221 NLRB 628 (1978), the employer had acquired two other companies in December of 1973. For a time, it had contin-

⁴ See, for example, City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

ued to recognize contracts with two separate labor organizations covering the employees of the formerly separate companies. Those agreements expired in March and June of 1975. On January 24, 1975, the employer filed a representation petition that appears to have been timely as to the contract which was to expire in March, but would normally have been untimely under the "contract bar" rule as to the agreement which was due to expire in June. The NLRB held that, since the employees worked side-by-side in similar job classifications and performed like functions under common supervision, the employer had formed a new operation. A question concerning representation was thus found to exist, and the labor agreements were held to not constitute a bar to an election.

In Massachusetts Electric Co., 248 NLRB 155 (1980), the employer had consolidated service and distribution facilities it formerly operated in three towns, so that only one of those facilities remained. The employer had existing collective bargaining agreements with different unions representing similar groups of employees. The NLRB held that the employer's newly-integrated operation was an appropriate bargaining unit. The existing contracts were not considered to constitute a bar to the holding of an election.

In Martin Marietta Chemicals, 270 NLRB 821 (1984), the employer had historically operated a facility known as the "north plant". Another employer operated an immediately adjacent facility known as the "south plant". Two different labor organizations had historically represented the production and maintenance employees at the different facilities, and both of them evidently wanted to continue representing those units. Collective bargaining agreements for both units were effective through May 31, 1983. On January 29, 1982, Martin Marietta acquired the south plant, hiring the employees of the former operator of

that facility. The employer then decided to operate both plants under one central administration. The NLRB held that a new operation had been created, consolidating the two previously separate bargaining units, and that the changed circumstances had "obliterated" the previous separate units. The Board's policy in such situations places greater emphasis on the right of employees to select their representative than on historical considerations or the vested interests of the labor organizations involved. Thus, the NLRB stated at page 822:

When an employer merges two groups of employees who have been historically represented by different unions, **a question concerning representation arises**, and the Board will not impose a union by applying its accretion policy where neither group of employees is sufficiently predominant to remove the question concerning overall representation. Boston Gas Co., 221 NLRB 628 (1978).

[Emphasis by **bold** supplied.]

Citing Massachusetts Electric, supra, the Board went on to state that, even if either of the collective bargaining agreements remained in effect, it would not bar an election. See, also, Pergament United Sales, 296 NLRB 333 (1989).

[Emphasis by **bold** in Mount Vernon decision.]

Thus, there is some basis for each of the positions advanced by the parties in this case, which involves a change of circumstances after the employer constructed a new, centralized repair facility and consolidated work that was previously done in several locations into the new facility.

Application of PrecedentThe Solid Waste Bargaining Unit -

From the original certification, from the recognition clause of the contract between the employer and Local 280, and from the table of organization admitted into evidence, the bargaining unit represented by Local 280 is and always has been a "vertical" unit limited to just one division within the employer's public works department. The evidence in this proceeding indicates that the mechanic work formerly done within the solid waste division is now performed at the new facility, or is contracted out.

Under South Kitsap School District, Decision 472 (PECB, 1978), the employer may well have had a duty to give notice to Local 280 and provide opportunity for collective bargaining before transferring the mechanical work historically performed within the solid waste division and bargaining unit to employees outside of that division (termed "skimming of unit work" in numerous Commission precedents) or to employees of an outside contractor. This is not the forum to decide such issues, however. The Commission takes the parties and employees where it finds them in unit determination proceedings under Chapters 391-25 and 391-35 WAC, and makes determinations on the bargaining relationships that will exist in the future. Under Walla Walla School District, Decision 5860-A (PECB, 1997), claims of unlawful "skimming" must be pursued through unfair labor practice proceedings under Chapter 391-45 WAC.⁵

⁵ In this case, where Local 280 first learned of the situation early in 1997, the six month period for filing an unfair labor practice complaint under RCW 41.56.160 has long-since expired.

Inclusion of the mechanic in the solid waste bargaining unit undoubtedly made sense at the time that unit was created. The position was in the same physical location as, and shared common supervision with, the other employees stationed at the landfill. The work of the position was then limited to maintenance and repair of the equipment used at the landfill. Such "vertical" units are prone to second-generation unit determination issues, however. In Cowlitz County, Decision 1652-A (PECB, 1984), a similar reorganization of public works functions and creation of a separate vehicle maintenance operation was analyzed as follows:

The situation at hand is a predictable consequence of organization of bargaining units along lines of employer-orientation rather than according to employee types. A "departmental" bargaining unit can be an appropriate bargaining unit within the meaning of RCW 41.56.060, but the parties to such a bargaining unit structure should expect to encounter some bargaining obligations and some unit determination problems at any time the employer finds it necessary or desirable to alter its table of organization. Any dispute which could have existed or now exists between the parties concerning the transfer of bargaining unit work from the department of public works to another department of the employer would be a subject for unfair labor practice proceedings, and is beyond the scope of these unit clarification proceedings. In the instant case, a bargaining unit determination must be made on the situation as it now exists. The motor pool has been removed from the department of public works and has been made a part of the budget/personnel office.

The lines of supervision which constituted the primary descriptor of the community of interest among employees in the bargaining unit represented by Local 334 have been severed in

the case of the motor pool employees. The evidence adduced at the hearing and the additional facts stipulated by the parties all indicate that, history notwithstanding, the present and future community of interest of the motor pool employees is with the employees in the "current expense" bargaining unit represented by Local 1262.

The same considerations apply in the cases now before the Commission. History alone is not sufficient to sustain the claim advanced here by Local 280. Once the mechanic position was moved from the landfill to the central facility and placed under common supervision with other mechanics, the "departmental" justification for its inclusion in the bargaining unit represented by Local 280 no longer made any practical or legal sense.

Accretion or Separate Unit -

Analysis of the arguments advanced by Local 760 and analysis of the arguments advanced by the employer merges into one process, because they cover the polar opposites which are the only results available in this situation. If the employees at the new central repair facility could stand alone as an appropriate bargaining unit, then a question concerning representation would exist and that would preclude resolution of this controversy through proceedings under Chapter 391-35 WAC. See, WAC 391-35-110. If the employees at the new central repair facility can appropriately be included only in the bargaining unit represented by Local 760, then a petition for a separate unit would properly be dismissed under Chapter 391-25 WAC, and an order accreting them to that existing bargaining would be appropriate in this proceedings.

The evidence indicates that the employer has grouped most, but not quite all, of its vehicle/equipment maintenance and repair functions in its new, centralized facility. Exhibit 3 in this record is the employer's organization chart dated February 10, 1998, and it shows "mechanic" and "service mechanic" positions continue to exist at each of the three road districts, in addition to the "mechanic" and "service mechanic" positions shown at the central shop. Even if the employer's announced intentions were otherwise at the outset of this course of events, this decision must be based on the situation which existed long after the centralized facility was opened and both unions advanced claims to the positions.

The separate unit suggested by the employer (even in the absence of an organization seeking to organize such a unit or a representation petition supported by the requisite 30% showing of interest) would not be appropriate under these circumstances. In addition to the similarities of duties and skills implied by their job titles, the evidence supports a conclusion that there is ongoing interchange between the employees who fill the various mechanic classifications in the central shop and the employees who fill the "mechanic" and "service mechanic" classifications at the road district facilities. Work jurisdiction claims are a natural outgrowth of the definition of a bargaining unit, and the Commission has sought to avoid bargaining unit configurations which are destined to ongoing "skimming" disputes. Office-clerical work was allocated to one of two claiming bargaining units on an occupational basis in Ferndale School District, Decision 2082 (PECB, 1985), expressing concern that the office-clerical workforce should not be fragmented. In South Kitsap School District, Decision 1541 (PECB, 1983), two

bargaining units which had artificially divided that employer's office-clerical workforce were both declared inappropriate. Similar concerns are apt here as to this employer's vehicle maintenance workforce.

The employer's argument that the mechanics at the central shop maintain and repair a broader range of vehicles and equipment is not persuasive. No case is cited or found where source of funds has been a factor in unit determination. There is only a modest difference between the pickup trucks historically repaired by the mechanics at the road district facilities and automobiles which are often products of the same manufacturers. There is no indication that the heavy equipment historically repaired at the landfill is markedly different from the heavy equipment used in road construction and maintenance. The "community of interest" standard is served by placing the mechanical personnel hired for the new shop into the bargaining unit which has included, and continues to include, employees performing similar work.

FINDINGS OF FACT

1. Grant County is a political subdivision of the State of Washington, and is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).
2. Teamsters Union, Local 760, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the Grant County Department of Public Works. That bargaining unit has histori-

cally included, and continues to include, employees who perform "mechanic" and/or "service mechanic" functions at the employer's road district facilities.

3. International Union of Operating Engineers, Local 280, a bargaining representative within the meaning of RCW 41.56.030-(3), is the exclusive bargaining representative of a bargaining unit limited to employees of the Solid Waste Division of the Grant County Department of Public Works. That bargaining unit historically included a diesel mechanic who worked at the landfill and was under the same supervision as other employees of the Solid Waste Division.
4. In May of 1997, Grant County opened a new central shop which provides repairs and maintenance for all county-owned vehicles and equipment, including equipment used at the landfill. The employee who held the diesel mechanic position at the landfill was transferred to the new facility, and thereupon ceased to be under the supervision of the solid waste division. New employees were hired for "mechanic" and "service mechanic" positions at the new central shop. The employees working in the new central shop are now supervised by a manager in the Equipment Repair Division of the Grant County Department of Public Works.
5. The non-supervisory employees performing mechanical work in the new central shop interact with, and have duties and skills similar to those of, employees holding "mechanic" and "service mechanic" positions which continue to exist in the employer's

road district facilities, and continue to be represented by Local 760.

CONCLUSIONS OF LAW

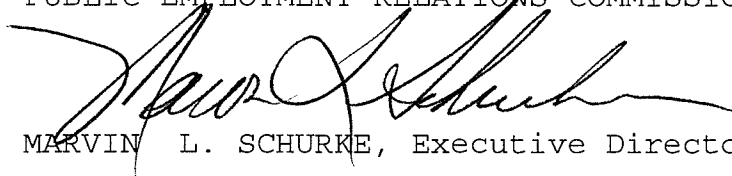
1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Continued inclusion of the diesel mechanic in the bargaining unit represented by Operating Engineers, Local 280, after the changes of circumstances described in paragraph 4 of the foregoing Findings of Fact, would have the effect of expanding a departmental unit limited to employees of the solid waste division, and would not constitute an appropriate bargaining unit configuration under RCW 41.56.060.
3. A separate bargaining unit limited to non-supervisory employees performing mechanical work in the new central shop operated by the Equipment Repair Division of the Grant County Department of Public Works would create an ongoing potential for work jurisdiction conflicts with the existing bargaining unit represented by Teamsters Union, Local 760, and would not constitute an appropriate bargaining unit configuration under RCW 41.56.060.
4. Accretion of the non-supervisory employees performing mechanical work in the new central shop operated by the Equipment Repair Division of the Grant County Department of Public Works is appropriate under RCW 41.56.060.

ORDER

The bargaining unit of Grant County Department of Public Works employees represented by Teamsters Union, Local 760, is clarified to include the non-supervisory employees performing mechanical work in the new central shop operated by the Equipment Repair Division of that department.

Issued at Olympia, Washington, this 8th day of June, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Marvin L. Schurke', is written over the printed name.

MARVIN L. SCHURKE, Executive Director

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