STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
STARR ELLIOT	)	CASE 15011-E-00-2498
	)	
Involving certain employees of:	)	DECISION 7018-A - PECB
	)	
PIERCE COUNTY	)	DECISION OF COMMISSION
	)	
	)	

Starr Elliot, appeared pro se.

Schwerin Campell Barnard LLP, by *Elizabeth Ford*, Attorney at Law, appeared on behalf of the intervenor, Teamsters Union, Local 599.

This case comes before the Commission on an appeal filed by Starr Elliot seeking to overturn the order of dismissal issued by the Executive Director on summary judgment.[1] The Commission reverses the summary judgment. Further proceedings are necessary.

BACKGROUND

On January 28, 2000, Starr Elliot filed a petition for investigation of a question concerning representation under Chapter 391-25 WAC, regarding employees of Pierce County (employer). The petition listed Teamsters Union, Local 599, as the incumbent exclusive bargaining representative of the employees involved, and marked a box on the petition form to indicate "DECERTIFICATION The employees in the bargaining unit no longer desire to be represented

---

[1] *Pierce County*, Decision 7018 (PECB, 2000).

by any employee organization." The petition described the affected employer entity as, "Human Services Department," and described the bargaining unit as:

> All Office Assistants 1 and 2; all Grant Accounting Assistants; and all Grant Accountants 1 employed in the Pierce County Human Services Department.

In response to a routine request from the Commission staff, the employer supplied a list of employees on February 17, 2000.

On February 25, 2000, Local 599 filed a motion for summary judgment. On March 6, 2000, Elliot filed an affidavit and statement in opposition to motion for summary judgment. The Executive Director concluded that he was bound by the Commission's ruling in *Pierce County*, Decision 6051-A (PECB, 1998), and dismissed the petition on April 7, 2000.

Elliot filed a notice of appeal on April 27, 2000. Briefs and reply briefs were filed concerning the appeal.

POSITIONS OF THE PARTIES

Elliot argues that the petitioned-for employees in the Human Services Department constitute an appropriate bargaining unit, based on the 1997-1999 collective bargaining agreement in which special provisions were negotiated for individual departments, and based on the current fragmentation of Pierce County bargaining units. Elliott asserts that a master collective bargaining agreement, entered into by an employer and union for the sake of convenience, does not automatically create a single bargaining

unit. Elliot contends the history of certifications in Pierce County supports her claims that the departments are individual bargaining units, and she contends that separately organized units should be able to decertify in the same manner. She questions why petitioners should have to seek severance from a bargaining unit of which they were never part. She asserts that dismissal of this petition is discriminatory because Community Services employees who filed a representation petition during the same period were allowed to decertify their unit. Elliot argues that Decision 6051-A was based on several errors and omissions including that: the decision was based on inaccurate information, the desires of employees should not have been ignored, and the employees involved were not informed of the decision until the time for appeal had expired. She believes the majority of affected employees are extremely dissatisfied with the union's performance. In conclusion, she asserts that Decision 6051 was entirely appropriate and should be allowed to stand.

The employer has not filed any response to the motion for summary judgment or the notice of appeal.

Local 599 argues that *Pierce County*, Decision 6051-A (PECB, 1998), is direct precedent establishing that there is a single bargaining unit of 150 employees that includes the 20 employees in Human Services. Local 599 asserts that the decertification petition was correctly dismissed as an inappropriate "severance-decertification" petition, because it specifies only a portion of the 150 person bargaining unit. Local 599 contends the petitioners had a chance to raise their objections in an earlier unit clarification proceeding and that they should not be able to re-litigate the exact same issues here.

DISCUSSION

The issue before the Commission is whether Local 599 represents a single bargaining unit of approximately 150 employees which includes the petitioned-for Human Services employees. We hold that the findings of fact and conclusions of law in Decision 6051-A, which were relied upon by the Executive Director in granting a summary judgment, are ambiguous. Consequently, there are genuine issues of material fact to be decided in this case.

Creation and Adjustment of Bargaining Relationships

The creation, modification and termination of bargaining relationships are regulated by RCW 41.56.050 through 41.56.080. The Commission conducts representation proceedings under Chapter 391-25 WAC, including:

- A stipulation or ruling that the group of employees involved constitute an "appropriate bargaining unit" is a condition precedent to determining any question concerning representation;

- Rulings are made on the "eligibility" of particular classes or individuals for inclusion in the bargaining unit; and

- A determination is made on whether any organization has the support of the majority of the employees in the bargaining unit, by means of a secret-ballot election or a confidential cross-check of employer and union records.

The Commission conducts unit clarification proceedings under the somewhat simplified procedures of Chapter 391-35 WAC, including:

- Bargaining unit descriptions are modified to maintain their propriety, following changes of circumstances; and

- Rulings are made on the "eligibility" of particular classes or individuals for inclusion in the bargaining unit.

If a question concerning representation is raised by the facts of a particular controversy, such that the union's majority status is at-issue, the dispute cannot be resolved through the unit clarification procedure. WAC 391-35-110(1). *See King County*, Decision 5820 (PECB, 1997).

Unit Determination Criteria -

In making unit determinations under either Chapter 391-25 WAC or 391-35 WAC, the Commission applies the community of interest criteria set forth in RCW 41.56.060:

> RCW 41.56.060 DETERMINATION OF BARGAINING UNIT-BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, *the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees*. . . .
>
> (emphasis added).

Although parties may agree on units, their agreement does not guarantee that the unit agreed upon is or will continue to be

appropriate. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd* 29 Wn. App. 599 (1981), *review denied* 96 Wn.2d 1004 (1981).

Assessing the "Desires of Employees" -

The petitioner argues that the "desires of employees" were not adequately considered in past proceedings affecting the petitioned-for employees, but her arguments misconstrue the applicable rules and precedents.

First, while it is true that "desires" are to be considered when making unit determinations under RCW 41.56.060, none of the unit determination criteria set forth in that statute prevails over the others. *Franklin County*, Decision 3193 (PECB, 1989).

Second, because the "desires" of employees concerning the configuration of bargaining units are usually closely-aligned with the views of the same employees on representation, and because employees have a right to the protections of the secret ballot or the confidential cross-check with regard to their choice of a bargaining representative, the Commission does not take testimony (or subject employees to cross-examination) on such matters. *Mukilteo School District*, Decision 1004 (PECB, 1980); *Spokane Transit Authority*, Decision 3149 (PECB, 1989); *Ephrata School District*, Decision 4675-A (PECB, 1995). Where either of two or more unit configurations sought by petitioning organizations could be appropriate under the other components of the statutory unit determination criteria, the Commission conducts a unit determination election to assess the "desires" of all eligible employees under the laboratory conditions of a secret ballot election. *Clark County*, Decision 290-A (PECB, 1978); *Mukilteo School District, supra; Ephrata School District, supra*.

There would have been no occasion to conduct a unit determination election in the previous unit clarification proceedings cited by the petitioner in this case.

"Severance Decertification" Petitions -

The Executive Director was correct in stating that the Commission has rejected "severance-decertification" petitions in the past. WAC 391-25-070(7) provides that a representation petition must contain among other things:

> A statement that:
> (a) The petitioner claims it represents a majority of the employees involved, and requests certification as the exclusive bargaining representative of the employees in the bargaining unit which the petitioner claims to be appropriate; or
> (b) The employees in the bargaining unit which the petitioner claims to be appropriate desire to change their exclusive bargaining representative, and to designate the petitioner as their exclusive bargaining representative; or
> (c) The employees in the bargaining unit do not desire to be represented by any employee organization.

Paragraph (c) is significantly different from (a) and (b), which refer to "the bargaining unit which the petitioner claims to be appropriate." The limitation of the inquiry to "the bargaining unit" in (c) indicates that a decertification petitioner does not have the prerogative of claiming an appropriate unit. Rather, a decertification petitioner must decertify in the context of the existing bargaining unit.

The language of the rule reflects long-standing Commission precedent. The decision in *City of Seattle*, Decision 2612 (PECB, 1987), where an employee sought to decertify only a select group of

employees from a larger bargaining unit, sets forth the controlling policy. The reasoning there included the following:

> The distinction between "decertification" of an incumbent exclusive bargaining representative and "severance" of a part of the existing bargaining unit is well founded and clear. Proceedings in the "decertification" category are characterized by employees seeking to be rid of their present union, with the result that they end up with no union representation. By contrast, cases in the "severance" category involve a petition of one organization seeking to carve out a separate bargaining unit from a larger unit historically represented by the same or another organization. In both types of cases, the Commission must honor statutory directive that it consider the "history of bargaining". RCW 41.56.060. A decertification petitioner does not have the prerogative to fashion a new bargaining unit or voting group, however. Rather, *employees who seek to be rid of their union must take the existing unit as they find it and must move to decertify in the context of the existing bargaining unit*. Accordingly, petitions which, as here, simultaneously seek "severance" and "decertification" are precluded by controlling precedent of the Public Employment Relations Commission.

(emphasis added).

A petition seeking a "severance-decertification" is void from the outset, and must be dismissed as such.

In this case, Elliott must take the bargaining unit as she finds it. If that unit includes approximately 150 employees in multiple departments, she is attempting to sever a part of that unit, which she cannot do. However, if the petitioned-for Human Services employees constitute a separate bargaining unit, then Elliot is simply seeking a decertification.

Motions for Summary Judgment

This case is on appeal from an order granting a motion for summary judgment. The Commission's rules formerly provided as follows:

> WAC 391-08-230 SUMMARY JUDGMENT. A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is *no genuine issue as to any material fact* and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the agency and served on all other parties to the proceeding.

(emphasis added).

The model rules of procedure now provide for summary judgment, as follows:

> WAC 10-08-135 SUMMARY JUDGMENT. A motion for summary judgment may be granted and an order issued if the written record shows that there is *no genuine issue as to any material fact* and that the moving party is entitled to judgment as a matter of law.

(emphasis added).[2]

Thus, a summary judgment is not available if there are contested issues of fact. A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. *City of Vancouver*, Decision 7013 (PECB, 2000) (*citing Monroe School District*, Decision 5283 (PECB, 1985).

---

[2] WAC 10-08-135 became effective November 6, 1999. The Commission's rule was repealed, effective August 1, 2000, and the Commission now follows the model rule.

The general rule in proceedings under Chapter 391-25 WAC is that it is up to a Hearing Officer and the Executive Director to determine material issues of fact. *See Adams County*, Decision 6907. A motion for summary judgment calls for a final determination on a number of critical issues, without the benefit of a full evidentiary hearing and record. *City of Vancouver,* Decision 7013. Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed. *City of Vancouver,* Decision 7013 *(citing Renton School District*, Decision 3121 (PECB, 1989)). The granting of such a motion cannot be taken lightly, however. *City of Vancouver,* Decision 7013. A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. *Adams County*, Decision 6907 (PECB, 1999). Where there are questions of fact the resolution of factual disputes is a task for the trier of fact, not an appellate court. *State v. Valentine*, 132 Wn.2d 1 (1997).

Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *See City of Seattle*, Decision 4687-A (PECB, 1996). In this case, review of the pleadings and briefs indicates the existence of contested issues of fact. Elliot contends the Human Services employees constitute an appropriate unit, and there is some history that supports her position. Local 599 argues there is a single bargaining unit of 150 employees, but it provides no basis for that claim other than citing Decision 6051-A. Based upon the pleadings and briefs, the Commission concludes that a summary judgment is not appropriate.

Decision 6051 and Decision 6051-A

In the proceedings which led to Decision 6051 and Decision 6051-A, a management reorganization combining the employer's Social

Services and Aging departments constituted "changed circumstances" that gave rise to the clarification of a bargaining unit.

The collective bargaining agreement between the employer and Local 599 for 1994-1996 listed the "Represented Job Classifications by Bargaining *Units*" in Appendix A, as follows: "*Area Agency on Aging*, Assessor/Treasurer, Building Maintenance, and Building Mechanics, Clerk, Facilities Maintenance, Medical Examiner, Parks and Recreation, Veterans Aid Bureau." (emphasis added).[3]

On February 9, 1996, Local 599 filed a unit clarification petition seeking to have unrepresented Social Services employees accreted to the bargaining unit it represented, upon the anticipated reorganization. In April 1996, the employer combined its Area Agency on Aging and its Department of Social Services into a new entity called "Human Services." The employer opposed the union's petition on several grounds, including that it raised a question concerning representation.

Decision 6051 -

A hearing was held in July 1997, before Hearing Officer Vincent M. Helm. On November 4, 1997, Executive Director Marvin L. Schurke issued an order denying the requested accretion.[4]

The Executive Director ruled that the 150 employees represented by the union did not constitute a single appropriate bargaining unit under RCW 41.56.060 and that the Area Agency on Aging employees constituted a separate bargaining unit within an amalgam of units

---

[3] When listing the departments included in the 1994-1996 contract, Decision 6051-A omitted the Facilities Maintenance Department.

[4] *Pierce County*, Decision 6051 (PECB, 1997).

represented by Local 599.[5] The Executive Director then looked at the situation which existed when that petition was filed, comparing the six represented employees in "Aging" to the seven unrepresented employees the union was seeking to accrete from "Social Services." The Executive Director thus concluded that the union's majority status in the new Human Services Department would be called into question, so that the requested accretion would have to be denied. He also compared the "Local 599" to "Social Services" ratio and found that the disputed employees constituted less than five percent of the employees in the claimed 150-person bargaining unit; however, he found serious questions regarding the propriety of counting all of the employees represented by Local 599. Those questions were related to the parties' contract and the history by which the claimed "existing unit" came into being. Based on these questions, the Executive Director concluded that the collection of employees now represented by Local 599 was not a single unit for purposes of assessing whether an accretion of the former Social Services workforce would call the union's majority status into question.

Appeal and Successor Contract -

Local 599 appealed the Executive Director's decision to the Commission. On February 13, 1998, while that case was pending before the Commission, the employer and Local 599 entered into a successor collective bargaining agreement effective for the period from January 1, 1997, through December 31, 1999. That contract expressly covers only employees in the following employer entities: Assessor/Treasurer, Clerk, Facilities Management-Building Mainte-

---

[5] The Executive Director found a high potential for an ongoing legacy of work jurisdiction disputes after the combination of "Social Services" and "Aging," and thus rejected the possibility that the separate bargaining unit of "Aging" employees historically represented by Local 599 continued to exist.

nance, Facilities Management-Building Mechanics, Facilities Management-Other, Medical Examiner, Parks and Recreation Services, and Veteran's Aid Bureau. Examination of that contract discloses that it neither expressly mentions a Human Services Department in the recognition language in Article 3, nor expressly mentions "grant accounting assistant 2," "grant accountant 1," or "grant accountant 2" classifications in its Appendix A. Thus, with the exception of the "Human Services" employees whose status was then at issue in proceedings before the Commission, the contract signed in 1998 covered all of the same departments as the 1994-1996 contract.

Decision 6051-A -

The Commission issued its decision on August 19, 1998.[6] We reversed the Executive Director's order, and we ruled that the disputed employees were represented by Local 599. In retrospect, we find our decision was ambiguous with regard to whether the employees at issue in that case were being accreted to a multi-department unit composed of all 150 employees covered by the 1994-1996 collective bargaining agreement, or to a smaller unit limited to employees in the Human Services Department.

There is an analysis of duties, skills, and working conditions in Decision 6051-A. At the beginning of that analysis, we noted that the 150 employees represented by Local 599 consisted of a mixture of office-clerical and accounting employees, data processing employees, appraisers, cartographers, other technical classifications, custodians, and mechanics. However, the focus of the rest of our analysis was on the office-clerical and accounting positions in Human Services. After comparing job duties, we found that all of those employees had similar duties, similar skills, common

---

[6] *Pierce County*, Decision 6051-A (PECB, 1998).

supervision, similar wages and benefits, similar work locations, and interchange of daily operations so that a community of interest existed among them. While concluding that Commission precedent favored accreting the former "Social Services" positions into a bargaining unit, we did not explicitly state whether that was a separate bargaining unit in Human Services or the multi-department bargaining unit asserted by the union both there and here.[7]

The Commission primarily analyzed the composition of the Human Services Department in determining the existence of a question concerning representation. Different from the Executive Director, we looked at the situation which existed immediately *after* the combination of departments, when about seven new "office assistant 1" positions were created. Six of the new positions were assigned tasks that originated within the "Aging" entity, and only one of them was assigned tasks that originated in the "Social Services" entity. The timing of the inquiry affected the number of represented and unrepresented positions, as follows:

	In Unit	Not in Unit
Before Merger	6	7
Immediately After Merger	12	8
At time of hearing	11	8

Thus, the numbers in Human Services at the times deemed relevant by the Commission (i.e. after the effective date of the reorganization) did not call the union's majority status into question.

Decision 6051-A also compared the number of employees proposed for accretion to the number of employees covered by the 1994-1996 contract (approximately 150), but did so while stating that the

---

[7] This narrowing of focus in the discussion suggests that, if it had been an issue, the 150-person unit would not have been found to be the appropriate unit.

same result would be reached by comparing the number of employees proposed for accretion to the number of Human Services positions that trace back to the "Aging" entity. Thus, we did not need to decide the precise unit structure before deciding that the union's majority status was not called into question.[8]

Review of the findings of fact and conclusions of law in Decision 6051-A confirms that the precise unit structure was left ambiguous. Having analyzed the "question concerning representation" issue in the alternative (either 12:8 or 150:8), we entered ambiguous findings of fact and conclusions of law leading to our order reversing the Executive Director's decision. Paragraph 3 of our findings of fact read as follows:

> The employer and union were parties to a collective bargaining agreement effective from 1994 through 1996, covering all of the Pierce County employees represented by Local 599. The history by which all of those employees came to be covered under one contract is not precisely established in this record, but reference to the Commission's decisions and docket records discloses that at least bargaining units in the office of the Pierce County Treasurer and in a Building Maintenance Division were the subject of separate representation proceedings before the Commission in 1980.

---

[8] There would have been no reason for us to be concerned about the "date of petition" or "immediately following merger" timing within Human Services unless the employees in Human Services could constitute an appropriate bargaining unit. Put another way, if a multi-department unit of 150 employees was the only appropriate grouping, the employees represented by Local 599 would have always outnumbered the unrepresented members transferred from the "Social Services" entity, and an analysis of the timing would have been unnecessary.

That same finding was made by the Executive Director in support of his conclusion that the group covered by the 1994-1996 contract was not a single appropriate bargaining unit. Our other findings of fact were also identical to those set forth in Decision 6051.

Decision 6051-A included three new paragraphs of conclusions of law, as follows:

> 2. The employees represented by Teamsters Union, Local 599 under the collective bargaining agreement between that union and Pierce County constitute an appropriate bargaining unit under RCW 41.56.060.
>
> 3. The office-clerical-accounting positions previously in the Social Services entity, but now merged with the Aging and Long Term Care entity into the new Human Services Department have duties, skills, and working conditions similar to, and a community of interest with, employees in the bargaining unit represented by Teamsters Union, Local 599, so that their inclusion in that bargaining unit its appropriate under RCW 41.56.060.
>
> 4. The office-clerical-accounting employees of the previous Social Services Department share a community of interest as defined in RCW 41.56.060 with the remaining office-clerical-accounting employees of the previous Aging and Long Term Care Department, all of whom are now in the new Department of Human Services as a result of the merger.

The first of those does not expressly specify that it is referring to all 150 employees under the referenced contract, and none of the findings of fact dealt with the propriety of such a unit, so it can also be read as stating the propriety of a unit composed of employees in Human Services.

Similarly, paragraphs 3 and 4 of those conclusions of law can be read, in the absence of detailed findings of fact, as stating that the disputed employees shared a community of interest with either a unit limited to the Human Services employees or a unit including all 150 employees represented by Local 599.

In Decision 6051-A, there was no question concerning representation because the union's majority status was not at issue once the Commission decided to analyze the bargaining unit composition after the merger. Furthermore, neither party seriously argued in that case that a unit combining the similar classifications from "Aging" and "Social Services" was inappropriate because of different duties or skills. Thus, the controversy then before the Commission was whether the employees were to become represented by Local 599 following the change of circumstances, not necessarily whether they were to be represented by Local 599 in a unit limited to Human Services or in a unit composed of 150 employees. The Commission does not conduct unit determination elections for unit configurations that are not being sought by a petitioning organization. Similarly, the precise bargaining unit configuration did not have to be (and was not) unambiguously specified in Decision 6051-A.

Mergers of Bargaining Units

The proceedings that led to Decision 6051-A could not have resulted in a merger of amalgam units historically represented by Local 599 into a single, appropriate bargaining unit. Mergers of bargaining units cannot be accomplished through unit clarification proceedings under Chapter 391-35 WAC.

The decision in *Mount Vernon School District*, Decision 1629 (PECB, 1983) explains that a merger of bargaining units through the unit clarification procedure would not serve the purpose of reducing or

eliminating disputes, and could be counterproductive to the extent of creating disputes.[9] The reasoning there included:

> RCW 41.56.070 affirms the right of rival organizations or dissident groups of employees to petition with a 30% showing of interest for a change of bargaining representative or for decertification. Neither the rival union nor the decertification petitioners would have had standing to be parties in the unit clarification proceedings between the employer and the incumbent representative. To hold such a rival union to "severance" standards, or to dismiss such decertification petitioners as seeking an improper "severance-decertification", would exalt form over substance, giving credence on the one hand to a merger order not yet implemented while on the other hand denying the rival union or decertification petitioners an opportunity to be heard in the merger proceedings. Under such circumstances, considerations of due process would require the employer and the incumbent (and the Commission) to re-litigate the issues purportedly decided in the unit clarification proceedings. New elections would be necessary in order to give decertification petitioners or rival unions an opportunity to campaign and to have their alternative choices on the ballot submitted to the employees. The bottom line. [sic] is that the unit clarification proceedings leading to the abortive merger of bargaining units would be an expensive waste of time for all concerned without really accomplishing anything. *Representation proceedings obviate the problems noted in the preceding paragraph.*

(emphasis added).

---

[9] The unit clarification petition in *Mount Vernon,* Decision 1629, sought an order merging three separately-organized bargaining units. The parties to that case had signed three separate collective bargaining agreements during the same month the petition was filed.

In contrast, a merger of bargaining units through representation proceedings requires an affirmative vote of the employees in each of the merging units. *Port of Seattle*, Decision 6103 (PECB, 1997) (*citing Mount Vernon School District*, Decision 1629). The resulting certification gives rise to a one-year "certification bar" and also establishes that the severance precedents will apply in any subsequent proceeding involving that unit.

While there was some evidence suggesting that the employees had voted to merge the "Social Services" and "Aging" entities into the Human Services Department, there was no reference in Decision 6051 or Decision 6051-A to Local 599 having ever conducted elections in which all of the employees covered by the 1994-1996 contract had ever voted to constitute themselves as a single bargaining unit. Even if the latter was requested, it could not have been accomplished in Decision 6051-A or the unit clarification proceeding that led to that decision.

The reaffirmation in *Mount Vernon* that the unit clarification procedures of Chapter 391-35 are only available to the employer and the exclusive bargaining representative does address both: (1) the petitioner's complaint that affected employees were excluded from the proceedings that led to Decision 6051-A; and (2) the union's argument that the petitioner is attempting to "re-litigate" matters that she should have asserted in the earlier proceedings. The simple response to both of those arguments is that the employees did not have standing in the earlier proceedings.

History of Bargaining

Review of the Commission's docket records (including docket records transferred to the Commission under RCW 41.58.801) fails to provide any support for a finding that Local 599 currently represents a

single, multi-department bargaining unit which historically encompassed the employees of the "Aging" entity.

- Nothing in records transferred from the Department of Labor and Industries (L&I)[10] suggests that anything resembling the 150-person bargaining unit of Pierce County employees now claimed by Teamsters Local 599 was ever certified by L&I.

- In *Pierce County*, Decision 1039 (PECB, 1980), a predecessor to Local 599 filed representation petitions for four bargaining units of Pierce County employees historically represented by another organization (Local 120), and claimed that each of the four petitions described an appropriate bargaining unit.[11] Rejecting the incumbent's argument that the severance criteria should be applied, the decision in that case stated:

> Any reasonable reading of the bargaining history in Pierce County dictates a conclusion that the group of county employees represented by Local 120 *defies description as a single bargaining unit* on any basis other than designation of Local 120 as bargaining representative at some point in time. . . . *There is no way to tie a ribbon of logic or reason around this grouping born of separate recognitions along lines of extent of organization so as to make a conclusion of law that it is a single appropriate bargaining unit within the meaning of RCW 41.56.060.* . . . The parties cannot bind the Commission by their stipulations of issues, and it is concluded that "severance" principles are inapplicable in these cases

---

[10] L&I administered Chapter 41.56 RCW from 1967 through 1975.

[11] The bargaining units involved were in the Treasurer's Office, District Court No. 1, Building Maintenance/Parking Lot, and Community Action Agency departments.

> because there is *no "whole" from which to worry about severing fragments or parts.*

(emphasis added).

Thus, the petitions for the separate units were proper at that time.[12] With regard to the "Treasurer" and "Building Maintenance" units, the Executive Director went on to state as follows:

> The employees in the Treasurer's Office perform work generally of a clerical and related nature. They have a history of lack of interchange with other employees of the county, they have separate supervision and they have separate Seniority rights. They have a history of bargaining marked by organization at a separate time, sometimes separate negotiations, and then finally the joint negotiations with groups larger than the group represented by Local 120. Under the duties, skills, and working conditions criteria, they have an identifiable community of interest among themselves. . . .
>
> The employees in the Building Maintenance/ Parking Lot group perform work of a generally blue-collar - non-craft generic type. They have separate supervision and seniority and personnel structures which distinguished them from any of the other employees involved in these cases. They have a history of representation as a group by an organization other than Local 120 prior to their designation of Local 120 as their representative. They, too, constitute an identifiable separate unit.

Pierce County, Decision 1039, *supra*.

As the Executive Director noted in Decision 6051, the "Treasurer" and "Building Maintenance" groups listed in the 1994-

---

[12] In that case, the Teamsters argued for individual units and now argue for a single 150-person unit.

1996 contract directly trace their roots to certifications as separate units in the proceedings which gave rise to Decision 1039.

- In *Pierce County*, Decision 7063 (PECB, 2000), the Commission conducted representation proceedings in a bargaining unit of Pierce County employees described as:

> All full-time and regular part-time employees of Pierce County Department of Community Action Programs in the following classifications: Family Educators (Early Childhood), Family Resource Specialist I and II, Family Educators (Other Prog), Energy Resource Specialist, Weatherization Technician, Grant Accounting Assistant II, Office Assistant II, and Employment Specialist, excluding supervisors, confidential employees and all other employees.

The described unit was found to be an appropriate unit and was allowed to decertify Local 599.[13]

Thus, we find nothing to suggest that the claimed existence of a 150-person bargaining unit has ever been fully litigated before the Commission.

At some point, the employer and Local 599 may have agreed to treat all of the employees covered by their 1994-1996 collective

---

[13] The petitioner's "discrimination" argument is based upon this case. She argues that Community Services/Community Action and Human Services are two branches of a separate a distinct entity known as Community and Human Services. She argues that this separately-certified unit was allowed to decertify, and that the Human Services employees should be allowed to do the same because the "Aging" unit which forms the basis for the Human Services unit was also certified individually.

bargaining agreement as a single bargaining unit. Even if such an agreement was made, it is not necessarily binding on either the petitioner or the Commission. *See City of Richland, supra.* The omission of any reference to such an employer/union stipulation in either Decision 6051 or Decision 6051-A is also consistent with disregard of actions that did not form part of our decision there. The merged unit which was protected from severance in *Port of Seattle, supra,* would have been vulnerable to attack from its component groups in the absence of the elections by which the historical bargaining units ratified the merger of units.

The Executive Director's Decision

The Executive Director interpreted Decision 6051-A as holding that the 150 employees represented by Local 599 constitute a single bargaining unit. As discussed above, the Commission did not need to decide the precise configuration of bargaining units in that case, and Decision 6051-A is ambiguous in that regard. Consequently, the Executive Director's interpretation of our decision was incorrect. The union's motion for summary judgment should have been denied.

This case should have been (and will now be) the subject of further proceedings under Chapter 391-25 WAC. If Local 599 continues to assert that the 150-person configuration is the only appropriate unit, the parties will be entitled to fully litigate that matter through a full evidentiary hearing before a Hearing Officer and a formal decision by the Executive Director with right of appeal to the Commission.

NOW, THEREFORE, it is

ORDERED

The order of dismissal issued by Executive Director Marvin L. Schurke in the above-captioned matter on April 7, 2000, is REVERSED.

Issued at Olympia, Washington, on the 8th day of May, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner