STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: | ) | |
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| STARR ELLIOT | ) | CASE 15011-E-00-02498 |
| | ) | |
| Involving certain employees of: | ) | DECISION 7018-B - PECB |
| | ) | |
| PIERCE COUNTY | ) | DIRECTION OF ELECTION |
| | ) | |
| | ) | |

*Starr Elliot* appeared *pro se*.

*Denise Greer*, Deputy Prosecuting Attorney, for the employer.

Schwerin Campell Barnard, LLP, by *Sonja D. Fritts*, for the incumbent intervenor, Teamsters Union, Local 599.

This "decertification" case is before the Executive Director on remand from the Public Employment Relations Commission, which overturned an order of dismissal previously issued by the Executive Director.[1] Hearing Officer Walter M. Stuteville held an evidentiary hearing in this matter on August 14, 2001. The parties filed simultaneous briefs to complete the record.

The Executive Director concludes the petition concerns a separate bargaining unit of Pierce County employees, and that a question concerning representation exists. An election is directed.

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[1] *Pierce County*, Decision 7018-A (PECB, 2001). The Commission acted in response to an appeal filed by Starr Elliot. The petition had been dismissed as a "severance-decertification" in *Pierce County*, Decision 7018 (PECB, 2000), in response to a motion filed by the incumbent union, Teamsters Union, Local 599.

## BACKGROUND

Pierce County (employer) includes the City of Tacoma, and is among the most populous counties in the state of Washington.

Teamsters Union, Local 599 (union), is the exclusive bargaining representative of various Pierce County employees, including employees in the Pierce County Human Services Department.

Starr Elliot (petitioner) is employed in the Pierce County Human Services Department, in a classification now represented by the union. She filed a timely and properly supported petition seeking decertification of the union for the human services employees.

## PROCEDURAL MOTIONS

Because the focus of this case is on historical facts, and because motions filed by both parties could affect the evidence and arguments to be considered, it is appropriate to describe and rule on those motions before deciding the merits of this case.

### The Union's Motion to Strike -

On October 11, 2001, after the parties filed their briefs, the union filed a motion to strike some arguments in the petitioner's brief and an addendum to that brief. The union cited *City of Port Townsend*, Decision 6433-A (PECB, 1999), which included:

> [T]he only material which can be considered in making this decision is the testimony given at the hearing (where it was subject to cross-examination by the opposing parties) and the exhibits admitted into evidence at that hearing (where they were subject to objections from opposing parties).

The union argued that three paragraphs in the petitioner's brief (two on page 9 and one on page 13) neither cite nor are supported by any evidence in the record, and it objected to consideration of a map filed with the petitioner's brief, on which the petitioner had marked the locations of various Pierce County offices.

The petitioner filed a response to the union's motion on October 25, 2001, in which she argued that the challenged materials set forth facts which can readily be discerned from objective sources:

- As to the first of the challenged paragraphs and the map, the petitioner asks the Commission to take administrative notice of addresses of Pierce County offices that can easily be determined and would not be changed by cross-examination.
- As to the second of the challenged paragraphs, the petitioner asserted that a reference to "frequent interaction" between the Budget & Finance Department and the Human Services Department is both logical and a matter of general knowledge.
- As to the third of the challenged paragraphs, the petitioner asserted that the relationship between the Human Services Department and the Community Action Department is a matter of record in this case, because it was discussed in the appeal brief the petitioner filed with the Commission prior to the issuance of Decision 7018-A, *supra*.

The Petitioner's Motion to Strike -
Simultaneous with her response to the union's motion, the petitioner filed a motion to have language stricken from the union's brief. The petitioner objected to four paragraphs as follows:

> Petitioners are greatly concerned about the prevalence of [challenged] statements in the union's post-hearing brief . . . . There are

> so many such statements, in fact, that we would delete a large portion of the union's brief if we asked to have them all stricken. We are confident, however, that the Commission will review the transcript with care and ascertain the truth. Therefore, we will address only those statement that are most troubling.

The petitioner also objects that a paragraph on page 2 of the union's brief is based upon hearsay testimony.

Rulings on Motions -

The union's motion to strike is granted in part and denied in part. The petitioner's motion to strike is denied.

The petitioner is correct that notice can be taken of the physical locations of employer facilities. However, the map she enclosed with her brief was neither offered in evidence at the hearing nor stipulated by the parties. Thus, that map has not been used in the preparation of this decision, and any geographical analysis must be made by the agency independently, by reference to standard maps.

The petitioner is correct that a working relationship between an employer's budget and finance officials and all other departments can be presumed, but the petitioner's claim of "daily" interchange is not supported by any evidence in this record. Similarly, the petitioner's arguments concerning the funding of various departments are not based upon any evidence adduced at the hearing. Thus, the petitioner's assertions as to the frequency of interchange between departments and as to the specifics of departmental funding have not been used in the preparation of this decision.

The fact that a subject was discussed in a brief filed earlier in this convoluted proceeding does not establish or assure that the

statements made in that brief were or remain accurate. Briefs are argument, not evidence.

The petitioner's "hearsay" objection is not persuasive. The Administrative Procedure Act, Chapter 34.05 RCW, includes:

> RCW 34.05.452 RULES OF EVIDENCE - CROSS-EXAMINATION. (1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. . . .

Thus, hearsay testimony is not categorically excluded from adjudicative proceedings. Even if the union's brief relies upon hearsay testimony that is of limited probative value, that is not a basis for striking arguments from the union's brief.

The petitioner's other objections relate to materials aptly categorized as argument. It is understandable that an employee who has presented her case without benefit of legal counsel may be unfamiliar with or confused by the distinction between evidence and argument. The paragraphs to which she objects do not bring in new evidence and, while she may not agree with the conclusions the union would have drawn from the evidence, that does not constitute a basis for striking those materials from the union's brief.

## POSITIONS OF THE PARTIES ON THE MERITS

The petitioner contends the human services employees have been added to a larger bargaining relationship between the employer and union without giving the employees involved an opportunity to determine their collective bargaining status. She particularly

cites the collective bargaining agreement for 1997-1999, in which separate provisions were negotiated for individual departments, and she asserts that a master collective bargaining agreement entered into by an employer and union for the sake of their convenience does not automatically create a single bargaining unit. She also cites a history of separate certifications and recognitions and the ongoing fragmentation within the overall Pierce County workforce as support for her contention that the human services employees constitute an appropriate departmental bargaining unit separate and apart from other employees of the employer. She contends that separately-organized bargaining units should be able to decertify in the same manner, and that "severance" criteria should not be applied here. She notes that community services employees were allowed to decertify their union, and she contends it would be discriminatory to deny the same rights to the human services employees. Responding to a union argument, the petitioner contends that *Pierce County*, Decision 6051-A (PECB, 1998) was based on 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.

Employer officials participated in the hearing in this case, but the employer has not filed a brief or taken a position on the matters at issue in this case.

The union argues that *Pierce County*, Decision 6051-A (PECB, 1998), provides direct precedent for a conclusion that it represents a single bargaining unit consisting of about 150 Pierce County employees that includes the 20 employees in the Human Services Department. The union re-asserts the "severance-decertification" argument it previously advanced as the basis for dismissal of this case. The union contends the employees had a chance to raise their

objections in the unit clarification proceedings that led to Decision 6051-A, *supra*, and that they should not be allowed to re-litigate the exact same issues here. The union also contends that allowing a separate bargaining unit of human services employees would fragment the bargaining process and prejudice the ability of employees to bargain collectively.

## DISCUSSION

### Applicable Legal Principles

The creation, modification and termination of bargaining relationships are regulated by RCW 41.56.050 through 41.56.080. The Commission administers those dispute resolution procedures.

Availability of Procedures -
The Commission conducts representation proceedings under Chapter 391-25 WAC. The matters addressed in such proceedings include:

- A stipulation or ruling that the employees involved constitute an "appropriate bargaining unit" (as a condition precedent to determining any question concerning representation);
- Rulings on the "eligibility" of particular individuals or classifications for inclusion in the bargaining unit; and
- Determination of whether an 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).

Under WAC 391-25-010, the parties to representation proceedings are limited to unions that meet the showing of interest requirement

for a petition or motion for intervention,[2] the employer,[3] and individual employees who meet the showing of interest requirement for a decertification petition.[4]

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 on the "eligibility" of particular individuals or classifications for inclusion in the bargaining unit.

Narrower than the "standing" principles applied under Chapter 391-25 WAC, the parties to proceedings under Chapter 391-35 WAC are limited to the employer and the incumbent exclusive bargaining representative(s) claiming the classification(s) or position(s) at issue. Importantly, unit clarification proceedings under Chapter 391-35 WAC are unavailable if the particular dispute raises a question concerning representation (i.e., calls a union's majority status into question). WAC 391-35-110(1). *See also King County*, Decision 5820 (PECB, 1997).

Unit Determination Criteria -

The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. In making unit determinations, the Commission applies the community of interest criteria set forth in RCW 41.56.060, as follows:

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[2] WAC 391-25-110, 391-25-170, and 391-25-190.

[3] The employer is a necessary party in any representation proceeding initiated by a union or employees, and can also initiate a proceeding under WAC 391-25-090.

[4] WAC 391-25-110.

> 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. . . .

Units encompassing "all non-supervisory employees of the employer" are generally considered appropriate, as it is generally accepted that all such employees will share a community of interest in dealing with their common employer concerning their wages, hours, and working conditions.[5] Units that are less than employer-wide have been found appropriate where they encompass all of the employees within a generic occupational type (a "horizontal" unit), or where they encompass all of the employees with a branch of the employer's table of organization (a "vertical" unit).

Unions and employers may agree on units, but their agreements do not guarantee that the unit agreed upon is or will continue to be appropriate. Parties' agreements are not binding upon the Commission. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

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[5] This general rule is subject to some exceptions that have no application in this case:

- Under WAC 391-35-310, employees eligible for interest arbitration are not mixed with employees who are not eligible for that procedure; and
- Under WAC 391-35-330, a one-person bargaining unit cannot be considered appropriate.

Severances -

Under *Yelm School District*, Decision 704-A (PECB, 1980), the "history of bargaining" component of the statutory unit determination criteria weighs heavily against (but does not altogether preclude) the "severance" of employees from an appropriate bargaining unit at the behest of a union seeking certification to represent a smaller bargaining unit.

As noted in the order reversing the summary judgment in this case, the Commission has rejected petitions seeking "severance" of employees from an appropriate bargaining unit at the behest of an employee seeking decertification of the incumbent union. *City of Seattle*, Decision 2612 (PECB, 1987), 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. . . .

WAC 391-25-070(7)(c) codifies that precedent and limits the inquiry in decertification cases to "the bargaining unit" so that parties

to decertification cases must take the existing unit as they find it. Paragraph (c) differs significantly from the "bargaining unit which the petitioner claims to be appropriate" language used in paragraphs (a) and (b) of that subsection. Thus, this petition must be dismissed again if it seeks a "severance-decertification" as to part of a larger appropriate bargaining unit.

Mergers of Bargaining Units -

The Commission has codified the procedure for merging separately-organized bargaining units in WAC 391-25-420(2). That procedure dates back to *Mount Vernon School District*, Decision 1629 (PECB, 1983), which rejected an attempt to merge separately-organized units through unit clarification proceedings. The unit which is to result from the proposed merger must be stipulated or found appropriate under RCW 41.56.060, and unit determination elections must be conducted in each of the units proposed for merger. If the employees in each of the historical units vote in favor of the merger, they overrule their history of bargaining in the separate bargaining units; if the employees in any of the historical units fail to vote in favor of the merger, then the entire merger fails.[6]

In *Port of Seattle*, Decision 6103 (PECB, 1997), an employer and union took pains to have an agreed merger of separately-organized units ratified by the affected employees in a series of elections patterned after the procedure described in *Mount Vernon School District*, Decision 1629, *supra*. After all of the component groups voted for the merger, the merged unit was upheld as valid when another union later sought to sever one of the component groups from the merged unit.

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[6] An example is *Mount Vernon School District*, Decision 2273 (PECB, 1986), where two of the three groups proposed for merger in Decision 1629, *supra*, rejected the merger when given the opportunity to vote on the matter.

Even before the rule codifying *Mount Vernon* was adopted, the effect of failing to provide an employee vote in support of a merger of bargaining units was made clear in *Pasco School District*, Decision 3217 (PECB, 1989). The employer and incumbent union in that case agreed to merge separately-organized bargaining units, but their agreement was not ratified by an election procedure of the type described in *Mount Vernon School District*, Decision 1629, *supra*, and WAC 391-25-420. When a change of representation was sought for the employees in one of the component groups, the agreement between the employer and the incumbent union did *NOT* bar the petition or even invoke "severance" considerations.

The Legal Standing of this Petitioner

The union's assertion that the petitioner and/or other employees had an opportunity to make their views known in an earlier unit clarification proceeding involving the Human Services Department is erroneous. Because of the legal standing limitations described above, individual employees had (and could have had) no voice in the unit clarification proceedings cited by the union here.

Employees who are excluded from legal standing as parties in unit clarification proceedings are not without remedies. Individual employees have legal standing under Chapter 391-45 WAC to file unfair labor practice charges against an employer and/or union that is claimed to have unlawfully included them in or excluded them from a bargaining unit.[7] Individual employees who are able to collect authorization cards from at least 30% of the employees in a bargaining unit can file a representation petition under Chapter

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[7] Examples are *Richland School District*, Decision 2208-A (PECB, 1985) and *Shoreline School District*, Decision 5560-A (PECB, 1996), 1980).

391-25 WAC, seeking decertification of the union. WAC 391-25-070(6)(c). This petitioner is in the latter category.

## The Unit Determination Issue

The key issue in this case is the scope of the bargaining unit which includes the petitioned-for human services employees: If they are a separate bargaining unit, then further processing of this petition will be warranted.

The History of Organizing -

Historical facts support the petitioner's claim that the 150 employees now claimed by the union as a single bargaining unit were assembled as the result of separate organizational efforts, and have never been merged by procedures consistent with Decision 1629, *supra*, and WAC 391-25-420(2). In assembling the history, the limited evidence provided in this record has been evaluated by taking notice (as described in the Notice of Hearing) of information extracted from docket records transferred to the Commission under RCW 41.58.801,[8] docket records maintained by the Commission since it commenced operations in 1976, and various decisions issued by the Commission.

The early history indicates this employer has bargained with this union and its predecessor for many years.[9] The records concerning

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[8] From its enactment in 1967 through December 31, 1975, Chapter 41.56 RCW was administered by the Washington State Department of Labor and Industries (L&I).

[9] A representation petition filed by a Pierce County employee was dismissed in *Pierce County*, Decision 2209 (PECB, 1985), upon a conclusion that Teamsters Local 599 was the valid successor to Teamsters Local 461, following a merger of those unions. Thus, no question concerning representation existed in that case.

the earliest documented case support an inference that the employer and union had moved beyond the certification/recognition process for some group of employees to negotiate a collective bargaining agreement containing the grievance procedure that was being implemented for a dispute concerning a discharge.[10] The records for a mediation case filed with the Commission in 1979 include a "mixed classes" code supplemented by a "drivers, clerical" entry that implies the union was previously recognized or certified to represent a diverse collection of Pierce County employees.[11]

Representation proceedings in 1980 and 1981 leave no doubt that the "unit" now claimed by the union as immune from severance was assembled from a series of separate organizational transactions. Four petitions were filed by Teamsters Local 461 in March 1980, while the mediation process initiated in 1979 (as described above)

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[10] L&I Case O-1665 was docketed on May 8, 1974, and was closed on October 31, 1974.

[11] Case 2446-M-79-1029 was docketed on November 16, 1979. By the time the case was closed on March 24, 1980, the nature of dispute was listed as "Mediate Strike" and the docket record for the case included:

> Strike 2/29/80-3/22/80 . . . by coalition of [Teamsters] Local 461, [Teamsters] Local 313, IAM Local 1152 & IUOE Local 612. Some [employees] in WSCCCE, IFPTE 17 and IBEW 483 honored picket lines.

Separate cases were docketed in that timeframe for mediation between Pierce County and the Washington State Council of County and City Employees (WSCCCE, Case 2638-M-80-1153), International Federation of Professional and Technical Engineers (IFPTE, Case 2639-M-80-1154), International Brotherhood of Electrical Workers (IBEW, Case 2640-M-80-1155), International Association of Machinists and Aerospace Workers (IAM, Case 2641-M-80-1156), and International Union of Operating Engineers (IUOE, Case 2642-M-80-1157), each representing various bargaining units of Pierce County employees.

was ongoing. In each of those cases, Local 461 sought to displace the WSCCCE as exclusive bargaining representative of a particular group of Pierce County employees:

- In Case 2650-E-80-507, Local 461 asserted that approximately 30 building maintenance and parking lot employees constituted an appropriate bargaining unit;
- In Case 2651-E-80-508, Local 461 asserted that approximately 25 district court employees constituted an appropriate bargaining unit;
- In Case 2652-E-80-509, Local 461 asserted that approximately 34 employees in the office of the county treasurer constituted an appropriate bargaining unit; and
- In Case 2652-E-80-510, Local 461 asserted that approximately 38 employees in the community action agency constituted an appropriate bargaining unit.

The WSCCCE opposed those petitions, making arguments similar to those advanced by Local 599 in the present case: It urged that all of the Pierce County employees then represented by the WSCCCE should be treated as a single bargaining unit, and that the "severance" criteria should be applied.

A hearing was held, and elections were directed in the four separate units. Given that the predecessor to Local 599 was a party to both stipulations made in those proceedings and the "master" contracts cited, *Pierce County*, Decision 1039 (PECB, 1981) is instructive in this case:

> *The parties filed a stipulation as to bargaining history*, from which it appears that Pierce County employees have been represented by various labor organizations, including [Team-

sters] and [WSCCCE] since 1937. [WSCCCE] signed a labor agreement with the county in 1960, representing certain employees under the County Commissioner's jurisdiction. In 1965, [WSCCCE] was voluntarily recognized as bargaining representative of employees of the Treasurer's Office.

. . . in 1970, . . . [WSCCCE] was voluntarily recognized as the representative of employees in the Building Maintenance Department . . . .

In 1971, [Teamsters] and [WSCCCE] both signed a multi-union *master contract* with the county. The unions which signed the agreement kept their individual identities as bargaining representatives, and the agreement referred to departments supervised by elected officials separately from departments supervised by the County Commissioners. *Seniority was confined to "bargaining units." However, "bargaining units" were not defined in the contract.* The master agreement, signed by the County Commissioners, established the wage rates and fringe benefits that county employees would receive. Supplemental agreements dealt with particular working conditions for particular groups of employees.

In 1973, [WSCCCE] was certified as bargaining representative of District Court No. 1 employees through proceedings conducted by the Department of Labor and Industries. In the same year, a *successor master agreement* was executed between seven unions, including [Teamsters] and [WSCCCE] . . . . No definition of bargaining units is contained in the agreement. . . .

. . .
For calendar year 1977, [WSCCCE] and [Teamsters] were among unions signing a *master agreement* with the county. . . .

During the month of October, 1978, the county voluntarily recognized [WSCCCE] as exclusive bargaining representative of employees in the Community Action Agency.

*In 1979, . . . a master agreement . . . provided that bargaining representatives could*

> *be voluntarily recognized for employees in departments where representatives had more than 50% of the employees as members. The master agreement defined seniority as continuous service within all county departments while within respective bargaining units.* . . . [WSCCCE] signed a supplemental agreement specifying that *the bargaining unit was to prevail in the event of layoffs, demotions or transfers, but neither agreement defined the scope of the bargaining unit(s).*

(emphasis added).

The reasoning set forth in Decision 1039 to support a conclusion that the collection of employees represented by the WSCCCE was not a single, appropriate bargaining unit included:

> The county acknowledges . . . that considerable fragmentation of bargaining units exist now and has existed historically within the county's workforce. *The provision of the 1979 [master] agreement under which the county agreed to voluntarily recognize a union as the representative of any group in which it showed majority support, and to add that group to the coverage of the existing contract, is suggestive of the methodology by which the "bargaining unit" claimed by [WSCCCE] arrived at the shape and size is possessed at the time the petitions were filed in these cases.* . . . *[T]he county's former personnel director took a very informal approach to unit definition and representation questions.* The stipulation of the parties as to bargaining history thus merely confirms the piecemeal growth of the group of Pierce County employees represented by Local 120.
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> . . . Severance and fragmentation are evils only if they undermine or destroy a rationally based and statutorily appropriate bargaining structure. That is not the situation here. *Any reasonable reading of the bargaining history in Pierce County dictates a conclusion that the group of county employees represented*

*by [WSCCCE] defies description as a single bargaining unit* on any basis other than designation of [WSCCCE] as bargaining representative at some point in time. *Selection by two or more dissimilar groups of a common labor organization to represent them cannot be deemed a controlling factor in unit determination, as the statute protects the right of employees to change their designation of an exclusive bargaining representative. 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.* Unit determinations are the province of the Public Employment Relations Commission under the statute. *City of Richland,* [*supra*]. The parties cannot bind the Commission by their stipulations of issues, and it is concluded that *"severance" principles are inapplicable in these cases because there is no "whole" from which to worry about severing fragments or parts.*

. . .

The history of joint negotiations, at least up through 1979, and the practice of the parties of grouping all of the employees represented by a particular labor organization together for the purposes of negotiating the supplemental agreement . . . suggest that the most that would happen as a result of these proceedings is that there could be some re-arranging of bargaining representatives within what has been the pattern of labor relations in the county. . . .

. . .

The employees in the Treasurer's office perform work generally of a clerical and related nature. . . . They have a history of bargaining marked by organization at a separate time, sometimes separate negotiations, and then finally of 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, too, constitute an identifiable separate unit.
>
> By application of the unit determination criteria specified in RCW 41.56.060, it is *therefore concluded that each of the units petitioned for by Teamsters Local 461 is an appropriate unit for the purposes of collective bargaining. Elections are directed accordingly*.

(emphasis added).

There was no appeal from Decision 1039, and neither Local 599 nor the employer has offered any evidence or argument to now justify disregard of the history that was stipulated in that proceeding and formed a basis for that decision.

As a result of the elections that followed, Teamsters Local 461 was certified as exclusive bargaining representative of:[12]

1. A separate bargaining unit of building maintenance and parking lot employees; and

2. A separate bargaining unit of the employees in the Treasurer's office.

Employees in those separately-certified units are now part of the 150 employees claimed by the union here as a single unit.

Separate certifications involving Teamsters Local 461 were issued in four additional cases between the issuance of Decision 1039 (in

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[12] *Pierce County*, Decision 1039-C (PECB, 1981). The WSCCCE retained its status as exclusive bargaining representative of the other two units at issue at that time.

December 1980) and the merger of Local 461 into Local 599 (in 1985):

3. While the proceedings that led to Decision 1039, *supra*, were pending before the Commission, a representation election was conducted for a unit of commissioned law enforcement officers that were part of the overall group of employees then represented by Teamsters Local 461. The union prevailed in the election, and was certified as exclusive bargaining representative of a separate bargaining unit.[13]

4. In May 1981, Local 461 was certified as exclusive bargaining representative of a separate bargaining unit consisting of approximately seven maintenance employees of Pierce County.[14]

5. In January 1983, a bargaining unit of adult probation officers and office-clerical employees theretofore represented by Local 461 decertified that union.[15]

6. In March 1984, another union was certified as exclusive bargaining representative of the non-supervisory law enforcement officers theretofore represented by Local 461.[16]

As to the first, third and fourth of those proceedings, the fact that portions of the overall group then represented by Local 461 were permitted to vote separately on their representation is of much greater significance than the results of the proceedings: It makes clear that the employees represented by Local 461 were not treated as a single bargaining unit (and the severance criteria

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[13] *Pierce County*, Decision 1050 (PECB, 1980).

[14] *Pierce County*, Decision 1161 (PECB, 1981).

[15] Pierce County, Decision 1568 (PECB, 1983).

[16] *Pierce County*, Decision 1875 (PECB, 1984).

were not applied) in the five years following the issuance of Decision 1039, *supra*.

Separate certifications involving Teamsters Local 599 occurred in four more cases since 1985. Transactions documented in the Commission's docket records include:

7. In January 1986, another union prevailed in a three-choice election and was certified for a unit of code enforcement employees theretofore represented by Local 599.[17]

8. In March 1986, Local 599 disclaimed a bargaining unit of technical employees then under a decertification petition.[18]

9. In March 1986, Local 599 was certified as exclusive bargaining representative of a separate unit of support personnel employed in the Sheriff's Department.[19]

10. In April 1986, another union prevailed in a three-choice election and was certified as exclusive bargaining representative of non-supervisory corrections personnel theretofore represented by Local 599.[20]

Again, the fact that portions of the overall group then represented by Local 599 were handled separately in the first, second and fourth of those proceedings is of great significance: This reinforces a conclusion that the employees represented by Local 599 have not been consistently treated as a single, appropriate bargaining unit.

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[17] *Pierce County*, Decision 2383 (PECB, 1986).

[18] *Pierce County*, Decision 2407 (PECB, 1986).

[19] *Pierce County*, Decision 2426 (PECB, 1986).

[20] *Pierce County*, Decision 2429 (PECB, 1986).

The employer and Local 599 continued the practice of negotiating a "master contract" covering all of the employees represented by the union. By 1986, the master contract covered the separately-certified units of maintenance employees and employees in the treasurer's office referenced above, along with employees of the Area Agency on Aging, the assessor's office, the clerk's office, the medical examiner's office, the Parks and Recreation Department, the Veteran's Aid Bureau, building maintenance, and the building mechanics. That master agreement reflected the existence of multiple units by stating, "Represented Job Classifications *by Bargaining Units*" (emphasis added), and by listing employee classifications separate for each department.

The absence of "merger" evidence is fatal to the union's position in this case. Nothing presented by the parties at the hearing and nothing found in the Commission's docket records even remotely suggests that the Commission has been asked to act upon a proposal to merge the Pierce County bargaining units represented by the union into a single bargaining unit under RCW 41.56.060. There is certainly no evidence that employees in the group now numbering about 150 employees have ever voted to merge the bargaining units represented by the union into a single bargaining unit.

In Decision 7018-A, *supra*, the Commission stated that a merger of bargaining units through representation proceedings requires an affirmative vote of the employees in each of the merging units, citing *Port of Seattle*, Decision 6103 (PECB, 1997) and *Mount Vernon School District*, *supra*. It noted that the resulting certification gives rise to a one-year "certification bar" and establishes that the severance precedents will apply in any subsequent proceeding involving that unit. It further stated:

> 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.

In reviewing precedents on this subject area, it must always be borne in mind that the right to representation conferred by RCW 41.56.040 belongs to the public employees themselves, not to employers or unions. The evidence adduced at the hearing held in this case clearly indicates that no such unit determination election or any other procedure has merged the employees represented by the union into a single bargaining unit.[21] Even if there

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[21] The closest this record comes to describing an election is testimony about an election between Local 599 and the Service Employees International Union:

> Q. [By Ms. Elliott] Are you aware of people in the accounting positions . . . within Puget Sound behavioral health who are not members of the Teamsters local? . . .
>
> A. If I recall correctly the accounting assistants are members of a different bargaining unit, SEIU.
>
> Q. May I dare how that happened? . . .
>
> A. I made a deal with the bargaining units that -- there was a lot of disputes at the time as to who should properly represent the employees. What we ultimately agreed to was that some employees would go to [SEIU] because that's who used to represent them in the past and [SEIU] made the argument that we were a successor employer and so therefore we had to voluntarily recognize them as representing certain employees. So we agreed to do that.

was evidence that Pierce County and Local 599 had negotiated a formal merger of any or all of the separate bargaining units represented by the union into a single unit, a union claim based on such an agreement could not be sustained in the face of contrary Commission policies. *City of Richland, supra.*

The purported "merged" unit would not be appropriate under RCW 41.56.060, even if it had been (or were to be) proposed in a "merger of units" proceeding under WAC 391-25-420(2). Testimony given by the a union representative about the cooperative efforts

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> Q. Ultimately what happened specifically as far as the accounting staff? . . .
>
> A. What we agreed to is that grant accountants would go to Teamsters 599 and . . . the grant accountants and the OAs would, either through a vote of the employees or - I know the OAs voted, I don't remember if the grant accountants did. And then the other employees would go to [SEIU].
>
> Q. And since you mentioned the vote, is it correct that the office assistants were required to choose a union, between SEIU and Teamsters during this hostile acquisition process?
>
> A. That's true.
>
> Q. And the proceeding that we're in the midst of now was in process then; is that correct?
>
> A. I think so.
>
> Q. Did you ever hear either union offer no union as one of the choices?
>
> A. You mean on that vote for the office assistants?
>
> Q. On the vote for the Puget Sound behavioral health.
>
> A. That was not an option.

of employees in negotiations for a recent master contract does not establish the propriety of the admixture of approximately 150 employees claimed by the union as a single bargaining unit:

- The 150 employees clearly do not constitute a wall-to-wall "all employees of the employer" unit. Several other unions represent non-supervisory employees of this employer in other bargaining units. In particular, the WSCCCE continues to represent the amalgam of units that dates back to Decision 1039, *supra* (plus and minus modifications since 1981).

- The 150 employees clearly do not constitute a departmental or "vertical" unit. The group claimed by Local 599 touches the offices of some (but not all) of the elected officials of Pierce County and some (but not all) of the Pierce County departments entirely controlled by the county commissioners.

- The 150 employees clearly do not constitute an occupational or "horizontal" bargaining unit. The group claimed by Local 599 encompasses widely diverse occupations ranging from professional employees to office-clerical employees. Local 599 and other unions represent office-clerical employees and professional employees in other bargaining units within the Pierce County workforce.[22]

As was the conclusion about the employees represented by the WSCCCE in Decision 1039: *Any reasonable reading of the bargaining history*

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[22] The office assistant classification is ubiquitous throughout the employer's operations. It was utilized in the Area Agency on Aging, the assessor/treasurer's office, the Veteran's Aid Bureau, and in the medical examiner/coroner's office. The classification is also used for unrepresented employees in planning and probation operations, and for employees represented by Local 599 under a different contract in the sheriff's department.

*in Pierce County dictates a conclusion that the group of county employees represented by Local 599 defies description as a single bargaining unit* on any basis other than designation of Local 599 as their exclusive bargaining representative at some point in time. *Selection by two or more dissimilar groups of a common labor organization to represent them cannot be deemed a controlling factor in unit determination, as the statute protects the right of employees to change their designation of an exclusive bargaining representative. 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 departments cobbled together under the master contracts have very different missions and objectives. Even when the same job title is utilized in different departments, those positions are not interchangeable: In his testimony, employer official Carrillo made it clear that Teamster-represented office assistants in human services could *NOT* bump a Teamster-represented office assistant in another department in the event of a layoff. This contradicts the union's argument that it has a long history of representing and bargaining on behalf of a single unit.

The union's contention that a separate human services bargaining unit would impose a "great burden" on the employer is not persuasive. Pierce County is among the larger public employers in the state. It has negotiated with many labor organizations over a long period of time, and it now negotiates 20 collective bargaining agreements covering its employees. The evidence does not support finding that the existence of a group of unrepresented employees (or even the potential for a 21st bargaining unit at some time in

the future) would unduly hinder the employer in the completion of its governmental functions.

The union's contention that a separate human services bargaining unit would weaken employees' bargaining strength is also not persuasive. Fragmentation presently exists, as the union now claimed by the union does not encompass all office assistants in the employer's workforce. Indeed, this union represents office assistants in at least one other bargaining unit, and there are unrepresented office assistants elsewhere in the employer's overall workforce. The history demonstrates that organizing by department is an available, if not always logical, technique.

The accretion of social services employees to the unit historically rooted in the Area Agency on Aging was the subject of earlier proceedings before the Commission, after the employer consolidated two of its operations: The workforce of the "aging" operation included office-clerical employees represented by Local 599; the workforce in a "social services" operation included office-clerical employees who were not unrepresented.

The union filed a unit clarification petition in February 1996, asserting that employees who originated in the social services operation should be accreted to an existing unit. The initial decision in that case denied the requested accretion based on a comparison of the numbers of "social services" and "aging" employees,[23] but it was reversed by the Commission on an appeal filed by the union. The Commission took a different view as to the

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[23] *Pierce County*, Decision 6051 (PECB, 1997) found the requested accretion would call the union's majority status into question, so that the bargaining unit of "aging" employees historically represented by the union became inappropriate as a result of the merger.

critical time for comparing the numbers of "social services" and "aging" employees, and it reversed the conclusion that the requested accretion called the union's majority status in the new Human Services Department into question. The Commission found that the duties, skills and working conditions of the unrepresented "social services" employees had sufficient commonality with the represented "aging" employees to support their inclusion in the same bargaining unit, so it followed that the accretion was appropriate. *Pierce County*, Decision 6051-A (PECB, 1998). There was no petition for judicial review of Decision 6051-A, and it became a final order under the Administrative Procedure Act, Chapter 34.05 RCW.

Decision 6051-A is not subject to collateral attack by either party in this case. Thus:

- The union cannot expand the result reached in Decision 6051-A beyond what was necessary to decide that case. While the union asserted its "single bargaining unit of 150 employees" claim in that proceeding and that claim was discussed in the decisions issued in that case, the recitation and discussion of an argument do not necessarily create something of precedent value. It is noteworthy that the Commission's order largely re-used the findings of fact that had been issued in the decision being reversed, and that the Commission did not make any findings of fact supporting the existence of a single bargaining unit consisting of 150 employees. Indeed, the Commission's comparison of the numbers of "aging" and "social services" employees would have been entirely inapposite to a decision based on the existence of a 150-employee bargaining unit. Further, as the Commission made abundantly clear in its order of remand in this case, the decision in that unit clarification proceeding did not constitute (and could not

have constituted) a ruling accepting or endorsing a merger of separately-organized bargaining units. The Commission's statement in Decision 6051-A that it would credit the long history of bargaining between the employer and union, and its citation of *City of Seattle*, Decision 781 (PECB, 1979) [fringe groups incorporated into the various units to which they logically related], were both fully applicable to the separate unit that originated in the "aging" operation and was being expanded to encompass the Human Services Department. Similarly, the Commission's citation of *City of Centralia*, Decision 2940 (PECB, 1988) for the proposition that petitions seeking to organize only a part of a department are properly rejected, was fully applicable to a unit limited to employees of the new Human Services Department.

- The union will not be heard to attack the propriety of the unit it represents in the Human Services Department. The union asserts that the petitioner has failed to show a community of interest among the human services employees, and it even argues that a departmental unit is inappropriate because the department has employees in multiple classifications and in four locations, but the Commission ruled in Decision 6051-A that there was a community of interest among the human services employees.[24]

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[24] The argument would be inapposite in this "decertification" case even if the union were not bound by the result of the earlier proceeding: As noted above, the parties to a decertification case must take the unit as they find it. The petitioner is not a union seeking to be certified for some bargaining unit, and a decertification petitioner is not obligated to prove that the existing bargaining unit is inappropriate. There is no occasion for an employer and incumbent union to modify or improve a unit description in a decertification case, or even to debate whether some other unit configuration might be appropriate.

- The petitioner's arguments here that the "bargaining unit" referenced in the previous case was never properly merged and that Decision 6051-A was affected by errors cannot be re-litigated in this proceeding. The only question properly at issue in this proceeding on remand from the Commission is whether the union represents a 150-employee bargaining unit or an amalgam of units which includes a unit within the Human Services Department.

Thus, the issue presented in this case is being determined independently of the aging / social services accretion question that was before the Commission in Decision 6051-A.

The conclusion from the foregoing is that the employees of the Human Services Department were organized as, and remain, a separate bargaining unit represented by Local 599. In *Pasco School District, supra*, the decision rejecting the use of "severance" criteria for an amalgam of units included:

> Given the existence of the separate unit of custodial-maintenance employees, the group of employees currently represented by [the incumbent union in that case] is certainly not a "wall-to-wall" unit. Nor is it even an "operations and maintenance" unit consisting of all of the employees of the employer other than office-clericals.

The same comment is apt here. Local 599 has failed to establish the existence of a community of interests binding all of the 150 employees it represents under the so-called "599-G" master contract together as a single bargaining unit under the criteria set forth in RCW 41.56.060 and the merger procedures codified in WAC 391-25-420. Instead, those 150 employees have widely diverse duties, skills and working conditions; they have diverse histories of

bargaining rooted in separate recognitions and certifications; and they constitute an amalgam of separate units.

The Petition in this Case

On January 28, 2000, Starr Elliot filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC. The petitioner listed Teamsters 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 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.

Thus, notwithstanding her complaints about the result reached in Decision 6051-A, *supra*, the petitioner impliedly accepts the accretion of the former "social services" employees to the "human services" bargaining unit that was ordered in that decision.

When asked to participate in an investigation conference in May of 2001, following the remand from the Commission, the union filed a written response in which it disputed the propriety of the petitioned-for bargaining unit but did not otherwise contest either

the jurisdiction of the Commission or the existence of a question concerning representation in this case.

With the foregoing conclusion that the union does not represent a single, multi-department bargaining unit that includes the human services employees, it is appropriate to proceed with determination of the question concerning representation by conducting a secret-ballot representation election among the human services employees.

## FINDINGS OF FACT

1. Pierce County is a county of the State of Washington, and is a "public employer" within the meaning of RCW 41.56.030(1).

2. Starr Elliot is employed in the Pierce County Human Services Department, and is a "public employee" within the meaning of RCW 41.56.030(2).

3. Teamsters Union, Local 599, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the incumbent exclusive bargaining representative of certain employees of Pierce County.

4. The employer and union were parties to "master" collective bargaining agreements effective for 1994-1996 and 1997-1999 periods, covering various Pierce County employees represented by the union. Those contracts contained separate appendices setting forth provisions applicable to various bargaining units within the overall group of employees covered. As of January 28, 2000, the union represented employees in the following Pierce County departments: Assessor/treasurer; clerk; coroner/medical examiner; human services; parks and

recreation; veteran's aid; building maintenance; and building mechanics. For purposes of contractual rights such as layoff and recall, the employees represented by the union have continued to be treated under the master contracts as if they remained in separate bargaining units.

5. The union came to be the exclusive bargaining representative of the employees described in paragraph 4 of these Findings of Fact as the result of a number of separate transactions over a period of many years, including a number of certifications issued by the Commission for separate bargaining units.

6. The union and its predecessor have lost status as exclusive bargaining representative for various groups of Pierce County employees as the result of a number of separate transactions since 1980, including certifications issued by the Commission in which "severance" principles were not applied to the overall group of employees represented by the union.

7. There is no evidence of a formal merger of the separately-organized bargaining units described in paragraph 5 of these Findings of Fact, and particularly no evidence of any vote by employees on the creation of a merged bargaining unit encompassing all of the employees represented by the union.

8. The collective bargaining relationship between the employer and union historically included certain employees in an agency responsible for matters related to aging and long-term care.

9. In 1996, the employer merged its former "social services" and "aging" operations to form the current Human Services Department.

10. In response to a petition filed by the union, the Commission found a community of interests to exist among the human services employees and, based upon a comparison of the numbers of employees that originated in the former "social services" and "aging" operations, accreted the former "social services" employees to the bargaining unit represented by the union.

11. Starr Elliot has filed a timely and properly supported petition for investigation of a question concerning representation under Chapter 391-25 WAC, seeking decertification of the union with respect to the bargaining unit of human services employees described in paragraph 10 of these Findings of Fact.

## 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. The employees covered by the "599G" master contract between Pierce County and Teamsters Local 599 do not constitute a single appropriate bargaining unit under RCW 41.56.060.

3. The employees represented by Teamsters Local 599 in the Pierce County Human Services Department constitute a separate bargaining unit under RCW 41.56.060.

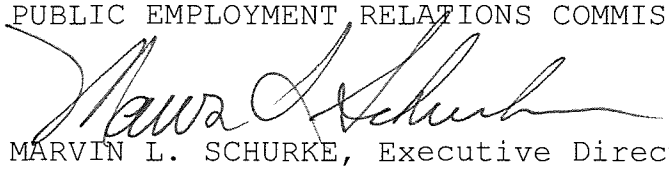
4. A question concerning representation currently exists under RCW 41.56.060 and 41.56.070 in the separate bargaining unit of Pierce County Human Services Department employees described in paragraph 3 of these Conclusions of Law.

## DIRECTION OF ELECTION

A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in paragraph 3 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Teamsters Union, Local 599, or by no representative.

Issued at Olympia, Washington, on the 13th day of December, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.