STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
JOY JANSSON	)	CASE 14211-E-98-2376
	)	
Involving certain employees of:	)	DECISION 7357 - PECB
	)	
KING COUNTY	)	ORDER OF DISMISSAL
	)	
	)	

Joy Jansson and *Susie Collier* appeared *pro se*.

Nancy Buonnano Grennan, Labor Negotiator, and Norm Maleng, Prosecuting Attorney, by *Mark G. Stockdale*, Senior Deputy, appeared on behalf of the employer.

Schwerin Campbell Barnard LLP, by *Lawrence Schwerin*, Attorney at Law, appeared on behalf of the intervenor, Public Safety Employees, Local 519, SEIU.

On October 27, 1998, Joy Jansson (petitioner) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking decertification of Public Safety Employees, Local 519, as the exclusive bargaining representative of certain employees of King County (employer) formerly in a "jail aide" classification.[1] After being set and reset for several dates, a hearing was opened on July 21, 1999, when the parties entered into a tentative

[1] The petitioner marked the box on the petition form to indicate she was requesting decertification, but she also claimed the employees involved were not currently represented for the purposes of collective bargaining, and the employees involved were members of Local 519 under protest, following their reclassification.

settlement with the assistance of Hearing Officer Rex L. Lacy. That settlement was not implemented, and the case was re-assigned for further proceedings. A hearing was held on November 1 and 2, 1999, before Hearing Officer Martha M. Nicoloff. The parties filed post-hearing briefs.

The Executive Director rules that the petition in this matter seeks an inappropriate bargaining unit and does not raise a question concerning representation. The petition is DISMISSED.

BACKGROUND

King County operates a comprehensive public safety program which includes both law enforcement and corrections components. During the period relevant here, facilities operated by the Department of Adult Detention (DAD) under Director Arthur Wallenstein qualified as jails under RCW 70.48.020(5).

The Early Bargaining History

The non-supervisory employees in the employer's public safety program are organized for the purposes of collective bargaining. The following chronology is the result of examining collective bargaining agreements signed by the employer and Local 519, the history of amendments to Chapter 41.56 RCW, Commission precedents, and the files and records of the Commission:

- In 1969, Local 519 was certified as exclusive bargaining representative of a bargaining unit of approximately 390 employees described as: "Employees of the Public Safety Department of King County." Excluded were a director, an

assistant director, a secretary to the director, and "Culinary Employees, Jail Physician, Jail Dentist, Clinical Social Worker, . . ." along with various supervisory titles down to "Major, and all Captains".[2]

- A collective bargaining agreement negotiated in 1972 for 1973 and 1974 covered both law enforcement officers (e.g., lieutenant, sergeant, policewoman, and three levels of patrolman), and a wide variety of other titles (e.g., I.D. tech, fingerprint clerk, communications officer at two levels, cashier, clerk at five levels, and custodial aide).

- In 1973, the legislature made a limited class of "uniformed personnel" eligible for interest arbitration.[3] Within the King County public safety workforce, statutory interest arbitration only applied to the law enforcement officers.

- A collective bargaining agreement for 1975 covered both the law enforcement officers and various other titles, including cashier, security aide, corrections officer and corrections officer supervisor titles that are of interest in this proceeding.

- Prior to the signing of a collective bargaining agreement for 1981, the bargaining unit certified in 1969 was divided into two units represented by Local 519: One of those was for the law enforcement officers; the other was for all employees

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[2] That certification was issued by the Department of Labor and Industries (L&I), which administered Chapter 41.56 RCW from its enactment in 1967 through 1975. Records for L&I Case O-562 were transferred, along with other L&I records, under RCW 41.56.801.

[3] Chapter 131, Laws of 1973.

working in a "Corrections Division" of what was then called a Department of Rehabilitative Services.

- A Corrections Division collective bargaining agreement for 1982 and 1983 covered the same classifications as the 1981 contract.

- A collective bargaining agreement for 1984 and 1985 covered the same classifications as the 1981 and 1982-1983 contracts, but the department covered was changed to the DAD.

- A collective bargaining agreement for 1986 through 1988 reflected a division of the corrections-wide unit into two units represented by Local 519. The term "corrections-custody unit" is used in this decision for a bargaining unit which then included corrections officers, security aides, and corrections sergeants; the term "corrections-support unit" is used for a bargaining unit which then included office-clerical and work release employees, and various other classifications (such as vocational and alcohol counselors, nurses, and evidence technicians).[4] The jail receptionist title first appeared in the collective bargaining agreement covering the corrections-support unit for 1986.

- The jail aide title first appeared in the 1990-1992 collective bargaining agreement for the corrections-custody unit, replacing the security aide title.

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[4] The Executive Director acknowledges that the parties have historically used different labels for these units, and have a comfort level with their terminology. However, the labels used by the parties since 1986 are found to be ambiguous and misleading descriptors of the employee groupings which are appropriate in light of a statutory amendment enacted in 1993, as described below.

- In 1991, the Commission certified the King County Police Officers Guild as exclusive bargaining representative of the law enforcement officers.[5] Local 519 thus ceased to represent any non-supervisory King County employees who were then eligible for the statutory interest arbitration process.

Thus, immediately before the events which gave rise to this controversy, Local 519 represented all of the corrections employees in the purportedly-separate corrections-custody unit and corrections-support unit.

Agreement Concerning Jail Aide Positions

In 1993, the employer and Local 519 entered into an agreement regarding the jail aide classification, as follows:

> The parties mutually covenant and agree that *King County will convert the Maintenance and Supply positions* currently held by Maysie Morey, Joy Jansson and John Thomas *into Corrections Officer positions as soon as practical, but no later than January 1, 1994.* The incumbents in these positions will be transferred into vacant Jail Aide positions as positions become open, in order of seniority in the special assignment, with the most senior person in the assignment transferred first.
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> The Maintenance and Supply Jail Aide position currently held by James Frederick will remain a Jail Aide position for as long as Mr. Frederick holds the position, but will become a Corrections Officer position at the conclusion of his tenure. . . .

(Emphasis added)

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[5] *King County*, Decision 3672-A (PECB, 1991).

For purposes of this case,[6] it is important to note that the jail aide classification continued to exist after January 1, 1994.

Effect of Extension of Interest Arbitration

In 1993, the legislature extended the statutory interest arbitration procedure to certain corrections employees. King County and Local 519 thereafter reviewed the propriety of their agreed-upon units, in light of Commission precedents.[7] While most of the employees in the corrections-custody unit came within the enlarged "uniformed personnel" definition, the parties disagreed about the jail aides. The employer argued that the jail aides were not eligible for interest arbitration, and that they should be transferred to the corrections-support unit. Local 519 stated that it could not voluntarily agree to those propositions.

On January 3, 1996, the employer filed a unit clarification petition with the Commission under Chapter 391-35 WAC, seeking removal of the jail aides from the corrections-custody unit. Case 12257-C-96-767 was docketed. That petition filed by Deborah Bellam, a labor negotiator for the employer, included the words

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[6] James Frederick testified that he understood the parties to have entered into that agreement to provide stability in the maintenance and supply function. Other testimony indicated it was an accommodation agreement for that employee, who had undergone surgery and was restricted from heavy lifting.

[7] Units mixing employees eligible for interest arbitration with employees who do not have such access had been rejected in *Thurston County Fire District 9*, Decision 461 (PECB, 1978); *City of Yakima*, Decision 837 (PECB, 1980); and *Kitsap County*, Decision 1970 (PECB, 1984).

"Petition No. I" in the space provided for identification of the issues.[8] A hearing was scheduled for June 17, 1996.

On May 13, 1996, the King County Corrections Association filed a representation petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of some of the corrections employees. Case 12491-E-96-2087 was docketed for that petition. As originally filed, the proposed bargaining unit included the jail aides, corrections officers, and corrections sergeants.

Upon the filing of the petition in Case 12491-E-96-2087, the unit clarification proceedings in Case 12257-C-96-767 were suspended under Commission rules which preclude clarification of a bargaining unit in which a question concerning representation exists. The parties were notified of that action (and related actions) in a letter issued on May 29, 1996. There was subsequent correspondence about those cases, but neither the employer nor Local 519 mentioned another petition or the existence of another issue to be resolved.

Review of the file in Case 12491-E-96-2087 discloses that Local 519 was under trusteeship in mid-1996. The principal officer of Local 519, Dustin Frederick, testified he was on leave from July of 1996 to February of 1997.

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[8] Bellam testified in this proceeding that she filed a second unit clarification petition with the Commission at the same time, in which she sought to have the jail aides placed into the corrections-support unit. Review of the Commission's docket records fails to disclose a second case opened or acted upon around that time. The file for Case 12257-C-96-767 was retrieved from the State Archives and examined, but that effort also failed to yield a copy of a second petition or any indication that a second petition was received by the agency at that time.

On July 10, 1996, the King County Corrections Association moved to amend its representation petition, to change its name to King County Corrections Guild and to drop the jail aide classification from the proposed bargaining unit. Local 519 did not agree to the exclusion of the jail aides from the bargaining unit.

The Commission conducted a representation election in Case 12491-E-96-2087, with the jail aides voting by challenged ballot. The King County Corrections Guild prevailed in the election, and there were not enough challenged ballots to affect the outcome. On September 10, 1996, the King County Corrections Guild was certified as exclusive bargaining representative of:

> All full-time and regular part-time corrections officers and sergeants of the King County Department of Adult Detention, excluding supervisors, confidential employees, and all other employees.

The Findings of Fact in that certification included two paragraphs concerning the jail aides, as follows:

> 3. . . . During the investigation conference, an issue was framed concerning the eligibility of jail aides. The King County Corrections Guild and the employer opposed their inclusion in the unit; Local 519 argued for their continued inclusion in the unit. The jail aides were allowed to vote by challenged ballot.
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> . . .
> 5. After the outcome of the election showed the employees had selected the King County Corrections Guild as their exclusive bargaining representative, the King County Corrections Guild and the employer confirmed their previous agreement to exclude the jail aides from the unit. *Local 519 has lost its standing to proceed with the inclusion of the jail aides in the bargaining unit.* ...

King County, Decision 5619 (PECB, 1996) (emphasis added).

Local 519 again ceased to represent any non-supervisory King County employees eligible for statutory interest arbitration.

The unit clarification proceedings in Case 12257-C-96-767 were also terminated by an order issued on September 10, 1996. That order included:

> A unit clarification proceeding cannot be conducted in the presence of a question concerning representation. . . . Once the parties moved ahead with the representation proceeding in Case 12491-E-96-2087, it was necessary for them to resolve any and all issues concerning the affected bargaining unit in that proceeding. . . . *Public Safety Employees, Local 519, SEIU, AFL-CIO, lost its legal standing to process a unit clarification petition in the affected bargaining unit once it lost its status as exclusive bargaining representative for the unit.*

King County, Decision 5658 (PECB, 1996)(emphasis added).

The parties were confused about the status of the jail aides. Compounding the absence of Dustin Frederick from the Local 519 staff between July of 1996 and February of 1997, Deborah Bellam went on maternity leave from about September of 1996 to January of 1997.

Negotiations Concerning Jail Aides

Upon his return from leave, in February 1997, Dustin Frederick asserted that Local 519 represented the jail aides in a separate bargaining unit limited to that classification. He so informed the jail aides. Bellam authored documents which both: (1) indicated that Local 519 represented the jail aides, and (2) claimed the jail aides were non-represented. She testified:

> I was out on maternity leave, which I believe was September of '96 – I believe I came back in January of '97. September of '96 PERC issued an order which I think may have been incorrect. PERC ruled on my petition, number one, saying that they granted the certification of the corrections guild and that's when they issued this order saying that 519 no longer represents the jail aides.
>
> What they didn't do – PERC didn't properly rule on my unit clarification or didn't rule at all or overlooked the second petition, which asked the jail aides to be placed into the noncommissioned unit. I wasn't at the office at the time, so apparently that was overlooked by my coworkers as well because we could have called PERC and reminded them about the second petition, or we could have appealed the ruling arguing that it was an incorrect ruling or we could have done a number of things.
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> At some point – and it might have been during this time, too – Dustin was out on leave. So the two people who knew most about it were both out unfortunately.
>
> ... finally, we came to the conclusion that correct or not, the PERC order was the law. There's a legal authority in this area.
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> But what really confused us is that the jail aides acted like they were represented by 519 in the sense that they had a seat on 519's board of trustees, if that's the proper terminology for their governing body. And 519, at least for a period of time, acted like they represented – represented the jail aides.
>
> So here I was with the county, and I have employees treating this union like the union represents them and the union acting like they represent the employees. So I was in kind of an awkward position that way.

Some jail aides became aware of a March 1997 letter in which the employer asserted that the orders issued in September 1996 had resulted in the jail aides becoming non-represented employees, and

they made inquiry to the union. Frederick assured them that, although "this was an extremely complicated issue," Local 519 was "for all intents and purposes" representing them.

The last corrections-custody unit collective bargaining agreement that covered the jail aides had expired on December 31, 1995, and notwithstanding its sometime assertion that the jail aides were non-represented, the employer bargained with Local 519 about the jail aides through most of 1997.

The 1997 Unit Clarification Petition

The employer and Local 519 continued to disagree about the appropriate bargaining unit placement for the jail aides, and the employer continued to seek inclusion of the jail aides in the corrections-support unit. On June 6, 1997, those parties jointly filed a unit clarification petition under Chapter 391-35 WAC, seeking a determination as to whether the jail aides were included in the corrections-support unit or constituted a separate bargaining unit. Case 13217-C-97-833 was docketed.[9]

In July of 1997, certain of the jail aides filed a lawsuit in the Superior Court. Those pleadings are not in evidence here, but apparently included an allegation that the jail aides were non-represented. During the summer of 1997, Local 519 conducted a poll in which the jail aides indicated a separate bargaining unit was a high priority for them.

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[9] Filed with that petition were: (1) a copy of the petition in Case 12257-C-96-767, bearing the words "Petition No. I" and a date stamp showing its receipt by the Commission on January 3, 1996; and (2) a copy of a unit clarification petition bearing the words "Petition No. II" but lacking the Commission's date stamp.

On November 11, 1997, Frederick submitted a contract proposal from the employer for a vote by the jail aides. That proposal included that the jail aides were to become part of the corrections-support unit. The jail aides rejected that proposal on November 20, 1997. In a December 3, 1997, letter to Bellam, Frederick indicated the union was withdrawing from the joint petition filed to initiate Case 13217-C-97-833. He wrote:

> In preparation for the Unit Clarification Hearing concerning Jail Aides, I had occasion to review the history and current status of this classification with our legal counsel. After reviewing the correspondences from PERC dated 9/10/96 . . . it became apparent that our joint request for a Unit Clarification Hearing may be inappropriate in light of the more fundamental question regarding Local 519's status as the official bargaining representative for this group of King County employees.
>
> Notwithstanding the position of PERC that as a result of the Corrections Officer decertification, the Jail Aides are officially unrepresented. The Jail Aides have participated over the last fourteen months in the activities of Local 519 including, but not limited to:
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> - Voting on elections regarding Union officers and Jail Aide collective bargaining proposals.
> - Occupying a seat on the Union Executive Board.
> - Through Local 519, requesting, attending and participating in Labor/Management meetings.
> - Requesting assistance from Service Employees International Union (SEIU) in negotiating a new collective bargaining agreement.
>
> In short, the Jail Aides have acted in every way as if they were represented by Local 519. In fact, at no time did the Jail Aides E-Board rep or any other Jail Aide claim that Local

> 519 did not represent them. In response, Local 519 has represented the Jail Aides in a fair, thorough and complete manner from the date of the decertification to present.
>
> However, notwithstanding the above actions of the Jail Aides and Local 519, several Jail Aides filed a lawsuit through their attorney Paul Gillingham on July 25, 1997. . . . One of the factual assertions in this lawsuit is that the Jail Aides are not represented. Obviously, the actions of the Jail Aides as referenced supra do not support the factual assertions in the lawsuit which simply adds further confusion to this issue.
>
> This matter was discussed at our December 2 Executive Board meeting and the conclusion of the Board was to clarify this issue immediately by sending Local 519 membership application forms/interest cards to all Jail Aides. We are proceeding pursuant to the opinion/decision of PERC that the Jail Aides are currently unrepresented under Washington State law and the most expeditious way to resolve the matter is to gain a majority of "interest" cards and request voluntary recognition by the County. It was the Union Executive Board's position that this must be done prior to proceeding to a Unit Clarification Hearing in January.

Upon receipt of that letter, the employer concluded that Local 519 had disclaimed its representation rights concerning the jail aides. Also on December 3, 1997, Frederick sent a "Special Notice" to all of the jail aides, stating in part:

> After review of the file correspondence and a lawsuit filed by attorney Paul Gillingham on behalf of several Jail Aides, it became apparent that before we can clarify which Local 519 bargaining unit is appropriate for the Jail Aides, it is necessary to clarify officially with PERC that Local 519 is the official bargaining representative for the Jail Aide classification. As a result of the decert by

> Corrections Officers, PERC ruled that Jail Aides are "unrepresented." Notwithstanding this ruling by PERC, the County, the Jail Aides and the Union have acted as if the Jail Aides are represented by Local 519. However, despite the fact that the County, the Jail Aides, and the Union have acted and are acting as if the Jail Aides are members of Local 519, PERC has no official notification of this fact and therefore, still considers the Jail Aides as "unrepresented."
>
> Consequently, before we can have the unit Clarification Hearing, we must first notify PERC that it is the desire of the Jail Aides to be represented by Local 519 and the County voluntarily recognizes Local 519 as the bargaining agent. The best way to accomplish this is to have all Jail Aides complete, sign and return membership application forms to Local 519.
>
> Enclosed is an Application for Membership form. If you want Local 519 to be officially recognized by PERC and King County as your bargaining representative, please complete and return the enclosed form to the Union office ... no later than Tuesday, December 23rd.

There is no indication in this record that the employer was aware of Local 519's request for membership cards from the jail aides.

A merger of the jail aide and jail receptionist classifications had been under discussion for some time, between Bellam and DAD representatives including Wallenstein. Both classifications were assigned to the intake/transfer/release area of the jail, and worked primarily in support of corrections officers; both reported through the same chain of command; and both wore uniforms. The distinguishing features were:

- Jail aides performed "routine assistance" to various jail operations, including cashier for inmate funds, inventory and storage of inmate property, maintenance and supply work, and

work in the laundry and commissary. Jail aides came into regular contact with inmates, and were in charge of inmate workers in the laundry. The job involved a certain amount of physical activity, including lifting.

- Jail receptionists worked with the public at the jail window, retrieving and verifying information, processing bail money, and processing requests for information about inmates. This was a less physical job than that of jail aide.

In a letter to the jail aides dated December 19, 1997, Wallenstein informed the jail aides that Local 519 had disclaimed them and announced a merger of the jail aide and jail receptionist classifications effective January 1, 1998. The purpose of the merger was described as addressing "flexibility to assign [employees] to cover for one another and to assist in overtime coverage for the other."[10]

Jail aides received Wallenstein's merger announcement in the same timeframe as Frederick had requested that they return authorization cards to the union. The record reflects that some of the jail aides believed there was no point in returning cards to the union after they received Wallenstein's memo. Local 519 did not receive membership cards from any of the jail aides.

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[10] The record indicates the King County Executive had concerns about proliferation of bargaining units, and the employer desired to cut down use of overtime. Major Craig Nelson, a DAD supervisor, noted that the small pool of employees in the former classifications had resulted in morale issues related to mandatory overtime, as well as work jurisdiction issues when corrections officers were assigned to perform jail aide / jail receptionist work.

The merger of the two classifications went forward, during or about January 1998, under a new "corrections technician" title. Class specifications entered into evidence reflect that the essential job elements for the new classification were, for the most part, a combination of elements listed for the jail aide and jail receptionist classifications. As with the former classifications, employees in the corrections technician classification do not attend the law enforcement academy, are not trained in use of force or physical restraint, and are not authorized to respond to violence between or among jail inmates.

Following the merger of classifications, Local 519 claimed representation rights for the new corrections technician classification based on its historical representation of the jail receptionists in the corrections-support unit. The former jail aides initiated this proceeding nearly 11 months later, on October 27, 1998.

POSITIONS OF THE PARTIES

The petitioner asserts that Local 519 falsely claimed to represent the jail aides after it lost status as exclusive bargaining representative of the corrections-custody unit, and thereby denied the jail aides their right to seek representation by another union. She alleges the employer and Local 519 then engaged in a conspiracy to deny the jail aides their collective bargaining rights, by merging the jail aide and jail receptionist classifications, and by placing the jail aides into the corrections-support unit. The petitioner contends the employer violated several of its own personnel guidelines in the merger of the classifications, and that the jail aides have suffered detriment as a result of the merger.

She claims the jail aides should not have to pay dues to Local 519 from January 1998 forward, because of those actions.

The employer contends that the petition must be dismissed as simultaneously seeking a severance and a decertification. Citing *Port of Seattle*, Decision 3421 (PECB, 1990), the employer asserts that the petitioner's filing of a decertification petition should be taken as a concession that Local 519 is, in fact, the exclusive bargaining representative of the former jail aides. The employer contends the petitioner's claims regarding the merger of classifications and the inclusion of the new classification in the corrections-support unit are beyond the scope of this representation proceeding, but it also argues that all proper procedures were followed in merging the classifications, and that there is no other logical bargaining unit for the new class.

Local 519 also asserts that the petition must be dismissed under precedents prohibiting "severance-decertification" petitions. It disputes the petitioner's contention that the jail aides retained any separate status following the merger of classifications and their placement into the corrections-support unit, and contends that any evidence regarding the continued existence of the jail aide classification is solely related to an accommodation agreement made by the employer with one employee. Local 519 disputes the claim that the jail aides were ill-served by the union, and notes that such issues have no place in a representation proceeding.

DISCUSSION

This controversy concerns employees who may be perceived as having slipped between cracks during the last five years, due to errors

made by the Commission staff, employer representatives, union representatives, and/or the former jail aides themselves. Collective bargaining is a process of communications, so good communications between parties and the administrative agency are certainly to be preferred. Any breakdown of communications is to be regretted.[11]

Status of Local 519 as Exclusive Bargaining Representative

The petitioner's brief opens with a reiteration of the "jail aides are unrepresented" alternative suggested on her petition. She wrote: "The Corrections Officers and Jail Aides legally decertified in September, 1996 from SEIU Local 519. The officers went on to form King County Corrections Guild."

The employer has vacillated: It has gone from claiming the jail aides were non-represented (in early 1997), to negotiating with Local 519 concerning the jail aides (through most of 1997), to acting unilaterally following a purported disclaimer by Local 519 (in late 1997), to placing the former jail aides into the

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[11] The Executive Director acknowledges that the parties were confused by *King County*, Decision 5619 (PECB, 1996) and *King County*, Decision 5658 (PECB, 1996). Terminology used by the agency is being reviewed for clarity, to avoid confusion in the future. The agency does not stand alone in responsibility for this situation, however. It appears neither the employer nor Local 519 requested an explanation from the agency, except by the prematurely withdrawn unit clarification petition in Case 13217-C-97-833. Moreover, neither of them utilized existing agency procedures designed to effect communications: The employer apparently never inquired when it didn't receive the "notice of case filing" routinely issued when a new case is docketed; Local 519 was entitled to service of any "Petition No. II", but (if it ever received such a petition) it apparently never inquired about a case in which it was named as a party.

corrections-support unit upon their transfer to the corrections technician classification (in early 1998).

For its part, Local 519 has also taken conflicting positions: It has gone from asserting ongoing representation rights as to the jail aides (through most of 1997), to purportedly disclaiming the jail aides (in late 1997), to asserting representation rights in the corrections-support unit as to the former jail aides in their new corrections technician classification (in early 1998).

Upon review of the record, the Executive Director concludes that each of the parties has misunderstood the representation status of Local 519 at some point in time:

First, the petitioner's brief reflects a fundamental misconception about what occurred in 1996. There was no two-step procedure. The corrections employees who qualified as "uniformed personnel" moved directly from representation by Local 519 to representation by the new organization, without an intervening stop in non-represented status.

Second, no question concerning representation was determined as to the jail aides in 1996. Although the jail aides were mentioned in the initial petition in Case 12491-E-96-2087, they ceased to be involved in that case once: (1) the representation petition was amended to exclude them from the proposed "uniformed personnel" unit, and (2) the only party seeking to include them in the "uniformed personnel" unit (Local 519) lost its legal standing to argue for their inclusion in that unit. Thus, the certification issued as *King County*, Decision 5619 (PECB, 1996) could not have caused Local 519 to lose its status as the exclusive bargaining representative of the jail aides.

Third, nothing in the order dismissing the unit clarification case, *King County*, Decision 5658 (PECB, 1996) could have upset the status of Local 519 as exclusive bargaining representative of the

jail aides. The representation proceedings in Case 12491-E-96-2087 had achieved the result sought in Case 12257-C-96-767, where the employer only sought to have the jail aides removed from the corrections-custody unit.

Revisiting the Unit Configuration(s)

The only possible issue remaining as to the jail aides in 1996 was their unit placement after the representation proceedings limited the corrections-custody unit to a "uniformed personnel" unit. That same issue is the key to a ruling on the representation petition now before the Commission, because the existence of an appropriate bargaining unit is a condition precedent to conducting any representation election.

Applicable Legal Standards -

The determination and modification of appropriate bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060. Two principles established in *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981) also apply:

First, that unit determination is not a subject for bargaining in the usual "mandatory/permissive/illegal" sense, so agreements made by parties on units are not binding on the Commission; and

Second, that the bargaining unit status of positions or classifications will not be disturbed in the absence of changed circumstances.

The general rule is that the employees in an appropriate bargaining unit have the right, under RCW 41.56.040, to vote on their choice of representatives (if any) for the purpose of collective bargaining. Accretion of employees to an existing bargaining unit is

appropriate (and the right of those employees to vote on their representation will not operate), however, where there is only one appropriate unit placement for employees affected by a change of circumstances. *See Kitsap County*, Decision 6805 (PECB, 1999), citing *Kitsap Transit Authority*, Decision 3104 (PECB, 1989).

Simple Analysis Based Upon Certifications -
A straightforward analysis of this controversy places the focus on the certifications which have been issued under the statute. Thus, the bargaining unit represented by Local 519 is the "all public safety employees" unit certified by L&I in 1969, as modified by the certification issued by the Commission in 1981 (which reduced the unit to "all corrections employees" by peeling off the law enforcement officers eligible for interest arbitration), and as further modified by the certification issued by the Commission in 1996 (which reduced the unit to "all corrections support employees" by peeling off the corrections personnel eligible for interest arbitration). There is no place in that analysis for a separate bargaining unit of jail aides.

Complex Analysis Based on Parties' Actions and Agreements -
Review of the unit configurations actually used by the employer and Local 519 discloses some transactions which reflected Commission policy and precedent, while others did not.

The division of the historical unit in 1981 was appropriate, since it conformed to the unit determination policy articulated in *Thurston County Fire District 9*, *supra*, and *City of Yakima*, *supra*. The law enforcement officers represented by Local 519 were clearly eligible for interest arbitration, while none of the corrections employees came within the "uniformed personnel" definition at that time. That unit configuration is accepted as valid.

The division of the corrections unit in 1986 is not binding, since there was no statutory or policy reason for such a division of the employer's corrections workforce at that time, and this record does not establish the existence of any change of circumstances which would have warranted an upset of the corrections-wide bargaining unit maintained by the employer and Local 519 from 1981 to 1985. The unit configuration agreed upon in 1986 contributed to this controversy, and is not binding on the Commission.

The 1993 statutory change triggered a unit modification, since the continued propriety of a corrections-wide unit (and of the agreed corrections-custody unit) came into question at the moment the legislation extending the interest arbitration process went into effect. The definition of "uniformed personnel" in RCW 41.56.030-(7) was amended to include:

> [C]orrectional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are *trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates.*
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> (Emphasis added)

That statutory change affected about 11 large counties, and the Commission had to interpret and apply the new statutory definition in cases involving several of those counties:

- The parties in *Pierce County*, Decision 4788 (PECB, 1994), were unable to agree on several classifications. Various medical, food service, and jail support employees were found to be excluded from the new definition of "uniformed personnel"

because they were not trained in the same manner as corrections officers, and did not have the same custody and control responsibilities as corrections officers.

- The parties in *Spokane County*, Decision 5019 (PECB, 1995), were unable to agree on the status of jail cooks who had some direct contact with inmates. The cooks were excluded from the bargaining unit eligible for interest arbitration because their pre-hire skills and ongoing responsibilities were primarily in food preparation, they were not trained as corrections officers, and they did not have the same custody and control responsibilities as corrections officers.

- The parties in *Thurston County*, Decision 4848-A (PECB, 1995), were unable to agree on the status of employees working under a "master control operator" title. Those employees clearly had responsibilities regarding the security of the jail facility, but they were excluded from the bargaining unit eligible for interest arbitration because they had no regular direct physical contact with inmates, did not attend the academy, and were not trained in the use of force or expected to restrain inmates or handle inmate disputes.

The record in this case indicates the jail aides had some direct contact with inmates in the laundry area, but they were not trained in the same manner as corrections officers and their responsibility for custody and control of inmates did not rise to the same level as that of corrections officers. Thus, the jail aides in King County were comparable to the cooks found ineligible for interest arbitration in *Pierce County* and *Spokane County, supra*. Had their status been fully litigated in either Case 12257-C-96-767 or

12491-E-96-2087, it is clear that they would have been excluded from the corrections-custody bargaining unit.

The jail aides could not have constituted a separate unit even if they had been found eligible for interest arbitration. Given the extraordinary procedural and expense burdens of the interest arbitration process, any unit configuration which purported to divide the non-supervisory corrections personnel of King County into two or more bargaining units would be abhorrent to the statutory purposes set forth in RCW 41.56.430 for the interest arbitration process. Thus, it would be appropriate to accrete any stranded or newly-identified "uniformed personnel" to the existing unit eligible for interest arbitration.

Accretion to the corrections-support unit was appropriate for the jail aides in 1996. When all of the facts and arguments are taken into consideration, the corrections-support unit was the only logical placement for the jail aides once they were removed from the corrections-custody unit. Reasons for such an accretion include:

- There was ample precedent for such an accretion. Like the *City of Yakima* decision which preceded them, the *Pierce County*, *Spokane County*, and *Thurston County* decisions uniformly avoided raising questions concerning representation or stranding the questioned employees. In each of those cases, the employees in the mixed bargaining unit had ongoing representation by the organization that previously represented the mixed unit, after being divided into the two groups according to the statutory definition of "uniformed personnel". None of those precedents provided any basis for an assertion that the jail aides were a separate bargaining unit.

- Accretion of the jail aides to the corrections-support unit was strongly preferable to the fragmentation problems inherent in creating multiple units among the employees who performed ancillary work in the jails.

- The propriety of a separate unit of the jail aides would have been called into question by the inherent problems to be faced by any organization representing 15 people out of a workforce numbering in the thousands.

Similarly, the only unit placement which is appropriate for the corrections technicians at this time is that which results from dividing the overall corrections workforce into two separate bargaining units according to the statutory "uniformed personnel" definition, and placing all of the employer's non-supervisory corrections employees into one or the other of those units according to their eligibility for interest arbitration.

A Severance-Decertification is Sought

The Commission has long held that the parties to a decertification case must take the bargaining unit as they find it, and that none of the parties to such a case are entitled to add positions to or subtract positions from the existing bargaining unit. Accordingly, a decertification petitioner will not be permitted to "sever" a portion of an existing bargaining unit for the purpose of voting on decertification. *City of Seattle*, Decision 1229-A (PECB, 1982); *City of Seattle*, Decision 2640 (PECB, 1987); *Spokane Transit*, Decision 5641 (PECB, 1996).

In this case, it was clear from the outset that the petitioner was seeking to decertify Local 519 for only the portion of the

corrections technician classification which traces its history to the jail aide classification. The petitioner was given a full opportunity to present evidence at a hearing, and to file a brief in this matter.[12] Now that the facts and arguments have been fully set forth and considered, it is clear that the severance-decertification precedents are applicable. Nothing in this record warrants setting aside those long-standing precedents. The petition in this case must be dismissed.

Petitioner's Other Arguments

The petitioner has advanced several arguments which are not applicable to this proceeding, or are not persuasive.

Merits of Reclassification Not At Issue -
The employer correctly argues that the petitioner's objections to the merger of the jail aide and jail receptionist classifications into the new corrections technician classification are outside the scope of representation proceedings under Chapter 391-25 WAC. The name "Public Employment Relations Commission" is sometimes taken as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees and unions. The agency does not have authority to resolve each and every dispute arising in public employment. In particular, the Commission has no jurisdiction to rule directly on the merits of an employer's classification system,

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[12] Most severance-decertification petitions are dismissed by summary judgment at an early stage of case processing, and this decision does not entitle such petitioners to a full evidentiary hearing. In this case, the confusion about the earlier agency decisions made it difficult to assess the validity of employer and union actions without benefit of a full record.

or on the creation, merger or abolition of particular classifications. Alleged violations of the employer's personnel policies and procedures cannot be resolved in this representation proceeding under Chapter 391-25 WAC, and could not be resolved in unit clarification proceedings under Chapter 391-35 WAC.[13]

The Request for Limitation of Union Security Obligations - The petitioner requests that the former jail aides be relieved of the obligation to pay dues to Local 519 for the period since January 1, 1998. As with the attack on the merger of classifications which was implemented on or about that date, the matter is outside the scope of this representation proceeding.

The petition in this case is being dismissed because the former jail aides are (and always have been) appropriately included in the corrections-support unit. Even confusion and inconsistencies which

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[13] This is not to say that the Commission could never pass judgment on issues about a classification system:

> The Commission clearly has jurisdiction to rule on alleged interference with the collective bargaining rights of employees and/or discrimination against the pursuit of lawful union activities, and it could rule on allegations that application of a classification system constituted interference or discrimination. However, any such claim would have to be processed as an unfair labor practice under RCW 41.56.140 through 41.56.160, in proceedings under Chapter 391-45 WAC.
>
> The Commission clearly has authority to determine and modify bargaining units under RCW 41.56.060 and to conduct representation and unit clarification proceedings under RCW 41.56.050 through 41.56.090, but rulings on the appropriate unit placement of classifications do not equate with rulings on the propriety of creating, merging, or abolishing classifications.

occurred in 1996 and 1997 are disregarded,[14] the corrections technician classification has been appropriately included in the corrections-support unit since its inception. Accordingly, it would be logically inconsistent to delay the inclusion of the former jail aides in the corrections-support unit while simultaneously dismissing their decertification petition under the "severance-decertification" precedents.

FINDINGS OF FACT

1. King County is a political subdivision of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. Public Safety Employees, Local 510, Service Employees International Union, a bargaining representative within the meaning of RCW 41.56.030(3), is the certified exclusive bargaining representative of non-supervisory corrections employees of King County, excluding elected officials, the executive head of the bargaining unit, confidential employees, supervisors, and employees who are uniformed personnel within the meaning of RCW 41.56.030(7). That bargaining unit has included corrections technicians since the creation of that classification on or about January 1, 1998.

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[14] An alternative explanation for the "January 1, 1998" date proposed by the petitioner is that Local 519 previously refunded the dues paid by the former jail aides in 1997 and the latter part of 1996. That was done in connection with the union's change of position concerning its representation status, which it announced to the employer and jail aides in December 1997.

3. Joy Jansson, an employee of King County in the bargaining unit represented by Local 519, has filed a representation petition under Chapter 391-25 WAC, seeking decertification of Local 519 as to a bargaining unit limited to employees formerly classified as jail aides.

4. Local 519 became the exclusive bargaining representative of all public safety employees of King County in 1969, under a certification issued pursuant to RCW 41.56.080.

5. Prior to the signing of collective bargaining agreements between Local 519 and King County in 1981, the bargaining unit certified in 1969 was divided into two units reflecting Commission precedents which required placement of employees who were eligible for interest arbitration under RCW 41.56.450 in units separate from employees who were not eligible for interest arbitration. One of the units created at that time included all employees of the corrections division.

6. Prior to the signing of collective bargaining agreements between Local 519 and King County for 1986, those parties agreed to divide the corrections employees into two bargaining units represented by Local 519. Nothing in this record shows that the subdivision of the certified bargaining unit at that time was done in response to any change of circumstances or the statute, or in response to any Commission precedent.

7. The "jail receptionist" classification first appeared in the 1986 collective bargaining agreement between Local 519 and King County covering corrections employees who performed support functions.

8. The "jail aide" classification first appeared in the 1990-1992 collective bargaining agreement between Local 519 and King County covering corrections employees who generally performed custody and control functions. The jail aide classification appears to have been the successor to a "security aide" title found in previous collective bargaining agreements.

9. Under legislation enacted in 1993, certain corrections employees performing custody and control functions were given access to the statutory interest arbitration process set forth in RCW 41.56.450.

10. On the record made in this proceeding, neither the employees in the jail aide classification nor the employees in the jail receptionist classification were trained for or responsible for the custody and control of inmates in the jail. While the jail aides had some direct contact with inmates in jail laundry facilities, it appears to have been comparable with that of jail cooks who were found ineligible for interest arbitration in cases involving corrections employees in other counties.

11. Between the enactment of the legislation described in paragraph 9 of these Findings of Fact and December 1995, Local 519 and King County reviewed the corrections bargaining units agreed upon in 1986 in light of Commission policy requiring the separation of employees into units according to their eligibility for interest arbitration. Local 519 and the employer agreed that the corrections officers and corrections sergeants represented by Local 519 were eligible for interest arbitration, but disagreed regarding the jail aides.

12. On January 3, 1996, the employer filed a unit clarification petition with the Commission, seeking removal of the jail aides from the bargaining unit which included the corrections officers and corrections sergeants. Although the employer provided credible testimony that it prepared a second petition at the same time, in which it sought to have the jail aides accreted to the bargaining unit of employees performing corrections support functions, the record does not establish that such a petition was filed at that time.

13. On May 13, 1996, another labor organization filed a petition for investigation of a question concerning representation with the Commission, seeking certification as exclusive bargaining representative of the corrections personnel performing custody and control functions.

14. The proceedings on the unit clarification petition described in paragraph 12 of these Findings of Fact was suspended upon the filing of the representation petition described in paragraph 13 of these Findings of Fact. The parties were so notified, by letter from the Commission staff.

15. In July 1996, the King County Corrections Association moved to amend its representation petition described in paragraph 13 of these Findings of Fact, to both: (a) change the name of the petitioning organization to "King County Corrections Guild"; and (b) to exclude the jail aides from the petitioned-for unit. Local 519 did not agree to the exclusion of the jail aides.

16. The Commission conducted a representation election, with the jail aides voting by challenged ballot. The King County

Corrections Guild received a majority of the valid ballots cast, and there were not enough challenged ballots to affect the outcome of the election. Local 519 thereby lost legal standing to pursue the inclusion of the jail aides in the bargaining unit of employees responsible for custody and control functions.

17. By orders issued on September 10, 1996, the King County Corrections Guild was certified as exclusive bargaining representative of the King County corrections employees who were eligible for interest arbitration, and the unit clarification petition described in paragraph 12 of these Findings of Fact was dismissed. Although Local 519, King County and the affected employees were confused about the status of the jail aides, nothing in those orders terminated the status of Local 519 as exclusive bargaining representative of the jail aides under the certification issued in 1969.

18. At various times subsequent to September 1996, the jail aides incorrectly asserted that they were represented by Local 519 in a separate bargaining unit and/or that they were unrepresented employees.

19. At various times subsequent to September 1996, Local 519 incorrectly asserted that the jail aides were represented by Local 519 in a separate bargaining unit and/or that they were unrepresented employees.

20. During most of 1997, Local 519 and King County engaged in collective bargaining regarding the wages, hours and working conditions of the jail aides.

21. In November 1997, the jail aides rejected a contract proposal which would have included them in the same bargaining unit with other corrections personnel performing support functions.

22. In December 1997, Local 519 purported to disclaim or place in question a portion of the bargaining unit certified in 1969 limited to the employees in the jail aide classification.

23. In December 1997, upon receiving a letter which it interpreted as a disclaimer by Local 519 of a portion of the bargaining unit certified in 1969 limited to the employees in the jail aide classification, King County announced a merger of the jail aide and jail receptionist classifications into a new corrections technician classification effective on or about January 1, 1998. The duties, skills and working conditions of the new corrections technician classification are a combination of those of the preceding classifications, and the record in this proceeding supports a conclusion that the merger of classifications was designed and implemented by employer officials to address existing problems relating to assignments and overtime work. The merger of classifications was implemented by King County on or about the announced date.

24. Following the implementation of the reclassification described in the preceding paragraph, King County recognized Local 519 as exclusive bargaining representative of the employees in the new corrections technician classification under the certification issued in 1969.

25. The petition filed by Joy Jansson to initiate this proceeding in October 1998, seeks decertification of Local 519 as to only the employees formerly within the jail aide classification.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. The record in this proceeding does not support a conclusion that the configuration of bargaining units among corrections employees that was implemented by agreement of Local 519 and King County during or about 1996 was appropriate under RCW 41.56.060, so that the Commission is not bound to accept or honor the agreement of those parties on that configuration.

3. Allocation of the jail aides to the bargaining unit of corrections employees performing support functions was the only appropriate unit placement for those employees, under RCW 41.56.060, on and after the effective date in 1993 of legislation extending the interest arbitration process to corrections employees trained for and responsible for custody and control of inmates, and Local 519 continued to be their exclusive bargaining representative, under RCW 41.56.080, at all times under the certification issued in 1969.

4. The bargaining unit certified in 1969, as modified by the removal of employees eligible for interest arbitration, is and continues to be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and the actions in 1995 by which Local 519 purported to disclaim a portion of that appropriate bargaining unit limited to the jail aides was null and void, and was not binding on the Commission.

5. The petition in this proceeding seeks a "severance-decertification" contrary to the rules and precedents of the Commis-

sion, and does not raise a question concerning representation under RCW 41.56.060, 41.56.070 or Chapter 391-25 WAC.

ORDER

The petition for investigation of a question concerning representation filed in the above-captioned matter is DISMISSED.

Issued at Olympia, Washington, on the 11th day of April, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a notice of appeal with the Commission under WAC 391-25-660.