

Kitsap Transit, Decision 10234 (PECB, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
KITSAP TRANSIT) CASE 21629-C-08-1331
)
For clarification of an existing) DECISION 10234 - PECB
bargaining unit represented by:)
)
AMALGAMATED TRANSIT UNION,) ORDER OF DISMISSAL
LOCAL 1384)
_____)
)
In the matter of the petition of:)
)
AMALGAMATED TRANSIT UNION,) CASE 21775-E-08-3370
LOCAL 1384)
) DECISION 10235 - PECB
Involving certain employees of:)
)
KITSAP TRANSIT) ORDER OF DISMISSAL
)
_____)

Summit Law, by *Bruce Schroeder*, Attorney at Law, for the employer.

Rita DiIenno, Business Agent, for the union.

On April 2, 2008, Kitsap Transit (employer) filed a unit clarification petition seeking removal of forty-four positions known as worker/drivers from the routed service unit represented by Amalgamated Transit Union, Local 1384 (ATU or union).

On June 13, 2008, the union filed a petition seeking to merge the two units it represents at Kitsap Transit: the routed service unit and the ACCESS service unit.

The petitions were consolidated for hearing.¹ Hearing Officer Starr Knutson conducted the hearing on July 29, 30, and 31, 2008. The parties filed briefs to complete the record.

ISSUES

1. Is the petition to remove the worker/drivers from the routed service bargaining unit timely?
2. Could a merged unit comprised of the routed service unit and the ACCESS service unit be an appropriate unit for collective bargaining?

Based on the record, applicable statutes, rules, and case precedent, the Executive Director rules that: 1) the clarification petition is dismissed as untimely under the provisions of WAC 391-35-020(3); and 2) the worker/drivers do not share a community of interest with the routed service drivers. A unit determination election may not be conducted in an inappropriate unit, and because the routed service unit is inappropriate due to the inclusion of the worker/drivers, the routed service unit and the ACCESS unit cannot be merged. Accordingly, the merger petition is dismissed.

ISSUE 1: Timely Petition?

The applicable standard is set forth in Chapter 391-35 WAC, which describes and limits the conditions under which a unit clarification petition may be filed. WAC 391-35-020(3) states:

¹ Ordinarily, the Commission will suspend processing of a unit clarification petition if a representation petition involving all or any part of a same bargaining unit is pending at the same time. WAC 391-35-110(1). However, these two cases were consolidated due to the number of common facts and the overlapping nature of the petitions.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.

Analysis - The worker/drivers are not primarily employed by Kitsap Transit; rather, their primary employer is the Puget Sound Naval Shipyard (PSNS). Ancillary to that job, they drive their PSNS co-workers to and from work at the shipyard.

This controversy began when the worker/drivers sent a letter to the employer requesting information on how the employer interpreted the contract concerning union dues. This caused the employer to revisit the issue of the composition of the routed service unit and whether or not the employees shared a community of interest. Ultimately, the employer put the union on notice during negotiations that it intended to file a unit clarification petition to remove the worker/driver positions from the routed service unit.

In its brief, the employer argued the worker/driver positions should be severed from the routed service bargaining unit based on the Commission's historical application of the unit determination criteria in "severance situations." It cited numerous cases, including *Ferndale School District*, Decision 8034, (PECB, 2003); *Riverside School District*, Decision 7098 (PECB, 2000); *Snoqualmie School District*, Decision 529 (PECB, 1972); and *Mukilteo School District*, Decision 1008 (PECB, 1980), in support of its petition. It also argued the criteria in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), applied by the Commission in *Yelm School District*, Decision 704-A (PECB, 1980), should apply to this case. However, the above-listed cases are inapposite to the case at hand. Each of

those cases involved a question concerning representation. Here, the employer did not question the representation status of the worker/drivers. Instead, it claimed that the worker/drivers never had a sufficient community of interest with the other employees in the routed service bargaining unit. Moreover, the employer argues the new security obligations imposed by PSNS after September 11, 2001, and as recently as the fall of 2007, and the importance of the security obligations have widened the gap between the worker/drivers and the routed service operators.

The employer cites *Skagit County Public Hospital District 2*, Decision 8027 (PECB, 2003), in which a clarification proceeding resulted in a division of the existing bargaining unit. However, the situation in that case was substantially different than the case at Kitsap Transit. In that case, the evidence showed a significant change in circumstances, including the addition of clinics, a medical office, and an oncology department; new pharmacy functions; doubling of the hospital size; increased laboratory testing; and numerous changes in the duties and responsibilities of the professional and technical employees. The employer also cites *City of Bellingham*, Decision 7322-A (PECB, 2001), in which a change sufficient to support severance was found when the positions at issue had evolved to require more formal training and more use of technology. The management structure for the positions had also changed to include two joint boards. No evidence of a similar appreciable change in circumstances was presented in this case.

The employer reasons that the worker/driver positions have experienced the same changes as were found in *Skagit County Public Hospital* and *City of Bellingham*. However, the record here does not reveal any significant change in the duties, skills, and working conditions of the worker/drivers. While the record contains

evidence concerning heightened security at PSNS after September 11, 2001, no evidence was presented that specific significant changes have been implemented more recently. The employer equates the two joint *City of Bellingham* boards to the two employers of the worker/drivers, but, in contrast to the situation in *City of Bellingham*, the dual employment relationship of the worker/drivers has existed for over 25 years.

The employer also claims recent "*de facto*" separation of bargaining between the fixed route operators and the worker/drivers as support for its petition. However, the record indicates that the separate bargaining history of the worker/drivers extends back to 1983 and has continued to the present.

CONCLUSION

This record does not support finding a change in circumstances contemplated by WAC 391-35-020(3). The unit clarification petition is dismissed.

ISSUE 2: Merge the Units?

Applicable Standard - The Legislature delegated the authority to determine appropriate bargaining units to the Commission. In determining, modifying, or *combining* bargaining units, the statute directs the Commission to consider the duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; and the desires of the employees. RCW 41.56.060.

The Commission makes unit determinations on a case-by-case basis. Among the four factors listed above, no one factor is overriding or

controlling. Additionally, all four factors need not arise in each and every case and may be weighted differently depending on the facts of that particular case. *Klickitat Valley Public Hospital District 1*, Decision 9350-A (PECB, 2006). However, the "duties, skills, and working conditions" component generally operates in all unit determination cases. *Community Transit*, Decision 8734-A (PECB, 2005).

The purpose of unit determination is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. The Commission also seeks to avoid the proliferation of multiple bargaining structures and conflicting work jurisdiction claims.

Within the category of "duties, skills, and working conditions," the Commission considers the degree of integration of managerial functions in an organization, similarities of pay and benefits, similarities of duties, and the degree of interchange of employee job functions. *Pierce County*, Decision 6051-A (PECB, 1998). Established differences of qualifications, duties, hours of work, and method of computing compensation can be a basis for allocating positions to different bargaining units within an employer's workforce. *Concrete School District*, Decision 8131 (PECB, 2003), *aff'd*, Decision 8131-A (PECB, 2004). Overlapping job functions or interchange among certain employees do not establish a community of interest by themselves. *King County*, Decision 5910-A (PECB, 1997).

Agreements of the parties do not bind the Commission on matters of unit determination. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981) and its progeny.

The following rule outlines the procedure for merging separately organized bargaining units.

WAC 391-25-420 UNIT DETERMINATION ELECTIONS

.
(2) Where an organization desires to merge two or more historically separate bargaining units, it may request a unit determination election under this section.
.

(c) The proposed merged unit must be an appropriate unit under the applicable statute.

(i) If the propriety of the merged bargaining unit is disputed, the executive director shall make a determination following a hearing.

In certain situations, the Commission has found that the merger of two units could be appropriate and has ordered elections. *Waterville School District*, Decision 9879 (PECB, 2007); *Everett School District*, Decision 9230 (PECB, 2006); *Wahkiakum County*, Decision 1876 (PECB, 1984). Conversely, the Commission has dismissed merger petitions where the merged unit would be inappropriate. *Raymond School District*, Decision 3202 (PECB, 1989); *Mount Vernon School District*, Decision 1629 (PECB, 1983).

In order to determine whether the proposed merger is appropriate in this case, the Executive Director has examined the duties, skills, and working conditions, the extent of organization, and the bargaining history of the bargaining units involved. The latter two factors, however, are not controlling in a petition for merger. *Community Transit*, Decision 8734-A. If the Executive Director finds that the proposed merged unit is appropriate, the desires of the employees will be determined by a secret ballot vote conducted by the Commission.

ANALYSIS

The history - Kitsap Transit, a public entity engaged in providing public transit services to residents of Kitsap County, was formed in late 1982 by a vote of the taxpayers. In January 1983, Kitsap Transit formally took over operations from Bremerton-Charleston Transit (BCT) and Bremerton Suburban Transit (BST), two private companies owned by the same person. The limited transit service provided by BCT became the routed service currently operated by the employer. The service provided by BST to and from PSNS was, and is, the service provided by the worker/drivers. At the time of the takeover, BCT had collective bargaining agreements in effect with local affiliates of the Teamsters, the Machinists, and the Amalgamated Transit Union. Kitsap Transit honored those collective bargaining agreements. The worker/drivers approached Kitsap Transit in 1983 and requested to be included with the former BCT drivers in bargaining. The employer agreed.

During that same period of time, a non-profit agency provided medical transportation services that grew into privately operated para-transit services for disabled persons. During the early 1990's, Kitsap Transit began scheduling for para-transit and a new company took over managing the para-transit operators. That new company, Larson Transportation, extended voluntary recognition under the NLRA to this union and negotiated a contract dated 1993-1995. In 1995, the employer took over the complete operation of that para-transit service, and formed what is now known as the ACCESS service.² Kitsap Transit honored that recognition and collective bargaining agreement.

² The employer had previously taken over the dispatch function for the private employer.

Thus, this union represents the two historical bargaining units known as the "routed service unit" and the "ACCESS service unit." However, no certifications exist in the Commission's files, nor were any presented at the hearing, concerning either of the two bargaining units.

The parties were engaged in bargaining and mediation during the pendency of these petitions. Historically, the bargaining units have had separate collective bargaining agreements, which expired at different times. The most recent routed service agreement expired on February 15, 2008; the ACCESS agreement expired on April 30, 2007. During the current round of bargaining, the union proposed, and the employer agreed, to bargain the agreements concurrently.³

The routed service unit - Article 8 of the routed service agreement lists and defines the categories of employees in that bargaining unit, as follows:

A. Routed Operator

1. Full-time operator - shall mean a person employed full-time to work on a scheduled basis and guaranteed thirty-five (35) to forty (40) hours of work per week.
2. Extra-board operator - shall mean a person available to work all service on a scheduled basis as needed and guaranteed thirty (30) hours of work per week.
3. Part-time A board operator - shall mean a person available to work all service on a

³ The parties agreed to a separate ACCESS agreement effective from May 1, 2007 to February 15, 2008, in order to bring the bargaining cycles together.

scheduled basis as needed and guaranteed fifteen (15) hours of work per week.

4. Part-time B board operator - shall mean a person available to work on a scheduled basis only and with no guarantee.
- B. Worker/Driver - shall mean a person employed on a part-time basis to operate a subscription commuter bus to their primary employment site.
- C. Intermittent Operations Supervisor - shall mean an operator employed on an as-needed basis to fill in for a supervisor's absences.⁴

Routed operators drive typical public transportation buses on fixed routes and schedules. They drive buses of approximately 35-40 feet in length and must obtain and retain a class "B" commercial drivers license (CDL) with a "P1" passenger endorsement and the air brake restriction removed.

Their hours of work are spread over fifteen hours per day. The operators bid four times each year by seniority for their desired work, including shift time and days off. The routed "A" board operators bid for a "package" of work. Each package includes the type of vehicle, its location, report time, quit time, daily and weekly hours (guaranteed full time), and days off. The routed extra board operators bid for days off with a guarantee of 30 hours per week. The part-time "A" board operators bid for availability only (1 day off and 1 preferred day off) with a 15 hour per week guarantee. The part-time "B" board operators bid for availability with some packages identified, with no guarantee of hours.

⁴ The intermittent operations supervisors are included in the unit. Neither party disputes the inclusion of these employees. There is no contention that these employees are statutory supervisors.

The employer provides orientation and training for all new hires in these categories. That training begins with a two day orientation that includes both routed and ACCESS operators. On the third day the new hires split into the two groups and the routed operators focus on learning to drive a 40 foot bus. Driving and learning the numerous routes and stops set by the employer are the primary objectives of the routed training.

The fixed route operators report to work based on a run card, which was determined by the seniority bid. Each run card lists the report location/time, the route numbers with the stops and the precise arrival time at those stops, the left/rights, the sign code for each route, and the end location/time. Operators have a pre-trip 17 minute time period in which to perform an inspection of their vehicle to ensure it operates correctly. Routed operators perform the same work every day of that particular bid, whether it is full-time or part-time work. Operators do not drive the same bus every day, and may even drive several different buses in a work day. Every fixed route bus is parked at the employer's Charleston Base when it is not being driven on a fixed route.

The employer sets the routes and arrival/departure times, and operators must adhere to that schedule. Drivers may not make adjustments to the schedule without authorization from dispatch. Fixed route operators do not collect money, as passengers must deposit the exact fare⁵ into a fare box, although drivers may also transport passengers who have previously purchased a 40-ride ticket.

The fixed route operators report to one of eight operations supervisors, who report in turn to the director of routed opera-

⁵ A bargained condition of employment.

tions. Although at the time of the hearing that position was vacant, testimony established that the employer intends to fill the position in the near future.

Worker/drivers also drive buses of approximately 35-40 feet in length and must obtain and retain a class "B" commercial drivers license (CDL) with a "P1" passenger endorsement and the air brake restriction removed. However, the similarity to a routed service driver ends there.

Each worker/driver performs full-time duties for PSNS, a federal facility bordering the employer's main routed service facility, Charleston Base. Worker/drivers transport co-workers and PSNS contractors, who live in close proximity to the driver, to work at PSNS each day. Worker/drivers must physically inspect the security badge of each person boarding the bus every day and ensure anyone without a proper security badge gets off the bus before it enters PSNS.

Worker/driver hours of work for Kitsap Transit span only the hours before and after their shift at PSNS. Worker/drivers operate the same bus every day. One-third of the worker/drivers park that bus at their personal residence, one-third park at a designated secured location, and the other third park at either the north or south base for ACCESS services. Each worker/driver determines independently what time to start the day, the route to take, whether or not to pick up additional passengers, where to pick up each passenger, and whether or not to alter the route. Worker/driver routes are posted on the employer's website for the convenience of the public, who may pay the fare and ride the bus only as far as the PSNS

gate.⁶ Persons calling Kitsap Transit to inquire about riding a worker/driver bus are given the worker/driver's home telephone number and told to call the driver. Most of the worker/drivers' passengers have passes paid for by PSNS. If not, worker/drivers sell the passenger a 40-ride ticket or collect the appropriate fare. Each driver must track his/her work hours, the ticket/fare sales, and number of passengers. Each worker/driver turns in a weekly report form to Kitsap Transit.

Worker/drivers have a 30 minute "pre-trip" time. That time allows for the usual safety inspection of the bus, 17 minutes, plus an additional 13 minutes to perform a security/bomb check mandated by PSNS. The PSNS deputizes worker/drivers after they complete security training conducted by PSNS, and retains the authority to determine the level of security training needed in order for the worker/drivers to remain deputized. If PSNS withdraws the security clearance for a worker/driver, that person's employment with Kitsap Transit is terminated.

A new worker/driver obtains a CDL learner's permit on his/her own and then contacts the worker/driver supervisor. The supervisor puts the new driver in contact with one of the worker/driver instructors, and those two people arrange the training, which is conducted on the weekend or in the evening at a location of their choice. The employer is not involved in the training, does not mandate how long the training will last, and has no direct control over the length of time it takes. It has taken up to one year to complete the training if PSNS sends the worker/driver to San Diego or Japan to work for a period of time. The only training provided

⁶ Testimony established that non-PSNS employees accounted for less than one percent of riders and do not generally ride every day.

by the employer is a CD-based interactive training and a related student handbook designed to help the new worker/driver learn the principles of defensive driving. Worker/drivers do not spend time learning any of the fixed routes.

The worker/drivers have one supervisor who reports to the service development director.

Testimony established that the worker/drivers have historically bargained separately from the routed service unit conducted after the routed service agreement was finished. Bargaining occurred during the evening for a couple of hours after the worker/driver representatives finished work at PSNS, and was concluded in two or three sessions. An ATU representative may or may not have been present.

The worker/drivers are covered by Appendix B to the routed service contract. That appendix functions as a completely separate agreement, but shares some common articles with the routed service contract. Most of the shared articles address subjects found in most collective bargaining agreements, such as the preamble, scope and purpose, recognition, non-discrimination, management rights, strikes and picket lines, savings clause, entire agreement, and duration.

However, the appendix includes some significant differences from the routed service agreement. The appendix states, in part:

The following Agreement covers working conditions and compensation for lead Worker/Drivers. Worker/Drivers (W/D) are operators employed on a part-time basis to operate a subscription commuter bus to their primary employment site.

The different language negotiated specifically to cover the worker/drivers is then delineated, including matters such as union security, seniority, holidays, leaves of absence without pay, other pay provisions (instruction pay, inclement weather pay, and pay for accident/incident reporting), miscellaneous provisions (the change fund), other working conditions, wages (three step scale), group bonus award, individual safety bonus award, and safe driving award. These articles contain substantively different provisions from those covering the routed service drivers.

The ACCESS service unit - Article 8 of the ACCESS service agreement lists the included classifications as follows:

1. Full-time Operator - shall mean a person employed full-time to work on a bid basis and guaranteed thirty-five to forty (35-40) hours of work per week.
2. Extra-Board Operator - shall mean a person available to work all service on a scheduled basis as needed and guaranteed thirty (30) hours of work per week.
3. Part-time A Board Operator - shall mean a person available to work all service on a scheduled or bid basis and guaranteed fifteen (15) hours of work per week.
4. Part-Time B Board Operator - shall mean a person employed to work on a scheduled or bid basis with limited availability and with no guarantee.

ACCESS operators drive a smaller vehicle (20 to 25 feet long) and have a Class "C" CDL with a "P2" passenger endorsement. ACCESS applicants take a special assessment which looks for certain personal characteristics. ACCESS applicants must also complete a written problem-solving exercise that addresses the unique ACCESS passenger and location-specific scenarios an ACCESS operator will

encounter. An applicant who does not successfully complete the ACCESS assessments will not be considered for an ACCESS position. If an applicant applies for both a routed and an ACCESS position and does not pass the assessment, the employer informs the applicant that only the routed position application will be considered. The ACCESS training focuses more on customer service and working with its unique customers than on driving the vehicle. Because ACCESS operators drive a different route every day, their training includes how to decide what route to take for efficiency, how to navigate down a narrow driveway, and gaining familiarity with the manuals (which cover many specifics of picking up passengers who regularly use the service). ACCESS operators must also learn to safely back up their vehicle, something a fixed route operator never does.

The ACCESS operators' work hours are also spread over fifteen hours in one day. Operators determine their work by a separate bid process conducted four times per year. However, the bid does not include any specified route; rather, the ACCESS "A" board operators bid for start and end times (which could be guaranteed or adjustable), weekly hours (guaranteed 35 to 40 per week), and days off. Extra board operators bid for availability (guaranteed 30 hours per week) and guaranteed or preferred days off. The part-time operators bid for availability only with no guarantee of hours.

The ACCESS operators' work is determined by the manifest, which is faxed to the ACCESS base shortly before the operator gets into the vehicle. It contains the names and locations of the passengers who have requested a pick-up on that day and what window of time has been specified by ACCESS dispatch for the pick-up. ACCESS operators use their 25 minute pre-trip time period to review the daily manifest, decide the best routes to take in order to arrive

at each pick-up location within the specified window, and perform a maintenance and safety inspection of the vehicle.

In 1995, when the employer began operating the ACCESS service, it decided to expand the service beyond the traditional para-transit service required under the Americans with Disabilities Act (ADA). Consequently, ACCESS operators perform three distinct types of service: para-transit (ADA), dial-a-ride, and subscription service.

In order to be eligible for ADA service, the individual must fill out an application and be certified under the requirements of the law. ACCESS operators then provide the eligible person (who must call 24 hours ahead of the need) with door-to-door service. The service called "dial-a-ride" is available within five specific areas of the county not serviced by a fixed route. Dial-a-ride requests must also be called 24 hours in advance. Persons requesting a "dial-a-ride" do not have to meet the ADA requirements for service. The employer decided to assign the dial-a-ride work to the ACCESS operators because the ridership is infrequent and it can match those trips to a time when an ACCESS vehicle would be in that same outlying area. This service comprises less than one percent of the total ACCESS trips. The subscription service is provided to people who request a ride at regular intervals (standing ride). The first subscription service was the early morning service to the ferry; it grew into part of a regular route. Other examples of subscription service provided by the employer include people living outside of a fixed route area who request a ride to work every day, or a work group of disabled persons going from one location to another several days a week, or a person wanting to go to the hairdresser every Thursday. Persons requesting a standing ride may or may not be ADA certified. Forty percent of the total ACCESS trips are for subscription service.

ACCESS operators are supervised by four operations supervisors who in turn report to the director of ACCESS and non-routed operations.

Similarities and Contrasts

All employees of Kitsap Transit complete the same application forms for employment.

Certain "hours of work" provisions are the same or similar in both the fixed route and ACCESS contracts: 1) definition of a work week; 2) overtime pay for work over 40 hours in a work week; 3) overtime pay for work spread in excess of 15 hours in a day; 4) the option to accrue compensatory time; 5) a certain percent of all runs mandated to be straight runs;⁷ and 6) a specified number⁸ of employees guaranteed full-time work. The appendix covering the worker/drivers does not address these issues.

The fixed route operators and the ACCESS operators have a similar bid system. The worker/drivers do not bid for their work.

All operators perform a maintenance and safety inspection of their vehicles prior to operating them for the day. In addition to the safety inspection, the worker/drivers perform a security check mandated by PSNS.

The fixed route and ACCESS operators share similar fringe benefits. The worker/drivers do not receive fringe benefits from Kitsap Transit.

⁷ Straight runs are those without a split in the work hours and range from 65 percent for routed service to 90 percent for ACCESS service.

⁸ Routed has a 55 person roster; ACCESS has a 38 person roster.

Fixed route and ACCESS operators share common lunch/break rooms in the three facilities operated by the employer. The worker/drivers do not use the employer's facilities for breaks or lunches as they are at PSNS during those hours.

Routed and ACCESS operators share training and orientation for two days, and then the groups split to cover job specific training. The worker/drivers are not trained by Kitsap Transit.

Neither fixed route operators nor ACCESS operators substitute for each other. Worker/drivers do not substitute for either of the other types of work.

CONCLUSION

An analysis of the duties, skills, and working conditions of the various groups of employees is necessary to establish whether the work of the employees is integrated and essential to the overall discharge by the employer of its primary function to provide public transportation.

Evidence establishes that both the ACCESS and the routed driver groups provide transportation to the public. While there may be some differences in their terms and conditions of employment, at first glance there does not appear to be a barrier to merging the two units under WAC 391-25-420. However, WAC 391-25-420(2)(c) is clear that in order to conduct a merger, the proposed merged unit must be appropriate.

Historically, the worker/drivers have been included in the same unit as the fixed route operators, yet their terms and conditions are vastly different. The worker/drivers are employees of PSNS;

their hiring process is different; training is separate and not controlled by the employer; fringe benefits and wages are different; supervision is separate; and seniority is calculated separately. The worker/drivers' terms and conditions of employment are unique. Worker/drivers do not perform duties that are essential to the overall discharge of the employer's primary function. For the most part, the worker/drivers do not transport the general public; they drive their co-workers to and from work. In essence, the worker/drivers provide a service akin to a van pool, albeit with larger vehicles. In light of the foregoing, it is clear that the worker/drivers do not share a community of interest with the routed drivers. Although they have historically been included in the unit with routed drivers, the unit was never certified by the Commission. Case law is clear that the Commission is not bound by the historical bargaining unit configuration. Thus, the unit is inappropriate and may not be merged with the ACCESS drivers.

Accordingly, the merger petition is dismissed.

FINDINGS OF FACT

1. Kitsap Transit is a "public employer" within the meaning of RCW 41.56.030(1).
2. Amalgamated Transit Union, Local 1384 is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Amalgamated Transit Union, Local 1384 is the incumbent exclusive bargaining representative of a bargaining unit of routed service coach operators. A history of bargaining exists wherein these employees have been represented by ATU in the same bargaining unit for over 25 years.

4. The routed service bargaining unit includes fixed route coach operators who drive public transportation buses and worker/drivers who drive buses carrying their co-workers, employees of the Puget Sound Naval Shipyard, to and from work. The worker/driver employees do not share a community of interest with the fixed route coach operators.
5. Amalgamated Transit Union, Local 1384 is also the incumbent exclusive bargaining representative of a bargaining unit of ACCESS operators. Employees in the bargaining unit drive small buses and vans for the employer. ACCESS operators have been represented by ATU for approximately 13 years. No dispute exists regarding the propriety of this bargaining unit.
6. The employer's petition to remove the worker/drivers from the routed drivers unit was not timely because there was no change of circumstances involving the routed driver unit.
7. The union filed a timely petition with a sufficient showing of interest, seeking to merge the ACCESS unit with the routed service unit.
8. Worker/drivers in the existing routed service unit are not engaged in activities in support of the public transportation mission of the employer and do not share a community of interest with the routed drivers.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW.

2. The clarification petition is not timely pursuant to WAC 391-35-020(3).

3. The worker/drivers do not share a community of interest with the routed drivers, thus the routed driver unit is inappropriate and cannot be merged with the ACCESS drivers.

ORDERS

1. The petition for clarification of a bargaining unit filed in Case 21629-C-08-1331 is DISMISSED.

2. The petition for investigation of a question concerning representation filed in Case 21775-E-08-3370 is DISMISSED.

Issued at Olympia, Washington, this 26th day of November, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

These orders will be the final orders of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210 or WAC 391-25-660, respectively.