STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
TEAMSTERS UNION, LOCAL 760	)	CASE 7479-E-88-1283
	)	
Involving certain employees of:	)	DECISION 3350 - PECB
	)	
GRANT COUNTY	)	ORDER OF DISMISSAL
	)	
	)	

Allen Hobart, Business Representative, appeared on behalf of the union at the hearing and filed the post-hearing brief; Wesley LeMay, Business Representative, appeared on a post-hearing motion.

Duane Wilson, Labor Relations Consultant, appeared on behalf of the employer at the hearing and filed the post-hearing brief. Menke and Jackson, by Anthony F. Menke, Attorney at Law, filed a post-hearing motion.

On July 7, 1988, Teamsters Union, Local 760, filed a letter with the Public Employment Relations Commission, requesting a "separation" of the unit of Grant County Sheriff Department employees currently represented by the union. Specifically, the union sought separation of the jail detention staff from the existing department-wide bargaining unit. The union's request was not specific as to the procedure being invoked, and the matter was docketed by the Commission as a representation case under Chapter 391-25 WAC. In response to a demand for submission of a showing of interest, the union sought to clarify the intent of the petition, by stating that it was merely seeking a unit clarification hearing on whether the severance of one group from the other was appropriate. A hearing was held at Ephrata, Washington, on November 29, 1988, before Hearing Officer J. Martin Smith. The hearing was conducted in the manner of a hearing in a unit clarification case. Briefs were filed by both parties, the last of which was received on

February 1, 1989. At the hearing and in the briefs, the union supported the creation of a separate unit, while the employer opposed the severance of the department-wide unit.

On February 9, 1989, the Commission received a copy of a memorandum addressed to the Hearing Officer and the union's representative by the employer's labor relations consultant, pointing out an error in the testimony which was carried forward in the employer's brief. That memorandum covered transmittal of a copy of a February 1, 1989 letter from the employer's administrative assistant to the employer's labor relations consultant. The cited error has to do with the dates and amounts of certain pay increases granted to bargaining unit employees.

On February 24, 1989, the Hearing Officer directed a memorandum to the representatives of both parties, declining the employer's request to "take this new information into account" in the processing of the case. The Hearing Officer advised the parties that it would be necessary for them to stipulate a copy of the administrative assistant's letter into evidence, or for them to stipulate or move for reopening of the hearing. Nothing further was heard or received from the parties on the claimed "error" in the evidentiary record.

Both of the parties thereafter experienced changes of their representatives. Wesley LeMay replaced Allen Hobart as the union representative for the bargaining unit. Attorney Anthony F. Menke replaced Duane Wilson as the employer's representative.

On June 9, 1989, the employer filed a motion "to re-open the record", citing the change of representative for the employer and a change of position by the employer on the substance of the case. The employer then indicated that it supported the severance originally proposed by the union, based upon "the community of interest, distinction in training and responsibility[, and] case

law". The employer mentioned the possibility of "a subsequent hearing/meeting for the purposes of finalization of the bargaining units and the exclusions applicable thereto", but did not identify any new evidence to be taken, or any other need for reopening of the hearing.

The Hearing Officer thereafter held a conference with the representatives of both parties. At that time, the employer raised an additional reason for severance of the units, i.e., that there would be a need in the future to split the bargaining unit if the "field" staff were to acquire access to interest arbitration. The parties reached a "tentative agreement" that would have resulted in a severance of the bargaining unit and recognition of the union for two separate units. The union later rejected that agreement, however.

The union has since had another change of officials. The representative who participated in the post-hearing conference, Wesley LeMay, is no longer representing the bargaining unit.

BACKGROUND

Grant County has bargaining relationships, pursuant to Chapter 41.56 RCW, with organizations representing six bargaining units which have been organized among its employees. These include: (1) A bargaining unit of courthouse employees, (2) a unit of district court employees, (3) a unit of public works employees, (4) a unit of sanitation employees, (5) a unit of "9-1-1" dispatch employees, and (6) the existing department-wide unit of Sheriff's Department employees.

The Grant County Sheriff's Department is headed by Sheriff Felix Ramon, an elected official. The operation is divided into two components, with Sheriff Ramon and Undersheriff Larry Hively

exercising direct authority over the entire department. At the next level, Chief Deputy Larry Boyd has authority over the "field" division, directing three sergeants and their subordinate deputies, while Chief Deputy Cleve Schuchman is in charge of the "detention" division, directing Chief Jailer Pete McMahon and the jail staff. The workforce of the Sheriff's Department currently includes 19 field deputies and 18 jailers.

Local 760 has represented the Sheriff's Department employees since the early 1970's. The parties' latest collective bargaining agreement, which was effective from January 1, 1987 through December 31, 1987, described the existing bargaining unit as:

> [A]ll employees of the Sheriff's Department except the sheriff, undersheriff, and chief deputies . . .

No specific references to "jailers", "corrections officers", "detention officers" or similar generic terms are found anywhere in that contract. Employees of the "detention" and "field" divisions had remained in the same bargaining unit up to the onset of these proceedings, however, notwithstanding the creation of the Corrections Standards Board by the State of Washington during or prior to 1979, and notwithstanding the imposition of new standards for jail staffs which distinguished them from fully commissioned law enforcement officers of the type assigned to the field division.

Prior to 1986, the employer's jail was located in close proximity to the office space utilized by the field deputies. Supervision of the jail facility was by a "chief administrator" who worked directly for the sheriff. Jail operations were performed by personnel who "doubled" as dispatch-radio operators. It appears that there were four to five people at any given time to perform "detention" work. Although those jailers were sent away for training for two weeks and were given limited commission cards

authorizing them to exercise certain powers of arrest, the practice was that the arresting officer remained with an arrestee during the booking process. Many of the field deputies had been assigned to detention tasks at some time in their employment with Grant County.

Grant County constructed a new "law and justice" center in 1985. The "field" deputies occupied new office and training facilities, and a new jail was put in use for the first time on January 17, 1986.

After the new jail facility was opened, the "detention" staff was soon increased to 11 employees. That number has further expanded to the current 19 employees. The "detention" employees are paid on a monthly-salaried basis. They work 8-hour shifts on a rotating shift scheme which cycles every 28 days. These employees are members of the PERS retirement system, and are not eligible for coverage under the LEOFF retirement plan applicable to the "field" deputies. Each jail shift is staffed to allow a supervisor and a jail officer at the booking desk on the main floor of the two-story facility, with one officer usually with inmates on the upper floor and one officer at the central control desk to monitor ingress to and egress from the facility.

Also in 1985, the employer commissioned the Norman Willis Company to do a wage survey for job classifications in Grant County. The survey was undertaken with the consent of Local 760. As a result of that wage survey, many of the employees in the Sheriff's Department bargaining unit received 6% wage increases in 1985 and 1987. Certain job classifications were considered to be paid above the general average for the surrounding area, however, and the wages for those classifications were "frozen" for that period of time. For the jail employees, their published "rates of pay" were reduced, but all existing employees were "red-circled" or "grand-

fathered" at their existing rates of pay, so that none of the employees actually suffered any pay reduction.[1]

The record is not clear on the point, but it seems that the events of 1986 were a source of friction between the employees in the "field" and "detention" groups. A successor contract was ratified through December 31, 1987, but the friction continued. In the absence of a new collective bargaining agreement, this petition was filed early in 1988.

POSITIONS OF THE PARTIES

Teamsters Local 760 took the position at the hearing and in its brief that the present division between "field" and "detention" employees defines separate communities of interest, such that creation of a separate bargaining unit of jailers is justified and appropriate under RCW 41.56.060.

The employer argued at the hearing and in its brief that the only divisions between the "field" and "detention" staffs in the Grant County Sheriff's Department are "political", or relate to different goals in collective bargaining. Further, severance of the existing bargaining unit was seen as constituting an unwarranted fragmentation disfavored by Commission precedent.

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[1] There was much confusing testimony on this subject. It is contended by the employer that no employees received pay raises in 1986, and that Sheriff's Department employees received a 6% increase effective March 1, 1987. Two jail employees who were making less than 6% above the rates determined appropriate by the Willis study were to have received increases. There was some testimony by jail personnel that their salary "steps" were frozen. Sorting out of these details is not essential to the decision of this case, however.

DISCUSSION

The Commission applies statutory criteria in determining disputes concerning bargaining unit structures. Those criteria are set forth in RCW 41.56.060, as follows:

> In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.

No single element predominates over all of the others. Bremerton School District, Decision 527 (PECB, 1978). On the other hand, the "history of bargaining" criteria tends to grow in importance, from little or no weight among unrepresented employees to a matter of substantial weight in a workforce which has been organized for some time. Thus, bargaining units with a substantial history are broken up only upon compliance with certain "severance" criteria. Yelm School District, Decision 704-A (PECB, 1978).

Issues concerning separation of jail/detention employees from the law enforcement employees in sheriff's departments have engendered a number of recent cases before the Commission.[2] In Okanogan County, Decision 2800 (PECB, 1987) and in Grays Harbor County, Decision 3067 (PECB, 1988), severances of the type sought here were rejected.

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[2] Review of the docket records of the Commission discloses cases, of various nature, involving new jail facilities in several counties, including at least Yakima, Spokane, Walla Walla, Okanogan, and Whitman. There has been a general expansion of the jail staffs in connection with the construction of new jails.

In the Okanogan case, a new jail facility opened in 1985 resulted in a physical separation of correctional employees from the dispatch and field deputy personnel employed in the same bargaining unit. The field deputies chose a dispatch employee to represent them in bargaining the next year, and there was dissention within the bargaining unit about the tentative agreement reached in 1986. Responding to a petition seeking to sever the historical bargaining unit, and applying the criteria of RCW 41.56.060 and the severance criteria of Yelm, supra, the historical unit was left intact. It was observed:

> It is concluded that severance of the existing bargaining unit would be disruptive of labor relations. Separate bargaining would be required for the additional unit, which would tend to involve additional personnel and effort, as well as complicate comparisons to "road" and "courthouse" bargaining units.

Intra-unit "disagreements" were not enough to support a fragmentation of the bargaining unit structure in the face of a history of bargaining which had continued over the life of six contracts.

Grays Harbor County, supra, involved a proposed severance of jailers, matrons and jail record clerks from a department-wide bargaining unit which included "field" personnel and dispatchers. As with Okanogan County, it was noted that Grays Harbor County is not a "second-class or larger" county so as to qualify its law enforcement personnel for interest arbitration under RCW 41.56.430, et seq. A "plebiscite" vote taken among members of the existing unit was not considered persuasive, even though it indicated a "desire" on the part of the field deputies to exclude the jailers. Nor was evidence of a "feeling" that jail employees were getting less than their fair share of bargaining effort persuasive when, in fact, the field deputies were a numerical minority of the overall bargaining unit, and no discrimination had been shown against jail employees at the bargaining table.

The arguments and shifts of position of the parties in Grant County have not demonstrated any significant differences from the situations in the Okanogan County and Grays Harbor County cases. The "detention" employees have been included for many years in the same department-wide bargaining unit with the field deputies and other employees of the Sheriff's Department. No timely effort was made to "sever" the bargaining unit when the new jail was opened and the jail workforce was substantially enlarged, and the jail employees now hold a thin majority of the overall bargaining unit. The Grant County jail does not operate separately, but remains under the direct authority and supervision of Sheriff Ramon. As Chief Deputy Schuchman put it:

> I wouldn't say that [the jail] operates separately. I think that each person within the department has an assignment to, within the department, to reach a common goal, and that is to arrest people that have committed crimes and to detain them properly in jail.

Outwardly, there are few differences between the two groups of personnel. Their uniforms are similar, but jailers' garb is designed for indoor wear. Employees in both groups are allowed to carry weapons, although jailers usually do not do so.[3]

There are, of course, differences in training and specific duties. The jailers have commissions which empower them to make arrests under some circumstances,[4] as well as permitting them to serve and

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[3] Jail practices encourage that all firearms be locked up in a "gun-locker" outside of the jail facility. Law enforcement officers entering the jail thus put their weapons in this locker prior to gaining entry, with their arrestees, to the jail's sally-port area. Thus, neither group carries arms in the jail itself.

[4] Indeed, Chief Deputy Schuchman testified that jailers had power of arrest, and have used that authority on several occasions throughout the jail facility.

process warrants, but they do not have the full power of arrest possessed by the field deputies. The current shop steward for the jail employees, Robert Slater,[5] thought it significant that the field deputies no longer "pinch-hit" for jail employees (as they once did), given the fact that the field deputies were no longer trained to handle all of the booking and detention functions of the jail. The record indicates that the role of the field deputies has been somewhat diminished, but not altogether eliminated, in the booking procedure now used for prisoners. The field personnel still keep restraints on their prisoners, still do the last pat-down search before the prisoner is booked, and still take a hand in preparation of charge forms and booking papers before turning over the prisoner to the jail staff.

As may be the case with many or even all bargaining units, there have been some disagreements among unit members as to overall bargaining strategy, leadership on the negotiations team, goals for contract negotiations, and other matters. There was testimony that the jailers considered the field deputies to sometimes display an "arrogant" attitude towards them. However, nothing in the record indicates that jail employees have been shut out of the bargaining process. Jail Shop Steward Slater testified that the jail employees were upset with the way things turned out on the Step Plan negotiations, but he conceded that the jail employees were not "outvoted on everything". Problems stemming from past or future implementation of the pay study remain a subject for collective bargaining under the "wages" category of the statute, regardless of the unit structure.

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[5] Slater was a field deputy for the first two years of his employment with Grant County. Rather than hire jailers "off the street", as it had done in the past, the employer began using civil service procedures for hiring of jail employees when it expanded the jail workforce. Slater was the employer's first civil service employee in the jail.

Arguments concerning "political infighting" which were advanced in the employer's post-hearing brief are not persuasive. The employer claimed in that brief that:

> [T]he union has attempted to apply pressure on the Sheriff, Board of County Commissioners, Performance Review Committee and other management personnel in the hope of effectuating a significant raise. Failing same, there has been a noticeable increase in grievance and political activity.

The filing of grievances under a collective bargaining agreement is an activity protected by the statute. Valley General Hospital, Decision 1195-A (PECB, 1981). The Commission has issued strong remedies against employers who punish employees for filing grievances. King County, Decision 3178, 3178-A (PECB, 1989). Mischaracterization of protected activity as "political pressure" will not change the law, and Grant County will not be heard to complain of the exercise by employees and their exclusive bargaining representative of the rights conferred by the statute.

Arguments concerning the potential for interest arbitration that were advanced by the employer in belated support for its post-hearing motion are also unpersuasive. The extension of interest arbitration to law enforcement employees of Grant County is entirely speculative. The Commission dealt adequately with such situations when interest arbitration was actually extended to employees in 11 additional counties in 1984. Benton County, Decision 2221 (PECB, 1985); Cowlitz County, Decision 2067 (PECB, 1984). The possibility of a future extension of interest arbitration was rejected as a basis for a current unit determination in Grays Harbor County, supra. Nothing has changed which would indicate a departure from that result here.

The community of interest in the department-wide bargaining unit continues to exist, and is supported by a lengthy history of

bargaining. To separate out a bargaining unit of jailers at this time would unduly fragment bargaining structures.

FINDINGS OF FACT

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

2. Teamster's Union, Local 760, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an existing unit of all employees in the Grant County Sheriff's Department, excluding the sheriff, the undersheriff and chief deputies. That bargaining relationship has existed since about 1972. Throughout its existence, the bargaining unit has included field deputies and jailers, as well as office-clerical employees.

3. A pay study conducted by the employer during or about 1985 with the consent of the union resulted in a "freezing" of wages among jail employee classifications, while field deputies and clerical employees in the bargaining unit received longevity increases and 6% cost-of-living increases in 1985 and 1987.

4. In January of 1986, the employer opened a new jail facility and expanded the size of the jail workforce. Routine contact between the field deputies and jail staff was reduced, but not altogether eliminated.

5. The jail employees are chosen by civil service procedures generally similar to those used for the hiring of field deputies. The jail employees wear uniforms generally similar to those worn by the field deputies. The jail employees are

provided firearms, and are issued commissions which empower them, under limited circumstances, to arrest persons who break the law.

6. The jailers and field deputies interface regularly in the operation of the Sheriff's Department, under the common supervision of the elected sheriff and the undersheriff, and are part of an integrated operation essential to overall performance of the employer in its law enforcement responsibilities.

7. Creation of a separate bargaining unit of jailers, record clerks and cooks would unduly fragment the existing bargaining unit and disrupt collective bargaining in the employer's workforce.

CONCLUSIONS OF LAW

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

2. The petitioned-for severance of a bargaining unit limited to jailers, record clerks and cooks from the existing department-wide bargaining unit of employees of the Grant County Sheriff's Department would not, in view of the history of bargaining, be an appropriate unit within the meaning of RCW 41.56.060.

3. No question concerning representation presently exists under RCW 41.56.050, .060 and .070 in these proceedings in a unit appropriate for the purposes of collective bargaining.

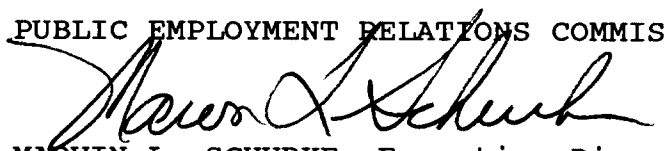
4. No basis presently exists for a clarification of the existing bargaining unit in this proceeding.

ORDER

The petition filed in the above-entitled matter by Teamsters Union, Local 760 is DISMISSED.

DATED at Olympia, Washington this 21st day of November, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).