

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of:	)	
	)	
WASHINGTON STATE COUNCIL OF	)	CASE NO. 7386-E-88-1261
COUNTY AND CITY EMPLOYEES	)	
	)	DECISION 3067 - PECB
Involving Certain Employees of:	)	
	)	
GRAYS HARBOR COUNTY	)	ORDER OF DISMISSAL
	)	
	)	
	)	

Pamela G. Bradburn, General Counsel, appeared on behalf of the Washington State Council of County and City Employees.

Perkins Coie, by Michael T. Reynvaan, Attorney at Law, appeared on behalf of the employer.

On May 3, 1988, the Washington State Council of County and City Employees filed a petition with the Public Employment Relations Commission, seeking certification as the exclusive bargaining representative of correction officers, matrons and record clerks employed by Grays Harbor County. A pre-hearing conference was held on June 7, 1988, at Montesano, Washington, at which time issues were framed for hearing. The incumbent exclusive bargaining representative of the petitioned-for employees, the Grays Harbor Deputy Sheriff's Association, indicated a willingness to disclaim the bargaining unit subject to the petition. A hearing was conducted on July 26, 1988, at Montesano, Washington, before Hearing Officer William A. Lang. Post-hearing briefs were filed on September 19, 1988.

**BACKGROUND**

The Grays Harbor County Sheriff's Department and Correction Facility are located at Montesano, Washington, which is the seat of the county government. The department is organized into three divisions: Corrections, criminal and civil. All of the divisions are under the overall administrative direction of the elected sheriff. The chief civil deputy and the chief criminal deputy supervise their respective divisions, and the jail superintendent is in charge of the Corrections Division. There are approximately 60 non-supervisory employee positions authorized in the Sheriff's Department. One "Records Clerk", two and one-half full time equivalent "Matron" positions and 18 "Correction officer" positions are assigned to the Corrections Division. The record clerk works the day shift, while the other employees cover 24 hours. All of these employees work in a "controlled access" area.

The record clerk is assigned to process jail records, although she occasionally does clerical work for other divisions.<sup>1</sup>

The matrons function principally as cooks, but also have duties involving the search of female prisoners. They are not armed, but wear uniforms and also have limited commissions.

The correction officers are primarily responsible for jail security, but occasionally are assigned to prisoner transport and courtroom security duties. Correction officers have limited commissions, wear uniforms and may carry weapons in

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<sup>1</sup> Prior to April 1, 1988, the Records Clerk reported to the jail superintendent. More recently, her supervision was changed to the chief civil deputy, who now approves her overtime and answers questions. The change seems to have otherwise had little practical effect on her duty assignments.

court or during transport. There was evidence that a correction's officer was assigned to the "scuba dive team", because of his special qualification as a diver.

The Criminal Division is the largest in the department, having 34 authorized non-supervisory positions. The bulk of those, a total of 24 positions, are employed under titles of: "Deputy Sheriff", "Sergeant" and "Detective". In addition, there are six dispatchers who operate communications for the department.

The deputies, sergeants and detectives are fully commissioned law enforcement officers who have full power of arrest, carry weapons, and are concerned with field law enforcement activities. These employees may wear uniforms while on duty.

The dispatchers take requests for assistance from the public by telephone, and dispatch deputies by radio. The dispatch center is located within the controlled access area of the employer's facility, separated from the jail by a plywood wall. These employees wear uniforms and carry limited commissions, but are unarmed. Both deputies and correction officers provide relief for the dispatchers.

The non-supervisory employees of the Civil Division are a "Civil Deputy", who is a fully commissioned deputy sheriff, an "Administrative Accountant", a "Civil Clerk", a "Receptionist" and, recently, the "Jail Record Clerk". The clerical employees handle the paperwork and recordkeeping for the department.

Deputies and correction officers all receive training at the police academy, and deputies serve a two week orientation assignment in the jail at the beginning of their employment with the department. In times of budget constraints, the county has transferred deputies to the jail rather than lay

them off. There is evidence of at least one instance when a deputy was temporarily assigned to the jail as a respite from the stress of patrol duties. The deputies and detectives work with correction officers when "booking" prisoners or interviewing inmates in the course of their investigations. The time spent in interaction with deputies is estimated at up to 5% of a correction officer's shift, on the average. The deputies, dispatchers and correction officers are supervised on the evening and night shifts and on weekends by sergeants who act as the "officers in charge". Occasionally, correction officers will be assigned as the "officers in charge".

The Grays Harbor Deputy Sheriff's Association was established some time around 1970-1971. Since 1977, the organization has been the exclusive bargaining representative since 1977 for all non-supervisory employees in the Sheriff's Department.<sup>2</sup> The correction officers were added to the bargaining unit in 1979, when that classification was created. The association has processed grievances for the correction officers, and correction officers have served on the grievance committee. The elected officers of the association (two positions) and its bargainers (two positions) have come primarily from the ranks of the deputy sheriff classification, although correction officers have served as representatives on bargaining committees in the past. Under the by-laws of the organization, correction officers can be nominated and elected to office, without restriction. It appears that correction officers declined to be nominated for association office for the current period, in anticipation of forming their own bargaining unit.

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<sup>2</sup> Review of the docket records of the Commission fails to disclose a representation proceeding involving the Sheriff's Department at this time frame. In fact, the earliest cases that can be identified as involving this bargaining unit were unfair labor practice and mediation cases filed in 1982.

There is some evidence that, over the years, there occasionally have been exchanges of derogatory statements between the correction officers and the deputy sheriffs. The correction officers came to believe that they were being discriminated against in terms of wages and benefits, even though the latest bargaining proposals advanced by the association demanded twice the amount of pay increase for the correction officers as was sought for the deputies.

In addition to its collective bargaining relationship with the Grays Harbor County Deputy Sheriff's Association, the county currently negotiates collective bargaining agreements with the petitioner covering separate bargaining units in the Engineer and Road Department, in the courthouse, and in the Health Department.<sup>3</sup> Prior to filing the petition in the instant matter, the petitioner requested voluntary recognition from the employer for the corrections group. The employer conditioned its willingness to grant recognition to the petitioner upon agreement that the group would be combined with the courthouse unit and upon evidence showing that the petitioned-for employees desired this arrangement.

The association conducted a secret ballot election to determine whether the petitioned-for group should be severed. A result of 36 votes for severance from the balance of the Sheriff's unit and six votes against severance was reported. Based on that result, the association purported to disclaim further interest in representing the jail employees.

The employer declined to grant voluntary recognition when the correction officers refused placement in another bargaining

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<sup>3</sup> The county voluntarily permitted the Health Department employees to sever from the courthouse unit three or four years ago.

unit. One member of the Board of County Commissioners estimated that he spent 20 to 25% of his time in contract negotiation and administration for the four existing units, and he therefore did not want to negotiate with an additional bargaining unit.

#### POSITION OF THE PARTIES

The county contends that a severance of the jail employees would unduly fragment the bargaining unit and imposes additional costs on the employer. The county also argues that the petitioner does not meet the severance criteria.

The petitioner claims that the jail employees constitute an appropriate bargaining unit with a strong and separate community of interest from the deputies. It points out that the petitioned-for employees have never had a chance to vote on representation. It claims that they are not adequately represented as a minority group in the historical bargaining unit structure. The petitioner also argues that the employer's desire to avoid increased labor relations costs is not among the statutory criteria for determining the propriety of bargaining units.

#### DISCUSSION

RCW 41.56.060 empowers the Commission to determine the units appropriate for the purpose of collective bargaining. In determining, modifying or combining bargaining units, 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....

The employer correctly notes that the Commission has applied "severance" criteria outlined in Yelm School District, Decision 704-A (PECB, 1980) in making a more refined view of situations where an attempt is made to split a historical bargaining unit into two or more units. Those include whether the proposed unit consists of a distinct and homogeneous group of skilled journeyman craftsmen and the history and pattern of bargaining in the industry involved (relating primarily to the statutory "duties, skills and working conditions" criteria), and the stability of the historical unit configuration and extent to which the employees in the proposed unit have maintained their separate identity (relating primarily to the statutory "history of bargaining" criteria).

The union correctly argues that "expense to the employer" is not among the unit determination criteria specified in the statute, and that the employer's arguments based directly on its own expense or inconvenience cannot prevail here.<sup>4</sup>

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<sup>4</sup> The Commission's reluctance to disturb long standing bargaining relationships is not based on potential increased costs to the employer for bargaining with additional units. Rather, fragmentation claims are viewed in the context of avoiding disruption of stable bargaining relationships. Tool Craftmen v. Leedon, 276 F.2d 514 (D.C. Circuit), cert. den., 364 U.S. 815 (1960). In the instant case, the employer opposes the severance not out of concern for maintaining stable labor relations, but purely on the economic cost. The inconsistency of the employer's stance is demonstrated by its voluntary severance of the health department unit from the courthouse unit several years ago. In short the employer opposes severance for the wrong reasons.

Application of the Unit Determination Criteria

The petitioner does not claim changed circumstances which make the historical bargaining unit configuration inappropriate. Therefore, the issue in this case is whether a "severance" should be granted from an existing bargaining unit which is conceded to be appropriate.

Duties, Skills and Working Conditions -

The correction officers and matrons in the petitioned-for unit work in the setting of a jail, wear uniforms, receive police academy training, are commissioned and carry firearms under certain circumstances, all of which are different from the employer's "road", "courthouse" and "health department" employees, but not entirely different from the field deputies in the historical bargaining unit.

The correction officers and matrons in the petitioned-for unit work in around-the-clock operations which are different from the "road", "courthouse" and "health department" employees, but not from the field deputies and dispatchers in the historical bargaining unit.

By contrast, the records clerk in the petitioned-for unit works a normal "day" shift performing clerical duties which align with both the clerical staff in the civil division of the Sheriff's Department (where she is now attached for purposes of supervision) and with clerical employees in other departments of the employer, but not with the field deputies, dispatchers or correction officers and matrons.

It can be readily observed on the one hand that there is some difficulty in discerning a "community of interest" to warrant attachment of the correction officers and matrons to the



existing courthouse unit, as proposed by the employer at an earlier stage of this dispute. On the other hand, it can be readily observed that there is difficulty in separating the "records clerk" from the other clerical employees in the Sheriff's Department and in county government. The question of whether the correction officers and matrons can stand on their own as a separate unit is not so clear.

Moving from the big picture to a closer examination of the details of daily operations, there are some well-established separations among the employees in the historical unit which constitute the basis for the petitioner's claim that the correction officers and matrons share a stronger community of interest among themselves than with other employees in the department. The three divisions are each concerned with different aspects of law enforcement. Interaction among the different classifications appears incidental to the primary functions of each division.<sup>5</sup> There are separate lines of supervision, although all ultimately report to the Sheriff. Beyond the division heads, supervision of the employees on evening and weekend shifts is by an "officer in charge" who may be either a deputy or correction officer.

The focus of the "severance" criteria on the degree of integration of the employer's process examines whether normal operations are dependent on performance of the duties of the employees in the proposed unit. In Okanogan County, Decision 2800 (PECB, 1987), the differences among the various functions within the Sheriff's Department were found to be small, such

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<sup>5</sup> The booking and transport of prisoners is a small percentage of the duties of each group. The sharing of courtroom security occurs when there are staff shortages and is, therefore, infrequent. On the other hand, the relief of dispatchers by deputies and correction officers occurs on a regular basis.

that the employees constituted an integrated operation essential to the overall law enforcement functions of the county. While Okanogan County can be distinguished from the facts in this record as to some details, the organization of the departments and the duties of the various classifications are substantially similar.

The Commission has previously found bargaining units comprised of the correction employees of a county sheriff's department to be appropriate. Pierce County, Decision 2429 (PECB, 1986).<sup>6</sup> The docket records of the Commission also suggest the existence of separate bargaining units for correction personnel in at least King, Kitsap, Lewis and Pacific counties. Were this the initial organizing of unrepresented employees, there would seem to be little difficulty in approving a separate unit of correction officers and matrons in this case. No case is cited or found, however, where correction officers and matrons have been characterized in terms rising to the level of "skilled journeyman craftsmen" as that term is used in the severance cases.

While the Commission has observed that a law enforcement officer's skills, duties and working conditions are distinctly different from those of non-uniformed groups, City of Everett, Decision 1883 (PECB, 1984), such a conclusion does not necessarily indicate that the same is true for correction officers and matrons.<sup>7</sup>

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<sup>6</sup> As in the instant case, the Pierce County Sheriff Department has field deputies, dispatchers, and clerical employees in addition to the corrections employees for which a separate bargaining unit was certified.

<sup>7</sup> To the extent that the Commission has ordered or accepted stipulations calling for the separation of law enforcement officers into separate units, some of

History of Bargaining -

The bargaining unit in the Sheriff's Department has existed for 11 years. Testimony and documentary evidence consisting of copies of the recognition clauses from consecutive collective bargaining agreements show a continuous history of representation of the petitioned-for group by the association since 1979, when the classification of correction officer was created.

In Okanogan County, the incumbent exclusive bargaining representative of a "wall-to-wall" unit sought to split the employees of the Sheriff's Department into two separate bargaining units consisting of field deputies on the one hand and jail/dispatch/clerical employees on the other. That bargaining relationship had existed for over 15 years, and six collective bargaining agreements. The severance effort mounted in that case by the field deputies was rejected, based upon the history of bargaining and a conclusion that severance would result in an inappropriate fragmentation of the historical bargaining unit.

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those results have been required to conform to the separate "interest arbitration" impasse procedures made available under RCW 41.56.430 et seq. for those who are "uniformed personnel" within the meaning of RCW 41.56.030(7). King County Fire District No. 39, Decision 2638 (PECB, 1987); Benton County, Decision 2221 (PECB, 1985); Cowlitz County, Decision 2067 (PECB, 1984). Grays Harbor County is not among the "second class or larger" counties which are covered by the interest arbitration procedure. Moreover, if the employer were covered by those procedures, the severance from the historical "wall-to-wall" unit which would be required would remove the field deputies from all of the other employee groups in the department, so that the dispatchers and clericals would have to stand on their own or be grouped with the correction officers and matrons, rather than remaining with the field deputies as proposed here.

The petitioner points out that the correction employees have not had an opportunity to vote on representation, because they were accreted to the sheriff's department unit without an election in which they could indicate their choice. Given the fact that these employees have been a part of the unit for almost ten years, the passage of time would appear to have diminished their right to a self-determination election. The employees did not raise a representation question at the time of their accretion to the existing unit or at a contract bar "window" period soon thereafter. In Yelm, supra, the passage of four years during which the petitioned-for employees were included in a wall-to-wall unit was found sufficient to invoke severance criteria. While "[e]mployees may reasonably be expected to make the best use of the representation available to them", the bargaining history here is not so equivocal as in Clover Park School District 400, Decision 386-A (EDUC, 1978), and the petitioned-for employees had the opportunity, under an unchanged statute, to make a choice as to their inclusion or exclusion in the departmental unit.

Nor is there evidence of sufficient instability in the existing unit to warrant a change of the unit structure. In Okanogan County, the field deputies sought a separate bargaining unit because they felt they were a minority being discriminated against in collective bargaining negotiations by the combination of correction and dispatch employees. The motivation for forming a separate bargaining unit in the instant case is the perception by the correction officers that they have been neglected by the deputies who have provided the leadership in collective bargaining with the employer.<sup>8</sup> The record shows,

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<sup>8</sup> The petitioner contends that the terms of the resulting agreement favor the deputies because the deputies earn pay for court time more frequently than correction officers, and because the deputies use

however, that the last proposal given to the employer in contract negotiations asked for twice the pay increase for correction officers as was requested for deputies. Moreover, the deputies are a numerical minority in the historical unit and the correction officers have the same opportunity to provide leadership to the association as the deputies, if they choose to do so. The evidence indicates that the correction officers have been elected to association office and have served on its grievance committees. Grievances have been processed on their behalf, without discrimination. There is no indication that the incumbent unfairly or ineffectively represented the employees in question.

Extent of Organization -

The extent of organization would not be altered by a split of a historical unit into two or more units.

Desires of the Employees -

While employee wishes are a factor to be considered, they are not the controlling factor absent some showing that statutorily protected rights are being denied or infringed, Kent School District, Decision 127 (PECB, 1976).

When it is concluded in a severance case that any of two or more unit configurations could be appropriate, then the desires of employees are determined. That task is accomplished by conducting a unit determination election giving the employees the right to vote on their choice among the appropriate units available. Mukilteo School District, Decision 1008 (PECB, 1980).

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county provided vehicles more often, because percentage pay increases have widened the gap between the salaries paid the two groups.

Counsel for the petitioner argued, in post-hearing brief, that

... the members of the correction unit desire separate representation is shown by the submission of representation cards from every employee.

Without confirming or denying the validity of that assertion, it must be pointed out that the rules of the Commission provide that the number and identity of the employees who sign the showing of interest is confidential. WAC 391-25-210 states:

WAC 391-25-210 SHOWING OF INTEREST CONFIDENTIAL. The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing. The agency shall not disclose the identities of employees whose authorization cards or letters are in support of a petition or motion for intervention. In order to preserve the confidentiality of the showing of interest and the right of the employees freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt to withdraw or diminish a showing of interest.

The disclosure by counsel of the number and/or identity of employees who have supported a showing of interest infringes on the statutory right of those employees freely to select their representatives, City of Tukwila, Decision 2434-A (PECB, 1986), City of Seattle, Decision 1229-A (PECB, 1982), and is not relevant or material evidence in this proceeding.

Conclusions -

As in Okanogan County, the energy behind this petition originates with a group of employees who are disgruntled with

the union's leadership. There is no indication that the incumbent has unfairly or ineffectively represented the petitioned-for employees. The Commissioned has rejected minor, intramural disputes as a basis for severance. Highline School District, Decisions 2685, 2686 (PECB, 1987). The purported disclaimer by the incumbent exclusive bargaining representative of a part of its appropriate unit cannot bind the Commission in the exercise of the authority reserved to it by RCW 41.56.060. The petitioner has failed to establish the propriety of the petitioned-for severance.

#### FINDINGS OF FACT

1. Grays Harbor County is a public employer within the meaning of RCW 41.56.030(1).
2. The Washington State Council of County and City Employees, a bargaining representative within the meaning of RCW 41.56.030(3), timely filed a petition for the investigation of a question concerning representation of employees of the correction division of the Sheriff's Department of Grays Harbor County.
3. The Grays Harbor Deputy Sheriff's Association, a bargaining representative within the meaning of RCW 41.56.030(3), is recognized as the exclusive bargaining representative of all non-supervisory employees of the Sheriff's Department of Grays Harbor County. That unit has historically included deputy sheriffs, dispatchers, correction officers, matrons and clerical employees.
4. The correction officers were included in the bargaining unit described in paragraph 3 of these findings of fact in

1979, by accretion agreed upon by the employer and the exclusive bargaining representative shortly after the positions were created.

5. In March, 1988, the Grays Harbor Deputy Sheriff's Association conducted an election to ascertain the interest of its membership in continuing to represent the correction officers, matrons and a clerical employee working in the jail. The association thereafter purported to disclaim further interest in representing those employees.
6. The clerical employee working at the jail has duties, skills and working conditions similar to those of other clerical employees of the Sheriff's Department and similar to those of other clerical employees in other departments of the employer.
7. The correction officers and matrons are selected, receive training, wear uniforms, hold commissions, occasionally wear firearms and occasionally perform courtroom security duties which align them with the field deputy sheriffs in the same department and which distinguish them from other employees of the employer. Their duties, skills and working conditions are part of an integrated operation essential to the overall performance of the employer's law enforcement function.
8. The creation of a separate bargaining unit of correction officers and matrons would unduly fragment the existing unit and disrupt collective bargaining in the employer's workforce.



CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The severance of the petitioned-for bargaining unit limited to correction officers, matrons and jail clerical employees of the Grays Harbor County from the unit composed of all non-supervisory employees of the Sheriff's Department of Grays Harbor County 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 currently exists under RCW 41.56.050, 41.56.060 and 41.56.070 in these proceedings in a unit appropriate for the purposes of collective bargaining.

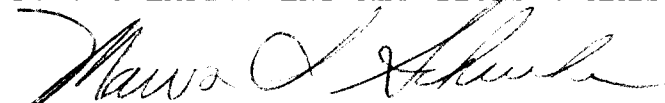
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 21st day of December, 1988.

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).