

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 117

Involving certain employees of:

PORT OF TACOMA

CASE 127497-E-15

DECISION 12557 - PORT

ORDER REMANDING CASE

Spencer Nathan Thal, General Counsel, for Teamsters Local 117.

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On July 21, 2015, Teamsters Local 117 (union) filed a petition to represent certain employees of the Port of Tacoma (employer or the port). The union seeks a bargaining unit that includes the Project Managers on the Facilities Development Team and the office-clerical employees throughout the employer's workforce, including the Administrative Assistant and Administrative Specialist in the Security Department. The petitioned-for employees also include four "customer-facing" information technology employees on the Finance, Contracts, Purchasing, Systems & Business Processes (Finance & Administrative Services) Team.

The employer asserts that the union's proposed bargaining unit configuration is inappropriate on several grounds. The employer argues that the Project Managers on the Facilities Development Team are "professional personnel" who are precluded from exercising collective bargaining rights under RCW 53.18.010. The employer concedes that a bargaining unit comprised of the office-clerical employees on the External Affairs, Finance & Administrative Services, and Facilities Development Teams, as well as the office-clerical employees on the Operations Team who work in the Maintenance Department, would be an appropriate bargaining unit. However, the employer argues the Administrative Assistant and Administrative Specialist in the Security Department are "port security personnel" who must be in their own separate bargaining unit under the provisions of RCW 53.18.060(3)(a). Finally, the employer claims it would be inappropriate to

include only the “customer-facing” information technology employees in the proposed bargaining unit because those employees share a community of interest with other information technology employees in the employer’s workforce.

Because the parties disagreed about the appropriateness of the union’s petition, the matter was forwarded to hearing. Hearing Officer Dario de la Rosa conducted a hearing on October 16 and 19, 2015, and the parties filed post-hearing briefs to complete the record.

The bargaining unit configuration sought by the union is not appropriate. The Administrative Assistant and Administrative Specialist in the Security Department are not “port security personnel” and may appropriately be included in a bargaining unit with other office-clerical employees because all of the employer’s office-clerical employees share a community of interest. However, the Project Managers are “professional personnel” who are precluded from exercising collective bargaining rights under RCW 53.18.010. Finally, the petitioned-for “customer-facing” information technology employees share a community of interest with other information technology employees in the employer’s workforce. Including some information technology employees in the proposed bargaining unit while excluding others would create work jurisdiction issues, unduly fragment the employer’s workforce, and result in an inappropriate bargaining unit. The union will be granted the opportunity to amend its petition to seek an appropriate bargaining unit configuration consistent with this decision.

BACKGROUND

The employer operates one of the largest ports in the western United States. The port leases its terminals and facilities to private entities involved in the importing and exporting of goods. The port is effectively the landlord to the tenants’ businesses. The port is responsible for maintaining and upgrading its facilities in accordance with the needs of its customers.

The employer’s operation is divided into several teams, including External Affairs, Facilities Development, Finance & Administrative Services, and Operations. The External Affairs Team is

responsible for community and governmental relations between the port and other entities. The Facilities Development Team is responsible for the capital improvement projects at the port. The Operations Team includes the employer's maintenance and security personnel as well as its railway and waterway personnel. The Finance & Administrative Services Team oversees the information technology services for the port and is also responsible for the port's financial and accounting responsibilities.

There are three bargaining units of employees in the employer's workforce: (1) a bargaining unit of Security Officers, Lead Security Officers, and Relief Security Officers that work in the Security Department, represented by the International Longshore and Warehouse Union, Local 28; (2) a bargaining unit of Terminal Security Officers, Lead Terminal Security Officers, and Relief Terminal Security Officers that work in the Security Department, also represented by Local 28; and (3) a bargaining unit of non-supervisory employees in the Maintenance Department, with the exception of the Administrative Assistant, and the Construction Inspectors on the Facilities Development Team, represented by the International Longshore and Warehouse Union, Local 22. All other employees in the employer's workforce are unrepresented.

Engineering Project Managers

The union seeks to include all of the employer's Engineering Project Managers on the Facilities Development Team in its proposed bargaining unit. The Engineering Project Managers oversee the port's capital improvement projects. When a need for a capital improvement project is identified, an Engineering Project Manager develops a scope, schedule, and budget for the project. A Senior Project Manager reviews the plan before seeking financial authorization. The Engineering Project Managers do not have the authority to authorize financing for a project. The employer's Executive Team may authorize projects that cost under \$300,000. Projects exceeding \$300,000 in cost must be authorized by the port's commissioners.

Upon approval of a project, the Engineering Project Manager works with other port employees in selecting a consultant from a pool of pre-contracted consultants or developing a request for qualifications to hire a project consultant. Once a consultant is selected, the employer's contract

specialists negotiate an agreement with the consultant. The Engineering Project Manager works with the consultant to develop the scope of work. The Engineering Project Manager serves as the port's primary contact for the duration of the project.

The employer requires the Engineering Project Managers to be licensed engineers or architects in order to ensure that they have the requisite expertise to effectively oversee consultants' work. The Engineering Project Managers do not stamp approval on architectural and engineering drawings that are prepared by consultants. Rather, they use their knowledge and training to verify consultants' work and ensure that the work meets the port's needs.

Additionally, the Engineering Project Managers determine what permits are needed for projects and assemble teams to procure those permits. The Engineering Project Managers oversee the projects, resolve contractual disputes, and execute change of work orders. They are authorized to spend up to \$25,000 for any single change to a work order.

Environmental Project Managers

The union also seeks to include all of the employer's Environmental Project Managers on the Facilities Development Team in its proposed bargaining unit. The Environmental Project Managers are divided into two groups: the Remediation/Environmental Quality (Remediation) group and the Environmental Permitting/Compliance (Permitting) group.

The Environmental Remediation Project Managers become involved when environmental contamination is discovered at an engineering project. They conduct environmental investigations, prepare draft cleanup plans, and work with environmental regulatory agencies to govern cleanups. Once a remediation project is approved, the Environmental Remediation Project Manager develops the final cleanup plan and oversees the work to ensure that it is completed in compliance with the approved plan.

The Environmental Permitting Project Managers work closely with the Engineering Project Managers to determine the environmental impacts of capital improvement projects and to identify

the necessary permits. Most projects require shoreline exemption permits and the Environmental Permitting Project Managers are responsible for obtaining those permits. The Environmental Permitting Project Manager negotiates with environmental regulatory agencies to secure the proper permits.

To qualify for an Environmental Project Manager position in the employer's workforce, the successful candidate must have a bachelor's degree in environmental studies and at least 6 years' experience performing analytical work involving environmental laws and programs in a regulatory setting. The successful candidate is also required to have a working knowledge in at least four of the following areas: (1) port or land development and permitting; (2) hazardous/solid waste management; (3) air quality, climate protection, environmental sustainability, air emission reduction, "Superfund" site investigation and cleanup; (4) environmental engineering; (5) surface and groundwater quality; (6) public or legislative involvement; (7) contract management; (8) environmental audits; or (9) other environmental regulatory programs that affect ports.

Office-Clerical Employees

The Administrative Assistant and Administrative Specialist job classes provide office-clerical support and are included on the External Affairs, Facilities Development, Finance & Administrative Services, and Operations Teams. Additionally, there is a Contracts & Procurement Specialist on the Finance & Administrative Services Team. The office-clerical employees on the Operations Team work in the Maintenance and Security Departments.

The parties agree that the office-clerical employees on the External Affairs, Facilities Development, and Finance & Administrative Services Teams could be included in the proposed bargaining unit. The parties also agree that the office-clerical employees on the Operations Team who work in the Maintenance Department as well as the Contracts & Procurement Specialist could be included. The parties agree that all of these employees share a community of interest because they perform the employer's office-clerical work and are in the same job classes. The parties disagree on whether the Administrative Assistant and Administrative Specialist in the Security

Department can appropriately be included in a bargaining unit with the other office-clerical employees.

The Administrative Assistant in the Security Department manages scheduling and payroll for the security employees. The position is also responsible for purchasing and serves as the primary contact between the port's customers and the Security Department. The Administrative Specialist in the Security Department is the primary contact between the information technology employees and the Security Department.¹ The position oversees the security budget and is involved in security capital improvement projects, such as installation of new cameras. The position also manages and implements security grants and assists in coordinating the daily operations of the Security Department.

Information Technology Employees

The employer's information technology workforce is part of the Finance & Administrative Services Team. There are several process teams within the Information Technology (IT) Department that address operational and processes issues, including the Operations Service Center and SharePoint Work Teams. The Operations Service Center Team analyzes software used at the port's Operations Service Center and includes employees in the Senior Business Process Analyst, Senior Software Engineer, and Senior IT Project Manager job classes. The SharePoint Work Team oversees the employer's document repository software. The SharePoint Work Team includes the same Senior Business Process Analyst that is on the Operations Service Center Team and also includes a Senior Software Engineer. There are a total of 13 information technology employees.

There is also a help desk that serves as the primary contact for employees facing information technology issues that need to be resolved. When a port employee has an information technology problem, a ticket is created to track the information technology issue for that customer. Two employees in the IT Support Specialist and Senior IT Support Specialist job classes primarily respond to customers' information technology issues. The union considers these positions to be

¹ The Administrative Specialist oversees the work of the Administrative Assistant but the parties agree that the Administrative Specialist is not a supervisory employee.

two of the four “customer-facing” positions and seeks to include them in its proposed bargaining unit.² The nine remaining information technology positions would continue to be unrepresented.

DISCUSSION

Applicable Legal Standards

Chapter 53.18 RCW grants employees at port districts the ability to organize and collectively bargain with their employer similar to other public employees within the state of Washington. As a collective bargaining statute, Chapter 53.18 RCW is remedial in nature and should be liberally construed to effect its purpose. *See International Association of Firefighters, Local 469 v. City of Yakima*, 91 Wn.2d 101, 109 (1978).

When originally adopted, Chapter 53.18 RCW lacked many of the features of other state collective bargaining laws, such as unfair labor practice provisions and provisions authorizing enforcement of unfair labor practice remedies through the courts. In 1983 the Legislature enacted RCW 53.18.015 to provide that Chapter 41.56 RCW, the Public Employees’ Collective Bargaining Act, governs the collective bargaining relationship of port districts and their employees unless there are differences between that chapter and the existing provisions of Chapter 53.18 RCW. Where differences occur, the provisions of Chapter 53.18 RCW shall apply.

One difference between the two statutes is that the definition of employees eligible to exercise collective bargaining rights is narrower for port districts under Chapter 53.18 RCW. RCW 53.18.010 excludes managerial, professional, and administrative personnel from the definition of employee. Thus, managerial, professional, and administrative personnel working for ports are not eligible to exercise collective bargaining rights. Another difference between the two statutes is

² In its brief the employer treats the Senior Business Process Analyst position and the CADD/GIS Specialist position, which produces maps, floor plans, and exhibits for port staff, to be at issue as “customer-facing” positions. The union’s brief does not mention the Senior Business Process Analyst or the CADD/GIS Specialist as “customer-facing” positions that it seeks to include in the proposed bargaining unit. Although the record readily demonstrates that the union intended for these two positions to be included in its proposed bargaining unit (*see* Tr. 49:23-53:25), it is not necessary to resolve these differences because all of the information technology employees must be included in the proposed bargaining unit for that unit to be appropriate.

that RCW 53.18.060(3)(a) prohibits “port security personnel” or “port supervisory personnel” from being included in a collective bargaining agreement with other port employees.

Chapter 53.18 RCW utilizes the same standard set forth in Chapter 41.56 RCW for making bargaining unit determinations. The creation and maintenance of appropriate bargaining units is a function of this agency. RCW 41.56.060. The purpose of this function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

RCW 41.56.060(1) provides that this agency, in examining whether there is a community of interest, 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.” While each factor is considered in each case, no one factor dominates the others. *See King County*, Decision 5910-A.

Again, this agency’s role is to determine whether there is a community of interest, not the *best* community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015), *citing Snohomish County*, Decision 12071 (PECB, 2014), and *City of Winslow*, Decision 3520-A (PECB, 1990).

Application of Standards

In determining the appropriateness of the union’s proposed bargaining unit configuration, the first questions to consider are whether the Project Managers are “professional personnel” under RCW 53.18.010 and whether the Administrative Assistant and Administrative Specialist in the Security Department are “port security personnel” under RCW 53.18.060(3)(a). Once those eligibility

questions are answered, the question then becomes whether the petitioned-for information technology employees, the eligible office-clerical employees, and any eligible Project Managers share a community of interest that would constitute an appropriate bargaining unit.

The Project Managers are “professional personnel” who are precluded from exercising collective bargaining rights. The Administrative Assistant and Administrative Specialist in the Security Department are not “port security personnel” and may appropriately be included in a bargaining unit with other office-clerical employees. Turning to the question of the appropriateness of the petitioned-for unit, the “customer-facing” information technology employees share a community of interest with other information technology employees in the employer’s workforce. Work jurisdiction issues would arise if the information technology employees were divided between two different bargaining unit configurations. It would be inappropriate to include just the “customer-facing” information technology employees in a bargaining unit with the office-clerical employees.

The Project Managers Are Professional Personnel

The employer asserts that the Project Managers are precluded from exercising collective bargaining rights under Chapter 53.18 RCW because they are “professional personnel.” RCW 53.18.010 does not specifically define what constitutes “professional personnel.” This agency has not interpreted or applied the “professional personnel” exclusion language of RCW 53.18.010 in a representation proceeding; however, it has defined and applied the “administrative personnel” exclusion language in that statute. *See Port of Seattle*, Decision 12190 (PORT, 2014), *aff’d*, Decision 12190-A (PORT, 2015), and *Port of Poulsbo*, Decision 12077-A (PORT, 2015).

The union argues that the ordinary dictionary definition of a “professional” employee should be used. This agency adopted a similar approach in *Port of Seattle*, Decision 12190, in interpreting the “administrative personnel” exception that is also found in RCW 53.18.010. The union would then analyze the actual duties and working conditions of the positions at issue to determine if each incumbent is a higher echelon employee that was actually trained and licensed to perform a traditional profession. The union would also limit the “professional personnel” exception to those

employees that are actually required to have professional licenses in order to perform their work, as opposed to those positions for which professional licenses are employer mandated prerequisites but are not actually required to perform the job duties. The union maintains that the “professional personnel” exclusion language should be read narrowly to ensure that employees are afforded their collective bargaining rights. *See, e.g., Port of Seattle, Decision 12190.*

The employer argues that the definition of a “professional employee” found in the National Labor Relations Act (NLRA) at 29 U.S.C. § 152(12) should be used in cases interpreting the “professional personnel” exception under RCW 53.18.010. The employer also asserts that the Minimum Wage Act, Chapter 49.46 RCW; the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219; and the collective bargaining laws of 16 other states all define professional employees in a manner consistent with the NLRA.

Similar to Chapter 53.18 RCW, the NLRA excludes “professional employees” from the definition of employee. The NLRA defines a “professional employee” as any employee whose work:

- is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
- involves the consistent exercise of discretion and judgment in its performance;
- is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
- requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital.

29 U.S.C. § 152(12).

The National Labor Relations Board (NLRB) does not require that the professional work knowledge be obtained through formal academic training. *Robbins & Myers, Inc.*, 144 NLRB 295 (1963). The character of the work, and not the employee’s qualifications or education, determines

whether that work is professional in nature. *See Ryan Aeronautical Co.*, 132 NLRB 1160 (1961). Additionally, the fact that an employee is not licensed to practice their profession has no bearing on their professional status under the NLRA. *See, e.g., Westinghouse Electric Corp.*, 89 NLRB 8 (1950).

While the union urges utilization of the ordinary dictionary definition of a “professional” employee in a manner consistent with this agency’s interpretation of the “administrative personnel” exception, utilizing the NLRA definition of “professional employees” is appropriate in this instance.³ It can be presumed that when the Legislature enacted RCW 53.18.010 in 1967, it was aware of the NLRA definition of “professional employee,” which has been included in that law’s definitions section since 1947 with the passage of the Taft-Hartley Act. Both RCW 53.18.010 and 29 U.S.C. § 152 use similar terms and use them in the same exclusionary context. Utilizing the NLRA definition also aligns with the directive to interpret this state’s labor laws in a manner consistent with the NLRA when the provisions of the applicable statutes are similar. Given the similarities between the two statutes and the current absence of agency decisions interpreting the “professional personnel” exclusion language of RCW 53.18.010, NLRB decisions considering “professional employees” are instructive when interpreting the definition of “professional personnel” at port districts.⁴

The Project Managers meet the NLRA definition of “professional employees” and are therefore precluded from exercising collective bargaining rights under RCW 53.18.010. The work performed by the Project Managers is predominantly intellectual in nature and not routine.

³ Decisions construing the NLRA, while not controlling, are generally persuasive in interpreting state labor laws that are similar to or based upon the NLRA. *Nucleonics Alliance, Local Union No. 1-369 v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984). Similarly, Chapter 41.56 RCW is substantially similar to the NLRA, and this agency often looks to NLRB decisions when ruling on disputes between most employers and employees under its jurisdiction.

⁴ The use of the FLSA or state Minimum Wage Act definitions has previously been rejected when interpreting terms under Chapter 53.18 RCW. *See Port of Seattle*, Decision 12190, and *Port of Poulsbo*, Decision 12077-A. Because the NLRA’s “professional employee” definition is rooted in labor law and policy, attempts to engraft the FLSA “professional employee” definition or decisions construing those kinds of wage and hour laws are rejected. The NLRB has adopted a similar stance. *See Standard Oil Co.*, 107 NLRB 1524 (1954) (an employee’s status as a nonprofessional employee under the Wage and Hour Act does not affect the NLRB’s determination of professional status).

See, e.g., Ryan Aeronautical Co., 132 NLRB 1160. The Project Managers are regularly required to exercise independent judgment when overseeing a project; each project, whether it be engineering or environmental, is unique and cannot be standardized. The Engineering Project Managers are required to have civil engineering licenses that can only be obtained through specialized training in order to perform their assignments. The fact that the Engineering Project Managers do not use their licenses to stamp approval on architectural and engineering drawings is not indicative of their professional status.

The Administrative Assistant and Administrative Specialist in the Security Department Are Not Port Security Personnel

The employer asserts that the Administrative Specialist and Administrative Assistant in the Security Department are “port security personnel.” RCW 53.18.060(3) prohibits “port security personnel” or “port supervisory personnel” from being included in a collective bargaining agreement with other port employees.⁵ *Accord Port of Seattle*, Decision 3937 (PORT, 1991).

Chapter 53.18 RCW does not define “port security personnel” and that term has not previously been interpreted by this agency. The employer argues the term “port security personnel” should be read broadly to include all employees who work in support of the employer’s security functions, including those employees who have access to confidential security information. The employer claims that, within the context of the security needs of a complex port operation, a broader reading would ensure that the employer’s overall security functions remain integrated. The employer points out that the term “security personnel” is broader than the term “guard” as it is used within the NLRA. 29 U.S.C. § 159(b)(3). The union argues that the term should be limited to those employees who are actually engaged in enforcement of rules to protect the employer’s property.

⁵ The employer asserts that RCW 53.18.060(3)(a) requires the Administrative Specialist and Administrative Assistant in the Security Department to be in a separate bargaining unit because they are “port security personnel.” RCW 53.18.060(3)(a) speaks only to “port security personnel” having separate collective bargaining agreements from other port personnel and is silent on whether “port security personnel” can be in the same *bargaining unit* as other port personnel provided there are separate agreements. It is unnecessary to decide that distinction in this case because the Administrative Specialist and Administrative Assistant are not “port security personnel.”

The NLRA requires “guards” to be in their own separate bargaining units. 29 U.S.C. § 159(b)(3). A “guard” is defined in the NLRA as an employee who enforces “against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.” *Id.*; see also *Petroleum Chemicals, Inc.*, 121 NLRB 630 (1958). The requirement that guards be in separate bargaining units was also enacted as part of the 1947 Taft-Hartley Act and was intended to protect employers during times of labor unrest by ensuring that their security personnel would be available to protect the employer’s property and enforce the employer’s property rules. See *McDonnell Aircraft Corp.*, 109 NLRB 967 (1954). An employee who performs other duties in addition to guard duties will be considered a guard for purposes of the NLRA only if an essential part of the employee’s duties is to enforce against employees and other persons the employer’s rules to protect its property. Employees who perform passive monitoring duties are not considered guards. *Wells Fargo Alarm Services*, 218 NLRB 68 (1975).

When the Legislature enacted RCW 53.18.060 in 1967, it can be presumed that it was aware of the NLRA definition of “guard,” which has been part of that law’s definitions section since 1947 with the passage of the Taft-Hartley Act. It can also be presumed that the Legislature was aware of the NLRB’s precedents interpreting the federal statute. Because the Legislature chose to use the term “security personnel” instead of the term “guard,” it can be presumed that the Legislature did not intend the terms to be synonymous; otherwise, it would have used the term “guard.” Thus, the question that must be answered is, what does the term “port security personnel” mean as used within Chapter 53.18 RCW?

When interpreting statutes administered by this agency, the meaning of the words used in a statute are given the full effect intended by the Legislature. *State – Transportation*, Decision 8317-B (PSRA, 2005). The statute’s subject matter and the context in which the word is used must also be considered. *Id.*; *Chamberlain v. Department of Transportation*, 79 Wn. App. 212, 217 (1995). Statutes must be interpreted and construed so that all the language used is given effect and no portion is rendered meaningless or superfluous. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537 (1996). Absent a specific definition, contrary legislative intent, or ambiguity, words in statutes are accorded their plain and ordinary meaning. *State v. Gonzalez*, 168 Wn.2d 256, 263

(2010). Statutes are not ambiguous merely because different interpretations are conceivable. *State – Transportation*, Decision 8317-B.

The phrase “security personnel” is not ambiguous. The ordinary dictionary definition of “security” is “something that secures.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED) 2054 (1986). The term “personnel” means “a body of persons employed in some service.” *Id.* at 1687. When the words “security” and “personnel” are used in conjunction, a reasonable definition of “security personnel” are those employees whose primary duty is to maintain the security of the employer’s workplace. If an employee’s primary duties are not directly associated with maintaining the security of the employer’s workplace, then that employee is not security personnel for purposes of the statute. In determining whether an employee qualifies as security personnel, the actual duties of the employee should be examined. *Accord State – Transportation*, Decision 8317-B (examining the actual duties of an employee to determine if the employee is an internal auditor). This standard recognizes that many employees may have some responsibility for security in the workplace but their primary duties are not directly associated with security.

In this case the Administrative Assistant and Administrative Specialist in the Security Department are not “port security personnel” because neither employee has the primary duty of ensuring the security of employer’s facilities. The Administrative Assistant provides administrative support for the Security Department. The position processes payroll, maintains files, and is the purchasing agent for the department. The Administrative Assistant is also responsible for processing badge requests for the employer’s workforce and processing the Security Department’s mail. The Administrative Specialist manages the administrative functions of the Security Department to ensure the effective and efficient flow of activities and oversees the work of the Administrative Assistant. The Administrative Specialist also manages the Port Security Grant Program and reviews federal refund submissions to ensure that the filings are accurate and correct.

Although the primary duties of the Administrative Assistant and Administrative Specialist support the Security Department, neither employee actively performs security functions to protect the employer’s property. Neither employee monitors security systems or dispatches security

employees. Additionally, there is no evidence that these employees are responsible for preventing unauthorized access to the employer's facilities. Rather, their work is predominantly clerical in nature. Because these employees are not "port security personnel," they would properly be included in a bargaining unit with the other office-clerical employees with whom they share a community of interest based upon their office-clerical duties.

Including Only the Customer-Facing Information Technology Employees Would Be Inappropriate
Having determined that the Project Managers must be excluded from the proposed bargaining unit and that the Administrative Assistant and Administrative Specialist in the Security Department are not "port security personnel," the final question to be answered is whether it is appropriate to include only the "customer-facing" information technology employees in the proposed bargaining unit. The four "customer-facing" information technology employees share a community of interest with other information technology employees in the employer's workforce; to include some but not all of those employees would lead to work jurisdiction issues.

All of the information technology employees are under the same supervisor. Additionally, all of the information technology employees, including the petitioned-for "customer-facing" employees, interact with other port employees to perform their tasks. For example, the employees in the Software Engineer job class work closely with the Operations Team to install radio frequency identification devices to produce performance metrics. The Software Engineers also work with the Operations Team to develop computer dashboards and other performance measures and work with the finance and maintenance employees to develop and manage the port's enterprise application. Thus, the information technology employees form an integrated workforce.

Previous attempts to distinguish information technology employees by their subject area or customer base have been rejected. In *State – Enterprise Services (Technology Solutions)*, Decision 11663 (PSRA, 2013), the employer organized the information technology employees into work units by subject area.⁶ For example, one unit worked on applications to standardize accounting

⁶ The fact that the *State – Enterprise Services (Technology Solutions)* case came to the agency as a legislatively directed unit clarification case beared no impact on the statutory unit determination analysis.

functions. Another unit constructed and maintained the agency's website, intranet site, and web interfaces. The evidence also demonstrated that employees from the various units were assembled on work teams to complete projects. The proposed bargaining unit of individual work units was rejected based upon the fact that all of the information technology employees performed duties associated with computer and technology support of state agencies.⁷ Additionally, while there may have been differences between specific duties of the employees, such as purchasing duties or programming duties, all of the duties performed by the employees were part of the continuum of functions needed to support the mission of the Technology Solutions Division. *Id.*

In *King County*, Decision 11828 (PECB, 2013), *aff'd*, Decision 11828-A (PECB, 2013), the employer's information technology employees were decentralized and assigned to various departments and, in many instances, included in various bargaining units with other employees who did not perform information technology duties. The employer consolidated its information technology workforce under a newly created information technology department so that all of its information technology employees had common lines of supervision and reporting. The organizational and reporting changes occurred even though the physical location of some information technology employees did not change. Based upon the reorganization and new community of interest, the employer filed a unit clarification petition to consolidate all of the information technology employees into a single bargaining unit. The incumbent union for a small group of information technology employees in the Wastewater Treatment Division argued that the employer's reorganization did not disrupt the community of interest for the employees it represented. The incumbent pointed out that its information technology employees were performing the same duties and nothing about their work had been changed. The incumbent also pointed out that its information technology employees only served employees in the Wastewater Treatment Division. These arguments were rejected because the information technology employees performed similar duties and the skills required to perform each job were also similar.

In this case all of the information technology employees perform a continuum of services for the employer and operate under the same reporting structure. Similar to *State – Enterprise Services*

⁷ The union also attempted to choose isolated positions to be included in the proposed bargaining unit.

(Technology Solutions), the employer's information technology employees work on projects in groups. These groups often consist of employees who are both included and excluded from the union's proposed bargaining unit configuration. To divide the employees in the manner proposed by the union would unduly fragment the employer's workforce and create work jurisdiction issues.

CONCLUSION

The office-clerical employees in the employer's workforce share a community of interest, including the Administrative Specialist and Administrative Assistant in the Security Department. Those two positions are not "port security personnel. Nonetheless, the bargaining unit sought by the union is inappropriate. The petitioned-for Project Managers are "professional personnel" who are not eligible to exercise collective bargaining rights. Additionally, the petitioned-for configuration of information technology employees would unduly fragment the employer's workforce and create work jurisdiction issues. The union will be given an opportunity to amend its petition consistent with this decision.⁸

FINDINGS OF FACT

1. The Port of Tacoma is a public employer within the meaning of RCW 53.18.010.
2. Teamsters Local 117 (union) is a bargaining representative within the meaning of RCW 53.18.010.
3. The employer's operation is divided into several teams, including External Affairs, Facilities Development, Finance & Administrative Services, and Operations. The External Affairs Team is responsible for community and governmental relations between the port and other entities. The Facilities Development Team is responsible for the capital improvement projects at the port. The Operations Team includes the employer's

⁸ Because no direction of election has been issued, any appeal of this decision shall be governed by WAC 391-25-660 and shall occur prior to any election.

maintenance and security personnel as well as its railway and waterway personnel. The Finance & Administrative Services Team oversees the information technology services for the port and is also responsible for the port's financial and accounting responsibilities.

4. The Engineering Project Managers on the Facilities Development Team oversee the port's capital improvement projects. When a need for a capital improvement project is identified, an Engineering Project Manager develops a scope, schedule, and budget for the project. A Senior Project Manager reviews the plan before seeking financial authorization. The Engineering Project Managers do not have the authority to authorize financing for a project. The employer's Executive Team may authorize projects that cost under \$300,000. Projects exceeding \$300,000 in cost must be authorized by the port's commissioners.
5. Upon approval of a project, the Engineering Project Manager works with other port employees in selecting a consultant from a pool of pre-contracted consultants or developing a request for qualifications to hire a project consultant. Once a consultant is selected, the employer's contract specialists negotiate an agreement with the consultant. The Engineering Project Manager works with the consultant to develop the scope of work. The Engineering Project Manager serves as the port's primary contact for the duration of the project.
6. The employer requires the Engineering Project Managers to be licensed engineers or architects in order to ensure that they have the requisite expertise to effectively oversee consultants' work. The Engineering Project Managers do not stamp approval on architectural and engineering drawings that are prepared by consultants. Rather, they use their knowledge and training to verify consultants' work and ensure that the work meets the port's needs.
7. The Engineering Project Managers determine what permits are needed for projects and assemble teams to procure those permits. The Engineering Project Managers oversee the projects, resolve contractual disputes, and execute change of work orders. They are authorized to spend up to \$25,000 for any single change to a work order.

8. The Environmental Project Managers on the Facilities Development Team are divided into two groups: the Remediation/Environmental Quality (Remediation) group and the Environmental Permitting/Compliance (Permitting) group.
9. The Environmental Remediation Project Managers become involved when environmental contamination is discovered at an engineering project. They conduct environmental investigations, prepare draft cleanup plans, and work with environmental regulatory agencies to govern cleanups. Once a remediation project is approved, the Environmental Remediation Project Manager develops the final cleanup plan and oversees the work to ensure that it is completed in compliance with the approved plan.
10. The Environmental Permitting Project Managers work closely with the Engineering Project Managers to determine the environmental impacts of capital improvement projects and to identify the necessary permits. Most projects require shoreline exemption permits and the Environmental Permitting Project Managers are responsible for obtaining those permits. The Environmental Permitting Project Manager negotiates with environmental regulatory agencies to secure the proper permits
11. To qualify for an Environmental Project Manager position in the employer's workforce, the successful candidate must have a bachelor's degree in environmental studies and at least 6 years' experience performing analytical work involving environmental laws and programs in a regulatory setting. The successful candidate is also required to have a working knowledge in at least four of the following areas: (1) port or land development and permitting; (2) hazardous/solid waste management; (3) air quality, climate protection, environmental sustainability, air emission reduction, "Superfund" site investigation and cleanup; (4) environmental engineering; (5) surface and groundwater quality; (6) public or legislative involvement; (7) contract management; (8) environmental audits; or (9) other environmental regulatory programs that affect ports.
12. The Administrative Assistant and Administrative Specialist job classes provide office-clerical support and are included on the External Affairs, Facilities Development,

Finance & Administrative Services, and Operations Teams. Additionally, there is a Contracts & Procurement Specialist on the Finance & Administrative Services Team. The office-clerical employees on the Operations Team work in the Maintenance and Security Departments.

13. The Administrative Assistant in the Security Department manages scheduling and payroll for the security employees. The position is also responsible for purchasing and serves as the primary contact between the port's customers and the Security Department.
14. The Administrative Specialist in the Security Department is the primary contact between the information technology employees and the Security Department. The position oversees the security budget and is involved in security capital improvement projects, such as installation of new cameras. The position also manages and implements security grants and assists in coordinating the daily operations of the Security Department.
15. Although the primary duties of the Administrative Assistant described in Finding of Fact 13 and those of the Administrative Specialist described in Finding of Fact 14 support the Security Department, neither employee actively performs security functions to protect the employer's property. Neither employee monitors security systems or dispatches security employees. Additionally, there is no evidence that these employees are responsible for preventing unauthorized access to the employer's facilities. Rather, their work is predominantly clerical in nature.
16. The employer's information technology workforce is part of the Finance & Administrative Services Team. There are a total of 13 information technology employees.
17. There are several process teams within the Information Technology (IT) Department that address operational and processes issues, including the Operations Service Center and SharePoint Work Teams. The Operations Service Center Team analyzes software used at the port's Operations Service Center and includes employees in the Senior Business Process Analyst, Senior Software Engineer, and Senior IT Project Manager job classes.

The SharePoint Work Team oversees the employer's document repository software. The SharePoint Work Team includes the same Senior Business Process Analyst that is on the Operations Service Center Team and also includes a Senior Software Engineer.

18. The information technology help desk serves as the primary contact for employees facing information technology issues that need to be resolved. When a port employee has an information technology problem, a ticket is created to track the information technology issue for that customer. Two employees in the IT Support Specialist and Senior IT Support Specialist job classes primarily respond to customers' information technology issues.
19. All of the information technology employees are under the same supervisor. Additionally, all of the information technology employees, including the petitioned-for "customer-facing" employees, interact with other port employees to perform their tasks.
20. On July 21, 2015, the union filed a petition to represent the Project Managers on the Facilities Development Team described Findings of Fact 4 through 11, the office-clerical employees throughout the employer's workforce described in Finding of Fact 12, the Administrative Assistant and Administrative Specialist in the Security Department described in Findings of Fact 13 and 14, and the four "customer-facing" information technology employees on the Finance & Administrative Services Team described in Finding of Fact 18. However, the union's petition excluded other information technology employees in the employer's workforce as described in Finding of Fact 17.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 53.18 RCW, Chapter 41.56 RCW, and Chapter 391-25 WAC.
2. Based upon Findings of Fact 4 through 11, the Project Managers are "professional personnel" within the meaning of RCW 53.18.010. It would be inappropriate to include those employees in the petitioned-for bargaining unit described in Finding of Fact 20.

3. Based upon Finding of Fact 15, the Administrative Assistant and Administrative Specialist in the Security Department are not “port security personnel” within the meaning of RCW 53.18.060(3)(a). It would be appropriate to include those employees in the petitioned-for bargaining unit described in Finding of Fact 20.
4. Based upon Findings of Fact 12 through 15, all of the office-clerical employees in the employer’s workforce share a community of interest and could be included in an appropriate bargaining unit under RCW 41.56.060. It would be appropriate to include those employees in the petitioned-for bargaining unit described in Finding of Fact 20.
5. Based upon Findings of Fact 16 through 19, the “customer-facing” information technology employees described in Finding of Fact 18 share a community of interest with the other information technology employees described in Finding of Fact 17. It would be inappropriate to include just the “customer-facing” information technology employees in the petitioned-for bargaining unit described in Finding of Fact 20.

ORDER

The representation petition filed by Teamsters Local 117 is REMANDED to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 24th day of March, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MICHAEL P. SELLARS, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-660.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12557 - PORT has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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