

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 483,)	
)	
Complainant,)	CASE 12690-U-96-3035
)	
vs.)	DECISION 6601 - PECB
)	
CITY OF TACOMA,)	
)	
Respondent.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
)	

Welch & Condon, by David B. Condon, Attorney at Law, appeared for the complainant.

G.S. Karavitis, Senior Assistant City Attorney, appeared for the respondent.

On September 9, 1996, International Brotherhood of Electrical Workers, Local 483 (union) filed a complaint with the Public Employment Relations Commission under Chapter 391-45 WAC, charging that the City of Tacoma (employer) had committed unfair labor practices in violation of RCW 41.56.140. A hearing was held on April 17, April 18, July 8, and July 9, 1997, before Examiner Mark S. Downing. The parties filed post-hearing briefs.

The preliminary ruling issued under WAC 391-45-110 found a cause of action to exist on allegations of:

The employer's skimming of unit work previously performed by consumer service consultants to the new position of energy services account executive, without first giving notice to the union and providing an opportunity for bargaining.

On the basis of the evidence presented at the hearing, the Examiner holds that the employer did not violate the law by failing or

refusing to bargain in good faith. The union's complaint is dismissed.

BACKGROUND

The employer provides municipal services to its residents through various departments. The "consumer service consultant" and "energy services account executive" positions at issue in this proceeding are associated with the Department of Public Utilities. That department supplies services through a: (1) Light Division; (2) Water Division; (3) Belt Line Railroad; and (4) Customer, Finance and Administrative Services Division. Director of Utilities Mark Crisson serves as the department head.

The union has represented Department of Public Utilities employees for about 80 years. David F. Smith served as business manager for the union during the timeframe covered by this proceeding. The union and employer were parties to a collective bargaining agreement for the period of April 1, 1994 through March 31, 1997.

The employer and union have stipulated that the entire record in a previous unfair labor practice proceeding between these parties be admitted as background information for this proceeding. The union filed the complaint in that case on January 11, 1995, alleging the employer: (1) refused to bargain a decision to eliminate the consumer service consultants; (2) failed to provide requested information in a timely manner; and (3) refused to bargain the financial and career impacts of its decision to lay off the consumer service consultants. A hearing was held on February 8, June 10, and June 11, 1996. The union filed a motion on July 9, 1996, requesting that the record in that case be reopened. The union indicated it had discovered, on or about June 26, 1996, that the employer had created a new position of energy services account executive which could perform work previously performed by the consumer service consultants. On August 26, 1996, the Examiner in

that proceeding denied the union's motion to reopen the record, ruling that any challenge to the creation of the account executive position should be made in a separate proceeding. City of Tacoma, Decision 5049-A (PECB, 1996). The union then filed the complaint to initiate this proceeding, on September 9, 1996.

On May 21, 1997, the Examiner in the previous unfair labor practice case dismissed that complaint, ruling that the union failed to sustain its burden of proof on those allegations. City of Tacoma, Decision 5049-B (PECB, 1997).

DISCUSSION

The facts are largely uncontested. The issue to be determined in this proceeding is:

Did the employer violate the statutory duty to bargain when it created the "energy services account executive" position outside of the bargaining unit?

The union claims the employer created the new position without providing an opportunity for bargaining with the union. The employer denies that charge, claiming it had no obligation to bargain with the union concerning creation of the new position.

The Duty to Bargain

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer commits an unfair labor practice if it refuses to engage in collective bargaining with the exclusive bargaining representative of its employees. RCW 41.56.140(4). The term "collective bargaining" is defined in RCW 41.56.030(4):

"Collective bargaining" means the performance of **the mutual obligations of the public employer and the exclusive bargaining representative** to meet at reasonable times, to

confer and negotiate in good faith, and to execute a written agreement **with respect to** grievance procedures and collective negotiations on personnel matters, including **wages, hours and working conditions** ...

[Emphasis by **bold** supplied.]

Matters affecting the wages, hours, and working conditions of employees are referred to as mandatory subjects of bargaining.

The bargaining obligation extends to situations where an employer seeks to remove work from a bargaining unit. At a minimum, the loss of work opportunities affects the work hours of bargaining unit employees. Changes in employee work hours give rise to a bargaining obligation. See, Federal Way School District, Decision 232-A (EDUC, 1977); Newport School District, Decision 2153 (PECB, 1985); and Seattle School District, Decision 5733-B (PECB, 1998). Where an employer transfers bargaining unit work to non-unit employees without fulfilling its bargaining obligation, an unfair labor practice violation will be found for unlawful "skimming" of unit work. See, South Kitsap School District, Decision 472 (PECB, 1978); Spokane County Fire District 9, Decision 3482-A (PECB, 1991); and City of Spokane, Decision 6232 (PECB, 1998).

To fulfill its bargaining obligation, an employer must give notice to the union and provide an opportunity for bargaining prior to changing the wages, hours or working conditions of bargaining unit employees. An employer violates RCW 41.56.140(4) if it presents a union with a fait accompli, or if it fails to bargain in good faith, upon request. Federal Way School District, *supra*; Green River Community College, Decision 4008-A (CCOL, 1993); and North Franklin School District, Decision 5945-A (PECB, 1998).

Bargaining Unit Work

Bargaining unit work is defined as work that has historically been performed by bargaining unit employees. Once an employer assigns

unit employees to perform a certain body of work, that work attaches to the unit and becomes bargaining unit work. City of Spokane, supra. The union alleges here that the employer removed work from the bargaining unit through creation of the account executive position. The employer maintains that the account executive position is different from the consumer service consultant position, was conceived at a different time for a different purpose, and is performing different work than was performed by the consumer service consultants.

Commission precedent calls for a two-part, or sometimes a five-part, analysis to determine whether an employer has fulfilled its duty to bargain in cases involving transfers of work to persons outside of a bargaining unit. See, City of Spokane, supra; and Spokane County Fire District 9, supra. In this case, the answers to two questions control the decision:

- 1) Is the account executive position performing work that was historically performed by one or more bargaining unit employees?
- 2) Is the work of the account executive position fundamentally different from regular bargaining unit work in terms of the nature of the duties, skills, or working conditions?

As the complaining party, the union has the burden of proof. Yelm School District, Decision 2543 (PECB, 1986). If the union fails to establish that the disputed work was performed by bargaining unit employees, it cannot sustain its burden of proof.

Consumer Service Consultant

Duties of the position -

The job description for the consumer service consultant position sets forth the following duties and responsibilities:

CONSUMER SERVICE CONSULTANT

BASIC FUNCTION

Under the direction of the Energy Conservation Supervisor, **promote effective use and conservation of electrical energy**; perform a variety of special projects including surveys, statistical analyses and forecasts.

REPRESENTATIVE DUTIES

Visit and confer with residential, commercial and industrial **customers to explain effective use of energy**, electrical rates, energy conservation, consumer assistance programs and services available; **resolve customer complaints**.

Advise customers on solutions to energy problems **to promote efficient use of energy**; prepare letters of agreement outlining contractual terms for new electric service and submit for approval.

Analyze energy use patterns to account for customers' energy use and **resolve customer complaints and concerns**.

Calculate heat loss and heating requirements, advise customers concerning selection and use of electrical equipment and **analyze cost-effectiveness of conservation measures**.

Assist consumer in understanding billing and metering and explain electric rate schedules and applications; **investigate and analyze existing billing data, determine if discrepancies exist**, recreate actual billing through statistical analysis and graphs to determine actual error; **process customer refund requests** according to established procedures and guidelines.

Calculate forecasts of electricity use for customer and Light Division evaluation of proposed new loads.

Assist energy audit staff with unusual or complex energy audits of residential, commercial and industrial premises.

Perform special projects as assigned including surveys, statistical analyses, forecasts, **trade shows**, scheduled outages and troubleshooting.

Make public presentations to promote the efficient use of electrical energy.

Train staff on efficient energy use and remain current concerning energy management developments and electrical energy marketing.

Perform related duties as assigned.

KNOWLEDGE AND ABILITIES

Knowledge of:

Customer policies.

Energy load patterns for industrial, commercial and residential services.

Methods for forecasting energy consumption.

The Utility's rate structure and various applications.

Billing, metering and wiring systems.

Electrical power consuming devices, including ratings and load characteristics.

Building materials and structural composition of buildings.

Heat transfer and related engineering mathematics.

Heavy-duty and domestic power consuming devices.

Heating, ventilation and air conditioning equipment and applications.

Interpersonal skills using tact, patience and courtesy.

Research and analysis techniques.

Oral and written communications skills.

State and federal energy and building codes.

Basic statistical methods.

Ability to:

Develop and implement clear, concise oral presentations to the general public.

Analyze and solve technical energy use problems.

Speak effectively to large groups.

Work independently from general instructions.

Make mathematical calculations accurately.

Perform research and analysis and make oral or prepare written reports.

Convert engineering notes to clear and concise directions understandable to technical and non-technical customers.

Establish and maintain cooperative and effective working relationships with others.

Analyze situations accurately and adopt an effective course of action.

EDUCATION AND EXPERIENCE

An equivalent combination to: **graduation from high school and two years advanced college-level training in energy management**, mathematics or a related field and three years experience in electrical work involving public contact and requiring general knowledge of electrical equipment, meters, electrical rates and inside wiring practices and circuits.

WORKING CONDITIONS

Office environment; subject to driving from site to site to conduct work.

[Emphasis by **bold** supplied.]

A "sales consultant" title was originally used for this position, when the duties included selling electric heat to new homeowners and builders. In 1976, the position was re-titled as consumer service consultant. After a few years, the position took on energy conservation duties, including the selling of insulation and other weatherization programs to housing developers. In 1990, the position was moved from the Light Division to the Customer, Finance and Administrative Services Division.

By 1994, the four employees in the consumer service consultant class spent approximately one-half of their time helping customers resolve billing or metering complaints. The consultants reviewed customers' bills and responded to questions about specific billing problems, often acting as an ombudsperson or intermediary for customers. For example, consultants would investigate high bill complaints, and calculate adjustments for customers. Consultants worked with industrial, commercial, and residential customers of the utility. Consultants worked infrequently with the employer's key managers, and the consultants had limited involvement with the development or introduction of new products. Consultants were not generally involved in projects designed to maintain customer loyalty, and were not expected to fully understand the nature of the business conducted by a customer. The one exception established by the evidence was that one consultant was involved during the 1985-1990 period with an "Energy Expo" sponsored by several utilities to showcase their products and services.

Elimination of Consultant Position -

In 1994, the employer was faced with increased financial pressures. Costs were rising to maintain its own operations, and other utilities were freezing or reducing their retail electric rates.

Director Crisson addressed this concern in the early part of 1994, by meeting with the division heads for a two-day strategic planning session. Crisson directed the division heads to find ways to reduce expenditures, including possible layoffs of employees.

In October of 1994, the employer decided to eliminate the consumer service consultant positions. That decision, made in response to Crisson's earlier directive, led to the layoff of the four employees in that position. While the affected employees were notified at that time, the effective date of the layoff was delayed to April 1, 1995, to provide them time to find other jobs.

During November and December of 1994, the employer and union were engaged in collective bargaining negotiations for a separate "customer and field services" bargaining unit which included a position titled "consumer service assistant". The parties agreed that certain duties of the eliminated consultant position, such as special billings, auditing the miscellaneous debit and credit report, and answering telephone inquiries, would be reassigned to the "consumer services assistant" position.

Energy Services Account Executive

Creation of the new position -

The strategic planning effort undertaken by the employer in 1994 was not confined to cost-saving measures. Crisson was also concerned that the employer was not keeping pace with rapid changes occurring in the public utility industry, including the approaching deregulation of the industry. In 1992, the federal Energy Policy Act deregulated electric rates at the wholesale level. While the state of Washington had not yet established a date for deregulation of retail electric rates, Crisson directed the division heads to find ways to improve the employer's competitive position.

Another management retreat was held in the spring of 1995. After that retreat, several study groups were formed to address ideas

generated at the retreat. One study group was assigned the task of analyzing ideas about how the employer might offer new products and services to help retain its customers. Senior Utilities Economist David Lerman was selected as team leader for this group, which became known as the Energy and Expert Services Study Group.

In November of 1995, Steve Klein, the head of the Light Division, raised the possibility of creating a new position to provide "pro-active" customer service. This occurred during a meeting between Klein and the team leaders from the various study groups. Klein asked the Energy and Expert Services Group to look into this idea.

Dalene Moore, a member of the Energy and Expert Services Study Group, had been doing independent research on public utility marketing since 1991, and she had compiled various information concerning the use of marketing executives. In a January 22, 1996 meeting of her study group, Moore presented a background paper concerning the concept of having a single point of contact within the utility. Her background paper indicated that, among 16 utilities contacted across the United States, all but four had some form of account executive position.

Moore's paper explained that the utility industry was employing two different operational models for account executive positions. Under a "full-service" model, account executives are charged with full responsibility for negotiating rates, making policy related to strategic customers, coordinating responses to outages, and handling new service requests. Under a "coordinative" model, account executives serve as the main contact for the business relationship and coordinate the employer's responses to customer needs. The paper related the role of account executives in the following terms:

Common to either model is the need to have "account executives" (by whatever name) have access to executive management. The "account executive" will convey the customer's needs to

the utility and must ensure the timeliness of the response to those needs. It takes access to executive management and a clearly defined team procedure to ensure that resources are made available, policies are clarified or interpreted and that priorities of work load are shuffled appropriately for a timely response to the customer.

In addition, the "account executive" positions in either model, but especially in the coordinative model, need to be classified at a high enough level to reflect the importance of their responsibilities for building and maintaining the business relationship with major customers. Entry level or second level staff will not inspire enough customer confidence to make the position work. Staff in these positions must make contact and develop relations with staff in all levels of the customer's organization, from the CEO to the field electrician chief. Each level of communication may necessitate a different style and certainly an awareness of content differences.

The importance of placing account executive positions at a senior-level status was emphasized. Moore's paper recommended that the employer create several new account executive positions.

During February and March of 1996, the Energy and Expert Services Study Group surveyed a sampling of the employer's top 100 customers, to determine how the employer could improve its services. Customers were asked what new services they would like to see offered, and what existing services were most useful. The survey results revealed that customers were most interested in two issues: (1) having a designated individual they could contact for issues such as billing and service improvements; and (2) the availability of new products and services. The survey results were interpreted as support for development of an account executive position.

The survey results were also consistent with a developing trend in the utility industry. Seminars on "key accounts management" were being held during this time period. The seminars were designed to help utilities develop programs to keep their largest accounts, in

the changing environment of deregulation. Other utilities in the northwest, such as Bonneville Power Administration, Clark County Public Utility District (PUD), PacifiCorp, Seattle City Light, and Snohomish County PUD were creating account executive positions.

At the same time as the employer was exploring the possible creation of an account executive position, it was undergoing other organizational changes to improve its competitive position. In the spring of 1996, the Light Division was reorganized into functional areas. Five sections existing prior to that reorganization [(1) light engineering; (2) power management; (3) construction/maintenance; (4) energy conservation; and (5) natural resources] were condensed into four sections [(1) generation; (2) transmission and distribution; (3) power management; and (4) energy services]. One of the purposes of the new energy services section was to develop unique products and services so the employer could compete in a deregulated environment. Under its new structure, products and services could be priced independently, that is, generation could be priced separately from transmission and distribution, etc.

In June of 1996, the employer created the position of energy services account executive, using the "coordinative" model described above. The position was in the energy services section of the Light Division. Two account executives were hired in June of 1996, and a third employee was hired by September of 1996. The three account executives attended a key accounts management seminar held in Spokane from September 16 to 18, 1996. In May of 1997, the employer sent a letter to its customers being serviced by an account executive, explaining the functions of the new position.

Duties of Account Executive -

The job description for the account executive position sets forth the following duties and responsibilities:

The Account Executive position reports to the Energy Services Manager, working closely at times

with the Light Superintendent and key staff from other sections of the Light Division. It is a **senior-level marketing position** involving frequent contact with senior-level representatives of key customers and customer groups, and Light Division service development and delivery staff. **The position's primary responsibility is the marketing to customers of the Light Division's products and services.** Account executives participate in development of products and services with teams throughout the Light Division and coordinate the delivery of the resulting services. The position is a primary point-of-contact between the Light Division and its customers, addressing a wide range of customer needs.

The Account Executive position in the commercial/industrial sector is responsible for establishing and maintaining productive working relationships with assigned Light Division customers. Incumbents develop a thorough understanding of their customer's business, electric energy use systems, metering equipment, and processes, as well as the Light Division's services, in order to analyze and understand problems and facilitate solutions.

The residential Account Executive position is responsible for outreach and service marketing and facilitates solutions to customer problems. Incumbents possess technical knowledge of residential sector energy use and energy using equipment, and a thorough knowledge of utility issues and operations. Incumbents promote the use of Light Division services and will provide information and technical assistance to citizens, community and neighborhood groups to foster positive relations with Tacoma Light and further the implementation and improvement of services. Incumbents will provide and receive information from customers, outside organizations and agencies.

All Account Executives will coordinate the Light Division's products and services with other departments of the City, listen to customer wants and needs, resolve customer concerns, and coordinate community outreach activities. Account executives need to fully understand the Light Division services, rates, and costs.

REPRESENTATIVE DUTIES

Participate in the development and market of the products and services of the Light Division.

Develop and implement strategies to increase customers' loyalty and satisfaction with the Light Division.

Gather, organize and disseminate customer and competitor intelligence.

Act as customers' primary contact with the Light Division.

Act as the customer's representative in the identification and resolution of service problems.

Help customers to understand their electric end uses and alternatives.

Provide information regarding the changing utility industry, the Light Division and rates to customers.

Coordinate intra-utility activities with other sections and programs.

Prepare and maintain various correspondence, records, and files.

KNOWLEDGE AND ABILITIES

Knowledge of:

- **Marketing principles and sales techniques.**
- Principles of business administration and basic accounting.
- Light Division services and rates.
- **Regional and national business and energy issues.**
- Energy management in commercial/industrial or residential settings.
- Energy efficient building construction codes, practices, methods, installation techniques, and costs.
- Modern office practices, procedures and equipment.
- City and Public Utility policies and procedures.

Ability to:

- **Effectively represent the Light Division and market its products and services to its customers.**
- Work independently with minimal direction and with a wide range of management, professional and technical people within the department and its customers.
- **Effectively participate in product and service development teams.**
- Facilitate resolution of problems.

- Communicate effectively orally and in writing.
- Analyze situations accurately and adopt an effective course of action.
- Meet schedules and time lines.
- Maintain records and prepare reports.
- Operate a personal computer, using appropriate word processing, spreadsheet and technical and financial analysis software.
- Read, interpret, and apply contract provisions, technical specifications and other City and code requirements.
- **Promote the efficient use of electricity.**
- Establish and maintain cooperative and effective working relationships with others.

EDUCATION AND EXPERIENCE

An equivalent combination to: **graduation from an accredited four-year college or university with major course work in business or public administration, marketing, energy management, planning** or a related field and four years of experience in commercial/industrial or residential energy services development, marketing, delivery or management.

LICENSES AND OTHER REQUIREMENTS

Valid Washington State Driver's License.

WORKING CONDITIONS

Office environment with frequent visits to customers' locations. Employee may be required to work evening hours and be on call 24 hours a day.

[Emphasis by **bold** supplied.]

The three account executives were assigned to different groups of customers:

- One handles industrial accounts (as well as St. Joseph's Hospital and Tacoma General Hospital);
- One works with commercial and institutional accounts (such as Albertson's, Fred Meyer, Safeway stores, Port of Tacoma, Pierce County, City of Tacoma, various school districts and community colleges); and

- One works with a few aggregated residential accounts (such as large scale, low-income housing projects operated by the Metropolitan Development Council, Tacoma Housing Authority and Pierce County Housing Authority, and with apartment complexes that are owned or managed by larger companies), but not with the residential sector generally.

Was Bargaining Unit Work Transferred?

As part of the two-part analysis to determine whether bargaining unit work was transferred, it must be established whether the account executives are performing work historically performed by unit employees. The union contends the employer resurrected work previously performed by the consumer service consultants, and that the account executive position is very similar in scope and content to the consumer service consultant position, but those arguments are not persuasive. Instead, the Examiner credits the employer's argument that the account executive position was created to fill a new and unique role in its organization, and now performs new work being undertaken by the department.

In the spring of 1995, after the layoff of the consultants, the employer held several meetings to identify any impact of the layoff on other utility employees. The employer prepared a table listing 16 tasks formerly assigned to the consultants. That table divided the 16 tasks into the following categories: Two had been discontinued; two had been assigned to the customer services section of the Customer, Finance and Administrative Services Division; six were returned to customer service; two had been done concurrently by customer service; two had been done concurrently within other programs; one was returned to the light engineering section of the Light Division; and one was assigned to the management services section of the Customer, Finance and Administrative Services Division. That re-distribution was the subject of the prior unfair labor practice proceeding, and will not be revisited here. The job

description for the account executive position does not include any of the 16 tasks previously assigned to the consultant position. The union has not met its burden to prove that the account executive position is performing work that was historically performed by the consultant position.

The two-part analysis also requires a decision as to whether the account executive position is fundamentally different from regular bargaining unit work in terms of the nature of duties, skills, or working conditions of the position. The account executive and consultant positions have different education and experience requirements. The qualifications for the consultant position are listed in the job description as follows:

An equivalent combination to: graduation from **high school and two years advanced college-level training** in energy management, mathematics or a related field and **three years experience in electrical work** involving public contact and requiring general knowledge of electrical equipment, meters, electrical rates and inside wiring practices and circuits.

[Emphasis by **bold** supplied.]

The job description for the account executive position lists its qualifications as follows:

An equivalent combination to: **graduation from an accredited four-year college or university** with major course work in business or public administration, marketing, energy management, planning or a related field and **four years of experience** in commercial/industrial or residential energy services development, marketing, delivery or management.

[Emphasis by **bold** supplied.]

At the most basic level, there is a clear distinction between "two years ... college ... and three years experience in electrical work" and "graduation from ... four-year college [in specified

majors] ... and four years of experience". Viewed from a broader perspective, the qualifications for the account executive position emphasize the marketing nature of the position, while the qualifications for the consultant position focus on technical knowledge in the field of electricity.

Detailed comparison of the job descriptions for the two positions reveals other major differences. The account executive position is described as a senior-level marketing position. The position has frequent contacts with senior-level representatives of key customers, and works closely with the head of the Light Division and key staff from the Light Division, to develop and deliver new products to customers. Specific duties of the account executive position are described with terms such as:

- ... develop ... and market ... products and services;

- ... develop and implement strategies to increase customers' loyalty and satisfaction;
- and

- ... gather, organize and disseminate customer and competitor intelligence.

The consultant position was described in very different terms, with a basic function of promoting the effective use and conservation of electricity. Duties such as "resolve customer complaints", "analyze energy use patterns", "calculate heat loss and heating requirements", "assist consumer in understanding billing" and "process customer refund requests" do not rise to the same level as the role and authority vested in the new position. The duties set forth in the consultant job description were confirmed from the evaluations prepared by each consultant prior to layoff. The evaluations indicated that almost half of their time was spent resolving customer complaints and handling billing discrepancies.

A comparison of the reporting relationships for the two positions is also instructive in analyzing their respective roles or functions in the employer's organization. The consultants reported to the customer account supervisor, who reported to the customer services manager, who reported to the head of the Customer, Finance and Administrative Services Division. The account executives are one level closer to their division head, reporting to the energy services manager, who reports to the head of the Light Division. Thus, the account executive position occupies a higher level of responsibility within the employer's organizational structure.

Further evidence of the higher function and responsibility of the account executive position is shown by a comparison of salary levels. In 1994, the top pay for the consultant position was \$20.17 per hour. Assuming that wages for the consultant position would have increased by 10% over the three-year period of 1995-97, the consultant position would have been earning approximately \$22.19 per hour in 1997. The top pay for the account executive position in 1997 was \$27.82 per hour, which is 25% higher than can be projected for the consultant position.

Conclusion as to Transfer of Unit Work

The consumer service consultant position was a technical position responsible for routine customer complaints, billing discrepancies, and technical assistance to customers. The account executive position has a broader perspective. The account executives are professional-level salespeople concerned with marketing the employer's products and services to its major customers in a new environment of deregulation that calls for proactive marketing efforts that historically have not been performed in the employer's organization. The account executive has a different focus than the consultant, and is expected to develop a detailed knowledge of customers' businesses, energy issues and business concerns, in order to develop strategies to increase customer satisfaction and

loyalty. The duties of the account executives are fundamentally different from those of the consultants, who were not performing senior-level marketing functions for the utility. The account executive position is fundamentally different from the consultant position, in terms of duties, skills and working conditions. The employer did not owe the union any duty to bargain concerning the creation of the account executive positions.

Waiver by Union of Opportunity for Bargaining

The Examiner does not address the employer's argument that the union failed to make a formal request for bargaining about the creation of the account executive position, and thereby waived its bargaining rights. Since the employer had no duty to bargain the creation of the account executive position, it is unnecessary to reach the waiver issue in this proceeding.

FINDINGS OF FACT

1. The City of Tacoma, a "public employer" within the meaning of RCW 41.56.030(1), offers electric and water services to its residents through a Department of Public Utilities.
2. International Brotherhood of Electrical Workers, Local 483, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of employees of the employer's Department of Public Utilities. One of the bargaining units represented by the union included the "consumer service consultant" position.
3. The consumer service consultant position was a technical position which did not require a baccalaureate degree and was responsible for routine customer complaints, billing discrepancies, and technical assistance to customers. The consultant

employees spent almost one-half of their time resolving customer complaints and handling billing discrepancies.

4. In October 1994, the employer notified the four employees in the consumer service consultant positions that they were to be laid off, effective on April 1, 1995. The employer identified 16 tasks historically performed by those employees, and they were reassigned to other employees or discontinued. By agreement of the union and employer, certain duties of the consultant position were reassigned to employees in another bargaining unit represented by the union. The legitimacy of those actions was the subject of a previous unfair labor practice proceeding before the Commission, and is not before the Examiner in this proceeding.
5. As the result of a management retreat held in the spring of 1995, the employer created an energy and expert services study group. This group researched the idea of marketing or account executives, and eventually recommended that an account executive position be created at a senior level within the employer's organization, to assist in marketing the employer's services and products in an environment of deregulation.
6. The employer created energy services account executive positions and hired three employees in June and September, 1996.
7. The account executive position requires a baccalaureate degree and substantial professional experience, and functions as a senior-level marketer of products and services to the employer's major customers. The duties of the account executive position include developing and implementing strategies to increase customers' loyalty and satisfaction.
8. The account executive position occupies a higher level in the employer's table of organization than was occupied by the

consultant position, and functions at a higher level of responsibility within the employer's organization.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. The energy services account executive position has duties, skills and working conditions different than, and does not perform work historically performed by, the consumer service consultant position formerly included in the bargaining unit represented by IBEW, Local 483, so that the City of Tacoma had no duty, under RCW 41.56.030(4), to bargain with IBEW, Local 483 concerning the creation of the new position.
3. By its creation and filling of the energy services account executive position, as described in the foregoing findings of fact, the City of Tacoma did not transfer bargaining unit work to persons outside of the bargaining unit, and did not commit an unfair labor practice under RCW 41.56.140(4).

ORDER

The complaint charging unfair labor practices filed in this matter is DISMISSED.

Issued at Olympia, Washington, this 12th day of February, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.