

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 483

Involving certain employees of:

CITY OF FIRCREST

CASE 26748-E-14

DECISION 12379 - PECB

ORDER OF DISMISSAL

Roberta Burnett, Assistant Business Manager, for the International Brotherhood of Electrical Workers, Local 483.

Summit Law Group PLLC, by *Bruce L. Schroeder*, Attorney at Law, for the City of Fircrest.

On September 24, 2014, the International Brotherhood of Electrical Workers, Local 483 (union) filed a representation petition to include the Parks Maintenance Supervisor position in its existing Public Works bargaining unit at the City of Fircrest (employer). The employer objected to the petition, arguing that the Parks Maintenance Supervisor position lacks a community of interest with the Public Works bargaining unit. The employer asserted that the Parks Maintenance Supervisor performs a distinctly different set of duties from the employees in the Public Works bargaining unit. The employer also asserted that including the Parks Maintenance Supervisor position in the Public Works bargaining unit would fragment and create work jurisdiction issues in the employer's workforce.

The sole issue to be decided in this proceeding is whether the Parks Maintenance Supervisor shares a community of interest with the union's Public Works bargaining unit and whether inclusion of that position would result in an appropriate bargaining unit under RCW 41.56.060. The Parks Maintenance Supervisor does not share a community of interest with the union's Public Works bargaining unit. Including that position in the bargaining unit would render the bargaining unit inappropriate. The Parks Maintenance Supervisor's work overlaps with that of other employees in the employer's workforce. If that position were included in the Public Works bargaining unit,

work jurisdiction issues would occur between the represented and unrepresented employees in the employer's workforce. Accordingly, the union's petition must be dismissed.

BACKGROUND

The employer's workforce is divided into multiple departments, including Public Works, Parks/Recreation (Parks), and Finance/Facilities (Facilities). Some employees in the Public Works Department are represented by the union while the employees in the Parks and Facilities Departments do not have a history of representation.

Employees in both the Parks and Facilities Departments are responsible for parks maintenance work. Andrew Piercy is the Parks Maintenance Supervisor in the Parks Department. His duties include maintaining the parks' landscapes, swimming pools, athletic fields, and other structures. He is also responsible for the day-to-day outdoor maintenance duties of the parks and his work varies by season. In the winter months, Piercy inventories and replaces equipment and orders supplies for the spring season, and he maintains the parks in the spring and summer seasons. In the summer when maintenance needs are high, Piercy works with and directs a crew of temporary summer workers. He generally works alone the rest of the year. Piercy is supervised by the Parks Department supervisor.

Gary Mims is the Senior Maintenance Supervisor in the Facilities Department.¹ Mims spends about 25 percent of his time performing many of the same parks maintenance duties that Piercy performs, including mowing and maintaining the City's parks, open spaces, and landscaping. Mims also assists Piercy in maintaining the City's recreational facilities, including dragging and drawing lines on ball fields for games, monitoring and maintaining the pools' filtration systems and chemistry, installing goal posts and nets for sports facilities, and cleaning and maintaining the tennis courts and sprinkler systems. These overlapping duties generally occur in the late spring, before the crew of temporary summer workers are hired to work with Piercy.

¹ Mims's position was reclassified from Maintenance Worker II to Senior Maintenance Supervisor at almost the same time the union filed its petition. The petition was signed on September 23, 2014, filed on September 24, 2014, and the Senior Maintenance Supervisor job description is dated September 23, 2014.

The Public Works Department is composed of the Water, Sewer, Storm, and Street divisions and includes employees in the Public Works Director, Utility Foreman, Utility Serviceman, Support Service Coordinator, and Billing Clerk job classes. The Public Works Department also has summer employees who are distinct from those who work in the Parks Department.

The union's Public Works bargaining unit only includes employees in the Utility Foreman and Utility Serviceman positions. These employees engage in outdoor labor. The duties of Utility Servicemen include pavement cutting; ditch digging; manhole, main, and line cleaning; installing and repairing mains, pipes, meters, hydrants, valves, water taps, plumbing fixtures, and catch basins; and servicing collection and distribution systems, lift and pump stations, and water reservoirs. The bargaining unit employees drive trucks and operate a variety of power, construction, and maintenance equipment. From time to time, they will operate landscaping equipment that is similar to the equipment used by the Parks Maintenance Supervisor. However, the bargaining unit employees also operate heavier machinery and are required to have commercial driver's licenses (CDL). Piercy maintains a CDL but it is not a job requirement for the Parks Maintenance Supervisor position.

The bargaining unit employees rarely engage in joint projects with the Parks Maintenance Supervisor. One regular exception is the annual street beautification project for winter holiday decorations. Otherwise, the Parks Maintenance Supervisor is not regularly assigned to work on public works projects and bargaining unit employees are not regularly assigned to do parks maintenance work. Piercy and bargaining unit employees occasionally provide each other informal, *ad hoc* assistance. For example, Piercy will assist bargaining unit employees by moving a vehicle. If Piercy needs assistance, he does not always request help from Mims and will sometimes receive help from the bargaining unit employees. However, these instances of work assistance are not sanctioned or directed by the employer. Piercy and bargaining unit employees often choose to take breaks together, but their regular daily interaction is more a result of longstanding friendships than of employer-directed joint work assignments.

ANALYSIS

Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *IAFF, Local 1052 v. PERC*, 29 Wn. App. 599 (1981), *rev. denied*, 96 Wn.2d 1004 (1981). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997). The goal in making bargaining unit determinations is to group together employees who have sufficient similarities (community of interest) that indicate they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

In making bargaining unit determinations this agency considers “the duties, skills, and working conditions of the public employees; the history of collective bargaining² by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.” RCW 41.56.060(1).³ These criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors will arise in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, *Renton Education Association v. PERC*, 101 Wn.2d 435 (1984).

When crafting bargaining units, this agency is not required to determine the “most” appropriate bargaining unit. Rather, it is only necessary that the petitioned-for unit be an appropriate unit. The fact that there may be other groupings of employees which would also be appropriate, or even

² Generally, the history of bargaining only applies where the petitioned-for employees are either currently or have recently been represented for collective bargaining. *See, e.g., Snohomish County*, Decision 12071 (PECB, 2014). In this case, although the union has successfully represented the Public Works bargaining unit, the Parks Maintenance Supervisor position has not recently been represented for collective bargaining.

³ Although “the desire of the public employees” is one of the unit determination criteria listed in RCW 41.56.060, testimony under oath is an inherently coercive and inappropriate method for ascertaining the desires of employees. *Valley Communications Center*, Decision 4465-A (PECB, 1994). Unless an accretion is appropriate, the desires of employees are ascertained through the election process. *Central Washington University*, Decision 9963-B (PSRA, 2010).

more appropriate, does not require setting aside a unit determination. *University of Washington*, Decision 8392 (PSRA, 2004); *City of Winslow*, Decision 3520-A (PECB, 1990).

Although this agency is not required to determine the most appropriate bargaining unit configuration, the agency nevertheless seeks to avoid excessive fragmentation and potential work jurisdiction disputes when making bargaining unit determinations. *King County*, Decision 6696 (PECB, 1999). Bargaining unit configurations that stretch between two departments have been rejected when the proposed configuration fails to include all personnel in similar classifications. For example, in *King County*, Decision 5910-A, a proposed bargaining unit configuration was rejected because it would create work jurisdiction issues.

Application of Standards

The Parks Maintenance Supervisor position lacks a community of interest with the union's Public Works bargaining unit. The Parks Maintenance Supervisor's duties overlap with those of other employees in the employer's workforce. Adding that position to the union's existing Public Works bargaining unit would create impermissible work jurisdiction issues.

The duties, skills, and working conditions of the Parks Maintenance Supervisor do not necessarily support a conclusion that this position shares a community of interest with the employees in the Public Works bargaining unit. While the regular duties of the Parks Maintenance Supervisor and the employees in the bargaining unit are different, both work outdoors, operate equipment, and perform hands-on tasks to maintain the employer's infrastructure. Furthermore, the Parks Maintenance Supervisor is responsible for landscaping the employer's parks and the bargaining unit employees are responsible for landscaping certain areas of the employer's streets. However, there is little regular interaction between the two groups, and the Parks Maintenance Supervisor and the bargaining unit employees rarely work together on employer-directed assignments.

The extent of organization strongly supports a conclusion that including just the Parks Maintenance Supervisor in the union's Public Works bargaining unit would result in an inappropriate bargaining unit because work jurisdiction issues would be created. The Parks

Maintenance Supervisor and the Senior Maintenance Supervisor in the Facilities Department share a long history of working together to maintain the parks. Approximately 15 years ago, both maintenance positions were assigned to the Parks Department. The Senior Maintenance Supervisor was later moved to the Facilities Department and was assigned additional duties.

Although they are assigned to different departments, the Parks Maintenance Supervisor and the Senior Maintenance Supervisor still share a considerable overlap in job duties. A significant portion of the Senior Maintenance Supervisor's duties continues to be parks maintenance work and this work is identical to the parks maintenance work performed by the Parks Maintenance Supervisor. Both positions require identical knowledge, skills, and abilities, and the minimum qualifications, special requirements, and equipment used are almost identical. The Senior Maintenance Supervisor is expected to have three years of maintenance experience as a minimum qualification, while the Parks Maintenance Supervisor position requires two years. Both positions require use of the same general tools and equipment with the only difference being the use of additional janitorial equipment. The overlapping of duties would create impermissible work jurisdiction issues if the Parks Maintenance Supervisor position were included in the existing bargaining unit while the Senior Maintenance Supervisor position were excluded from that unit.

Overlapping work jurisdictions between potentially represented and unrepresented employees, when regular and ongoing, support a finding that a proposed bargaining unit configuration is not appropriate. For example, in *State – Enterprise Services (Technology Solutions)*, Decision 11663 (PSRA, 2013), a proposed bargaining unit was found to be inappropriate when it would result in bargaining unit members working “side-by-side with unrepresented employees who perform the same work.” The concern in that case was that the proposed bargaining unit configuration would create work jurisdiction conflicts over what work should be assigned to bargaining unit employees and what work should be assigned to non-bargaining unit employees. This petition presents a similar potential for conflict should the Parks Maintenance Supervisor be included in the union's Public Works bargaining unit and the Senior Maintenance Supervisor remain unrepresented.

CONCLUSION

The substantial and regular overlap between the job duties of the Parks Maintenance Supervisor and the Senior Maintenance Supervisor demonstrates that these two positions have a substantial community of interest, and to include one position in a bargaining unit while excluding the other would result in an inappropriate bargaining unit.⁴ As the union has filed a petition to include a single position in its existing bargaining unit, it would be improper for this agency to determine an alternative configuration without an attempt to build a record to what appropriate configurations are possible. Because such a record cannot be achieved through the petition as filed, the union's petition is dismissed.

FINDINGS OF FACT

1. The City of Fircrest is a public employer within the meaning of RCW 41.56.030(12).
2. The International Brotherhood of Electrical Workers, Local 483 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer's workforce is divided into multiple departments, including Public Works, Parks/Recreation (Parks), and Finance/Facilities (Facilities). Some employees in the Public Works Department are represented by the union while the employees in the Parks and Facilities Departments do not have a history of representation.
4. The union represents a bargaining unit of Public Works employees that only includes employees in the Utility Foreman and Utility Serviceman positions. The employees in this bargaining unit are responsible for work in the Water, Sewer, Storm, and Street divisions.

⁴ Even if the union were to amend its petition to include the Senior Maintenance Supervisor as part of its petition, the work jurisdiction issues may not necessarily be alleviated. This proceeding did not fully explore any work jurisdiction issues that may be associated with that position outside of the issues associated with the Parks Maintenance Supervisor.

5. Andrew Piercy is the Parks Maintenance Supervisor in the Parks Department. His duties include maintaining the parks' landscapes, swimming pools, athletic fields, and other structures. He is also responsible for the day-to-day outdoor maintenance duties of the parks and his work varies by season. In the winter months, Piercy inventories and replaces equipment and orders supplies for the spring season, and he maintains the parks in the spring and summer seasons.
6. Gary Mims is the Senior Maintenance Supervisor in the Facilities Department. Mims spends about 25 percent of his time performing many of the same parks maintenance duties that Piercy performs, including mowing and maintaining the City's parks, open spaces, and landscaping. Mims also assists Piercy in maintaining the City's recreational facilities, including dragging and drawing lines on ball fields for games, monitoring and maintaining the pools' filtration systems and chemistry, installing goal posts and nets for sports facilities, and cleaning and maintaining the tennis courts and sprinkler systems.
7. The Public Works employees described in Findings of Fact 3 and 4 engage in outdoor labor. The duties of Utility Servicemen include pavement cutting; ditch digging; manhole, main, and line cleaning; installing and repairing mains, pipes, meters, hydrants, valves, water taps, plumbing fixtures, and catch basins; and servicing collection and distribution systems, lift and pump stations, and water reservoirs. The bargaining unit employees drive trucks and operate a variety of power, construction, and maintenance equipment.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter through the provisions of Chapter 41.56 RCW, Chapter 391-25 WAC, and Chapter 391-35 WAC.
2. Based upon Findings of Fact 4 through 7, including the employee described in Finding of Fact 5 in the bargaining unit described in Finding of Fact 4 would create impermissible

work jurisdiction issues that would result in an inappropriate bargaining unit under RCW 41.56.060.

ORDER

The petition filed by the International Brotherhood of Electrical Workers, Local 483 in the above entitled action is DISMISSED.

ISSUED at Olympia, Washington, this 16th day of July, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-590.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 07/16/2015

DECISION 12379 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 26748-E-14

EMPLOYER: CITY OF FIRCREST
ATTN: RICK ROSENBLADT
115 RAMSDELL ST
FIRCREST, WA 98466
rosenblatt@cityoffircrest.net
(253) 564-8901

REP BY: BRUCE SCHROEDER
SUMMIT LAW GROUP
315 5TH AVE S STE 1000
SEATTLE, WA 98104-2682
bruces@summitlaw.com
(206) 676-7000

PARTY 2: IBEW LOCAL 483
ATTN: ALICE PHILLIPS
3525 SO ALDER ST
TACOMA, WA 98409
alice@ibew483.org
(253) 565-3232

REP BY: ROBERTA BURNETT
IBEW LOCAL 483
3525 S ALDER
TACOMA, WA 98409
roberta@ibew483.org
(253) 565-3232