

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 77

Involving certain employees of:

CITY OF SEATTLE

CASE 27288-E-15

DECISION 12552 - PECB

ORDER REMANDING CASE

Jacob H. Black, Attorney at Law, Robblee Detwiler & Black, PLLP, for the International Brotherhood of Electrical Workers, Local 77.

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On June 10, 2015, the International Brotherhood of Electrical Workers, Local 77 (union) filed a representation petition concerning a group of unrepresented employees in the Power Marketer job class at the City of Seattle (employer). The petition seeks to allow these employees the choice of whether to be included in an existing mixed-class bargaining unit. The petitioned-for employees and existing bargaining unit employees work in the employer's City Light Department (City Light).

The union asserts that the Power Marketers share a community of interest with the mixed-class bargaining unit and that including the Power Marketers in that unit would result in an appropriate bargaining unit. The employer contends that the resulting bargaining unit would be inappropriate because the Power Marketers have a distinct and separate community of interest from the mixed-class bargaining unit. Instead, the employer argues that, if they choose to be represented, the Power Marketers should be in a separate bargaining unit and negotiate a separate collective bargaining agreement.

Because the parties disagreed about the appropriateness of the union's petition, the matter was forwarded to hearing. Hearing Officer Matthew Greer conducted a hearing on October 1 and 2, 2015, and the parties filed post-hearing briefs.

The Power Marketers do not share a community of interest with the existing bargaining unit. Adding the Power Marketers to the existing bargaining unit would not result in an appropriate unit configuration. The tenuous connection the Power Marketers have with the Senior Power Dispatchers in the mixed-class bargaining unit is outweighed by the differences in the duties, skills, working conditions of these employees and the federal requirement that transmission employees function independently from marketing employees. The union's petition is remanded to the Representation Case Administrator for further processing consistent with this decision.

BACKGROUND

City Light provides electrical power to the city of Seattle. City Light owns and maintains electrical power production and distribution facilities and the related infrastructure necessary to deliver power to its customers. The union represents a bargaining unit of nearly 600 City Light employees working in 80 classifications, including (but not limited to) lineworkers, electricians, and power dispatchers.¹ Most bargaining unit positions directly engage in the generation and distribution of power to City Light customers.

The power market was deregulated in the late 1990s. Prior to deregulation, power was distributed in a way that sought to balance the overall power system and was not focused on generating revenue. As a result, marketing functions were less complex and performed by dispatchers.

After deregulation, power became a commodity bought and sold on the open market. Power marketing became much more complex and the focus switched to generating revenue by taking advantage of market conditions to buy and sell power. This change in the treatment of power required electrical utilities to separate marketing functions from dispatching functions.

¹ The union also represents a smaller bargaining unit of City Light employees who work in accounting.

As part of the deregulation process, federal regulations were enacted to limit antitrust concerns with organizations that both produce electricity and buy and sell it on the market. The Federal Energy Regulatory Commission's (FERC) regulations require that "transmission function" employees operate independently from "marketing function" employees. The "transmission function" employees are prohibited from communicating non-public transmission information to "marketing function" employees. Also, communications between dispatchers and marketers are recorded.

When deregulation occurred, the employer created the Power Marketer job class. The parties agreed that the Power Marketers would not be included in the bargaining unit. At that time, some previously represented dispatchers were reclassified as Power Marketers and became unrepresented as a result. However, no dispatcher has become a Power Marketer since this reorganization. The Power Marketers have remained unrepresented since the classification was created.

Power Marketers sell excess power on the open market when City Light has or is forecasted to have excess power. They generate revenue for City Light in doing so. Power Marketers buy excess power on the open market to meet customers' energy demands. They help City Light ensure that it has an adequate supply of power for its customers.

There are four different positions within the Power Marketer job class, distinguished primarily by the timeframe for which they buy or sell power: (1) Day Ahead/Prescheduler Power Marketers handle transactions for the next trading day and through the end of the month; (2) Forward Power Marketers handle transactions for a period that is between one month and 24 months from the current date; (3) Real-Time Power Marketers handle transactions for the current day and up to two days in advance to meet City Light's near-term power needs; and (4) Regional Dialogue (RD) Slice Power Marketers deal with transactions involving the federal Bonneville Power Administration. One incumbent Power Marketer does not transact power but instead handles risk assessments and operations.

Power Marketers are not directly engaged in the production and distribution of power in the same way as other bargaining unit members. They are generally not concerned with ensuring that City Light's physical infrastructure for delivering power is maintained. For example, Power Marketers do not work overtime to prepare for major storms that may damage the power transmission equipment or to assist in post-storm recovery. However, Power Marketers must take various non-financial factors into consideration, such as operational constraints and maintenance of reservoir water levels and fish conservancy.

Senior Power Dispatchers work to ensure a constant and reliable power supply throughout their shifts. They also ensure that City Light's transmission infrastructure meets those needs. For example, Senior Power Dispatchers can order power-generating turbines be turned on or off based on City Light's power needs and other conditions. They can direct Power Marketers to buy or sell power based upon need for additional power capacity, to ensure system reliability, or to protect power system equipment and facilities. Senior Power Dispatchers do not focus on revenue generation.

All Power Marketers, except for the Real-Time Power Marketers, work daytime shifts Monday through Friday. Start times are dictated by the national power trading day, meaning that work days start early so that City Light can trade power at the same time as power utilities in eastern time zones. However, Real-Time Power Marketers and Senior Power Dispatchers provide 24-hour coverage in 12-hour shifts including nights, holidays, and weekends. The evidence suggests that the parallel shift structures were developed for convenience rather than necessity.

All of the Power Marketers work in an office environment at the Seattle Municipal Tower. Bargaining unit employees are located throughout Seattle and at various power-generating facilities around the state of Washington. Senior Power Dispatchers work out of a facility in the Ballard neighborhood. The workplaces for both the Power Marketers and the Senior Power Dispatchers are rooms with large monitors. The monitors for the Power Dispatchers show data regarding the operations of the City Light power system. The monitors for the Power Marketers show data relevant to purchasing and selling power on the market.

The management and supervision of the Power Marketers is distinct from that of the Senior Power Dispatchers and other bargaining unit members. The director who leads the Power Marketers and the director who leads the Senior Power Dispatchers each report to the general manager of City Light.

Power Marketers are required to have a bachelor's degree or equivalent experience. The current incumbents generally have degrees in finance. Successful Power Marketer applicants typically come from other power generation companies, not from within City Light. Senior Power Dispatchers are recruited from within City Light and from other electrical dispatching entities, including the U.S. Navy.

There is no overlap in the career progression between Power Marketers and other union-represented positions, including Senior Power Dispatchers. Power Marketers generally start their careers as Real-Time Power Marketers and then work their way up to the other types of Power Marketers. Power Marketers do not become dispatchers and dispatchers do not become marketers. Dispatchers are not required to go through journeyman process, but many incumbents have gone through that process as part of their career at City Light in other positions.

Most Power Marketers have little to no interaction with bargaining unit employees. Specifically, RD Slice Power Marketers, Day Ahead/Prescheduler Power Marketers, and Forward Power Marketers rarely come into any contact with employees in the mixed-class bargaining unit. The five Real-Time Power Marketers have regular contact and interaction with the Senior Power Dispatchers. However, as described above, that contact is limited and constrained by FERC regulations.

At the beginning of their shifts, the Real-Time Power Marketers create a marketing plan for the purchasing and selling of power for the next 12 hours. Although they work in different locations, Real-Time Power Marketers must check in with the Senior Power Dispatcher on duty at the beginning of each shift to make sure the marketing plan is consistent with City Light's power needs for the day. The Real-Time Power Marketers reevaluate the marketing plan hourly and

check in with the Senior Power Dispatcher several times throughout their shifts to stay updated on immediate power needs. The Real-Time Power Marketers also interact with the Senior Power Dispatcher through electronic power-tracking systems. When a Power Marketer purchases or sells a block of power, an electronic tag is created to track the block of power as it moves through the system to an end user. Senior Power Dispatchers must approve the tags before they are finalized.

ANALYSIS

Applicable Legal Standards

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).

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. *King County*, Decision 5910-A (PECB, 1997). 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.

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. *Snohomish County*, Decision 12071 (PECB, 2014); *City of Winslow*, Decision 3520-A (PECB, 1990).

Self-Determination Elections

The union filed this representation petition seeking to allow the petitioned-for employees to choose whether to be included in the mixed-class bargaining unit. The self-determination election process is one method for modifying existing bargaining units. WAC 391-25-440. The process is designed to allow unrepresented employees the opportunity to express their desires and choose whether to be included in an existing appropriate bargaining unit that the petitioning union already represents. *Pierce County*, Decision 10992 (PECB, 2011).

As a threshold matter, a self-determination election is inappropriate if the number of petitioned-for employees equals or exceeds the number of employees in the existing bargaining unit because the majority status of the underlying unit is called into question. *Id.* The resulting bargaining unit must also continue to be appropriate following the addition of the petitioned-for employees. *Id.* The unit determination criteria identified in RCW 41.56.060(1) is applied to the resulting bargaining unit.

If the bargaining unit is presumed appropriate with or without the petitioned-for employees, then the petitioned-for employees are allowed the opportunity to vote on their inclusion in the existing bargaining unit.

Application of Standards

The mixed-class bargaining unit would no longer be appropriate if the Power Marketers were added to the bargaining unit. The Power Marketers do not share a community of interest with the bargaining unit. The only bargaining unit positions with which the Power Marketers have any connection are the Senior Power Dispatchers. The employer's "Reliability and Marketing Operating Agreement and Protocols" provides that the Power Marketers and the Senior Power Dispatchers both work to ensure that City Light's power supply system is reliable. Yet, that tenuous connection does not create a community of interest and is outweighed by the differences in the duties, skills, and working conditions of these employees as well as the requirement that marketing employees function independently from transmission employees.

The Power Marketers buy and sell power. They generate revenue for City Light and help City Light ensure it has an adequate supply of power for its customers. The bargaining unit is involved in the production and delivery of power and maintaining the reliability of City Light's power supply system. The Power Marketers are not integrated with the positions in the bargaining unit.

The Power Marketers are required to have bachelor's degrees or equivalent experience while there is no such requirement for other bargaining unit positions. There is no overlap in the career progression between Power Marketers and other union-represented positions, including Senior Power Dispatchers. Power Marketers generally start their careers as Real-Time Power Marketers and then work their way up to the other types of Power Marketers. Power Marketers do not become dispatchers and dispatchers do not become marketers.

The Power Marketers work in a geographically separate location from the Senior Power Dispatchers and most of the bargaining unit. With the exception of the Real-Time Power Marketers, the Power Marketers work unique shifts which are tied to the national power trading day. The Real-Time Power Marketers work the same 12-hour shift as the Senior Power Dispatchers, primarily due to convenience rather than necessity. The Power Marketers report through a different supervisory chain than the rest of the bargaining unit.

With the exception of the Real-Time Power Marketers, most of the Power Marketers have no interaction with bargaining unit employees. There is no evidence that the RD Slice Power Marketers, Day Ahead/Prescheduler Power Marketers, and Forward Power Marketers have any necessary work interactions with bargaining unit employees. There is no evidence the individuals in these positions require any information from bargaining unit employees to perform their jobs.

The interaction between the Real-Time Power Marketers and Senior Power Dispatchers is limited and regulated, and their communication is recorded. The Real-Time Power Marketers check in with the Senior Power Dispatcher on duty at the beginning of each shift to make sure the marketing plan is consistent with City Light's power needs for the day. The Real-Time Power Marketers

reevaluate the marketing plan hourly and check in with the Senior Dispatcher several times throughout their shifts to stay updated on immediate power needs.

The facts of this case are different from two recent decisions where a community of interest was found between positions with dissimilarities. In *Pierce County*, Decision 12522 (PECB, 2016), a community of interest was found to exist between the Adult Probation Officers and Legal Process Assistants in the employer's district court operation. Although there were important differences between the two positions, such as the educational requirements for each position and hours of work, other similarities and an integration of functions demonstrated they had a community of interest. The Adult Probation Officers and Legal Process Assistants worked side-by-side on assigned projects and worked in the same offices. The Adult Probation Officers also assigned tasks to the Legal Process Assistants, such as scheduling, data entry, and file maintenance.

In *Tacoma Community College*, Decision 12543 (PECB, 2016), a community of interest was found to exist between employees who provided students with placement testing and accommodation services and an existing bargaining unit of advisors and career center employees. Likewise, there were differences between the two groups, including educational requirements, types of services provided, and frequency of interaction with prospective and existing students. However, a community of interest was found between the two groups of employees who all provided prospective and existing students a spectrum of services with the shared goal of helping those students successfully enter and move through the education experience at the college. There was no prohibition or regulation on the interaction between the two groups of employees. The services provided by the petitioned-for employees linked or related to services provided by the bargaining unit employees.

In this case the separation of the marketing employees from the transmission employees is required by federal regulation and scrupulously maintained. The constrained and limited interaction that does exist between the Power Marketers and other bargaining unit employees is insufficient to create a community of interest. The requirements and efforts to maintain the separation of

functions combined with the differences in duties, skills, and working conditions preclude a finding of a community of interest.

CONCLUSION

This agency is not required to certify the *most* appropriate bargaining unit configuration. However, any proposed configuration must still be *an* appropriate unit configuration, and there must still be a community of interest between the employees in the unit as demonstrated by the statutory unit determination criteria. The differences in duties, skills, and working conditions demonstrate no community of interest exists between the Power Marketers and the mixed-class bargaining unit.

The employer has not objected to the Power Marketers being placed in their own, separate bargaining unit. Accordingly, the union will be given an opportunity amend its petition consistent with this decision.²

FINDINGS OF FACT

1. The City of Seattle (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. The International Brotherhood of Electrical Workers, Local 77 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer's City Light Department provides electrical power to the city of Seattle. City Light owns and maintains electrical power production and distribution facilities and the related infrastructure necessary to deliver power to its customers.

² 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.

4. The union represents a bargaining unit of nearly 600 City Light employees working in 80 classifications, including (but not limited to) lineworkers, electricians, and power dispatchers. Most bargaining unit positions directly engage in the generation and distribution of power to City Light customers.
5. Senior Power Dispatchers work to ensure a constant and reliable power supply throughout their shifts. They also ensure that City Light's transmission infrastructure meets those needs.
6. Power Marketers sell excess power on the open market when City Light has or is forecasted to have excess power. They generate revenue for City Light in doing so. Power Marketers buy excess power on the open market to meet customers' energy demands. They help City Light ensure that it has an adequate supply of power for its customers.
7. There are four different positions within the Power Marketer job class: (1) Day Ahead/Prescheduler Power Marketers handle transactions for the next trading day and through the end of the month; (2) Forward Power Marketers handle transactions for a period that is between one month and 24 months from the current date; (3) Real-Time Power Marketers handle transactions for the current day and up to two days in advance to meet City Light's near-term power needs; and (4) Regional Dialogue (RD) Slice Power Marketers deal with transactions involving the federal Bonneville Power Administration.
8. Power Marketers are not directly engaged in the production and distribution of power in the same way as other bargaining unit members. They are not generally not concerned with ensuring that City Light's physical infrastructure for delivering power is maintained.
9. All Power Marketers, except for the Real-Time Power Marketers, work daytime shifts Monday through Friday.

10. Real-Time Power Marketers and Senior Power Dispatchers provide 24-hour coverage in 12-hour shifts including nights, holidays, and weekends. The evidence suggests that the parallel shift structures were developed for convenience rather than necessity.
11. All of the Power Marketers work in an office environment at the Seattle Municipal Tower. Bargaining unit employees are located throughout Seattle and at various power-generating facilities around the state of Washington. Senior Power Dispatchers work out of a facility in the Ballard neighborhood.
12. Power Marketers are required to have a bachelor's degree or equivalent experience. The current incumbents generally have degrees in finance. Successful Power Marketer applicants typically come from other power generation companies, not from within City Light.
13. Senior Power Dispatchers are recruited from within City Light and from other electrical dispatching entities, including the U.S. Navy.
14. There is no overlap in the career progression between Power Marketers and other union-represented positions, including Senior Power Dispatchers.
15. Most Power Marketers have little to no interaction with bargaining unit employees. Specifically, RD Slice Power Marketers, Day Ahead/Prescheduler Power Marketers, and Forward Power Marketers rarely come into any contact with employees in the mixed-class bargaining unit.
16. The five Real Time Power Marketers have regular contact and interaction with the Senior Power Dispatchers. However, that contact is limited and constrained by the Federal Energy Regulatory Commission's regulations.

17. On June 10, 2015, the union filed a representation petition seeking to allow a group of unrepresented employees in the Power Marketer job class the choice of whether to be included in the mixed-class bargaining unit described in Finding of Fact 4.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. Based upon Findings of Fact 4 through 16, the employees in the Power Marketer job class described in Finding of Fact 6 do not share a community of interest with the bargaining unit described in Finding of Fact 4.

ORDER

This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 7th 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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RECORD OF SERVICE - ISSUED 03/7/2016

DECISION 12552 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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