

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

KING COUNTY

For clarification of an existing bargaining  
unit represented by:

TECHNICAL EMPLOYEES  
ASSOCIATION

CASE 24873-C-12-1508

DECISION 11828 - PECB

ORDER CLARIFYING  
BARGAINING UNIT

Cline and Associates, by *James M. Cline*, Attorney at Law, for the union.

*Sasha P. Alessi*, Labor Negotiator, for the employer.

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Attorney at Law, for Professional and Technical Employees, Local 17.

King County (employer) is a large municipal corporation that offers a multitude of services to its residents. The employer's workforce is divided into multiple departments, each of which performs a different function or provides different services. Prior to 2011, information technology (IT) work was decentralized throughout its various operations. Employees who performed IT work were assigned to the specific division or department that he or she supported.

In July 2011, the King County Council passed Ordinance 17412. That ordinance created a new department in the King County Executive Branch: King County Information Technology (KCIT). With limited exceptions, the ordinance directed the employer to consolidate most of its IT services within KCIT.<sup>1</sup> The purpose of the reorganization was to centralize the employer's IT services so that it could be managed in a more holistic, efficient and fiscally responsible manner. The ordinance specifically removed certain types of IT services from the control of specific

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<sup>1</sup> Any information technology employee who was attached to an elected official's office was not subject to the reorganization.

departments to the control of the KCIT. For example, section 4 of Ordinance 17412 specifically removes “the authority to manage, design, develop, operate, maintain and enhance the geographic information systems” for the county and other contracting agencies from the Department of Natural Resources and Parks to the KCIT. The director of KCIT is the Chief Information Officer (CIO). The ordinance gave the CIO the authority to recommend, manage, and oversee all IT business, projects, strategies, and associated funding. The CIO also has the authority to recommend technical standards for the purchase, implementation, and operation of computer software, hardware and networks, to recommend countywide policies and standards for the security, and to establish a standard methodology for IT projects.

The ordinance also affects the budgeting process for county IT services and IT employees. Beginning fiscal year 2012, IT services would be provided to the employer’s departments and divisions through a service based budget model. KCIT works with customer departments and divisions to identify the IT services each department and division will need during the fiscal year. The KCIT quantifies those requirements and builds its budget accordingly. The KCIT then bills the respective department and divisions for the requested services. Departments that historically relied upon certain individuals to provide IT services, such as the Department of Natural Resources and Parks, could also request to have those employees assigned to provide that department’s services. Although the ordinance was passed in 2011, changes to the organizational structure of the employer’s IT workforce did not begin until January 1, 2012 and would continue throughout the first part of that year.

Prior to the 2011 ordinance, there was an Office of Information Management that was an office of the County Executive. That office functioned as the central IT group that handled countywide enterprise services, such as e-mail, servers, and data centers. The CIO oversaw that office. However, not all IT services were overseen by that office. For example, geographic information services (GIS) were overseen by the Department of Natural Resources and Parks. Each department or division fulfilled its IT needs on a direct basis and not necessarily in coordination with other departments or divisions. Each department directly budgeted for its IT needs.

Because the employees performing IT duties were attached to the various departments or divisions that they supported, IT employees were placed in existing bargaining units within those departments or divisions (depending on how those bargaining units were organized). At the time the King County Council passed the reorganization ordinance, the affected IT employees were included in six different bargaining units represented by four different unions. Those units, their representatives, and the number of IT employees included in those units, are as follows:

- Information Technology bargaining unit – Professional and Technical Employees, Local 17 (Local 17) – 223 employees.
- Department of Public Health and Community Services bargaining unit – Local 17 – 40 employees.
- Department of Transportation bargaining unit – Local 17 – 58 employees.
- Administrative Support bargaining unit – International Brotherhood of Teamsters, Local 117 (Teamsters) – 16 employees.
- Department of Natural Resources and Parks Industrial and Hazardous Waste bargaining unit – Washington State Council of County and City Employees (WSCCCE) – 4 employees.
- Department of Natural Resources and Parks Wastewater Treatment Division bargaining unit – Technical Employees Association (TEA) – 7 employees.

On June 12, 2012, the employer filed a series of unit clarification petitions concerning the IT employees in the six bargaining units. The employer's petition seeks to remove the IT employees subject to Ordinance 17412 from five of those bargaining units and place them into Local 17's Information Technology bargaining unit. That bargaining unit is currently described as:

The employer recognizes Professional and Technical Employees, Local 17 as the exclusive bargaining representative of all regular full-time and regular part-time employees, including probationary employees and employees in grant-funded positions, and term limited temporary employees, doing the work of the job classifications listed in attached Addendum A, excluding temporary employees, contract employees, supervisors, managers and confidential employees, within the following departments and divisions of King County:

1. Office of Information Resources Management;
2. Department of Executive Services – Records and Licensing Services Division;
3. Department of Community and Human Services
4. Department of Adult and Juvenile Detention
5. Department of Developmental and Environmental Sciences
6. Department of Executive Services – Finance and Business Operations Division
7. Department of Executive Services – Facilities Management
8. Department of Executive Services – Office of Emergency Management
9. Department of Judicial Administration
10. *Department of Natural Resources/Parks*
11. Department of Election

Information Technology positions in some of these departments and divisions were represented by other labor unions prior the organization of the Local 17-IT bargaining unit. Local 17-IT does not claim to represent positions that have been historically represented by other Unions.

(emphasis added). Addendum A lists 41 different job classes that are included in Local 17's Information Technology bargaining unit. Among the job classes included in Local 17's bargaining unit are the Application Developer and GIS Specialist series. There is no evidence in this record demonstrating when Local 17's bargaining unit was established. However, it appears that Local 17's Information Technology bargaining unit was recognized through voluntary recognition.

Local 17 and the employer agreed that the IT employees in Local 17's Department of Public Health and Community Services and Department of Transportation bargaining units should be consolidated into Local 17's Information Technology bargaining unit. Following that agreement, 321 employees were included in the Information Technology bargaining unit.

The bargaining unit represented by the TEA includes employees in the Wastewater Treatment Division of the employer's Department of Natural Resources and Parks. The bargaining unit came into existence in 2001 through voluntary recognition by the employer and was not certified by this agency. At the time of the voluntary recognition, the voluntary recognition agreement between the employer and TEA described the bargaining unit as:

All employees in the Design and Construction and Asset Management, Planning and System Development, and Technical Assessment Resource Recovery Sections of the Wastewater Division of the Department of Natural Resources (“DNR”), excluding supervisors, managers, confidential employees and all other employees of the employer.

During the course of TEA’s representation, the bargaining unit description changed due to changes in the employer structure or changes in the descriptions of the various sections of the division. To reflect these changes, the employer and TEA modified the recognition agreement in the collective bargaining agreement. The current recognition agreement, Article II of the contract, describes the bargaining unit as:

All employees in the Project Planning and Delivery, Resource Recovery, Brightwater and the Environmental and Community Services Sections of the Wastewater Treatment Division of the Department of Natural Resources and Parks (DNRP), excluding supervisors, managers, confidential employees, student interns, employees in the Industrial Waste unit of the Environmental and Community Services Section and all other employees of the employer.<sup>2</sup>

The TEA’s bargaining unit included employees in the Application Developer and GIS Specialist job classes who are assigned to the Wastewater Treatment Division. It is unclear from the record exactly which sections of the Wastewater Treatment Division the Applications Developer and GIS Specialist were included in. The employer’s petition would remove the seven employees in these two job classes from the TEA’s bargaining unit and place them in Local 17’s Information Technology bargaining unit.

The Teamsters, WSCCCE, and TEA initially opposed the employer’s petitions on the basis that the reorganization did not create a change in circumstances that warrants clarification. The TEA also filed an unfair labor practice complaint concerning the employer’s reorganization.<sup>3</sup> Prior to the hearing, the Teamsters and WSCCCE agreed to be bound by the result of any decision resulting from the proceedings between the employer, TEA, and Local 17. Accordingly, these

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<sup>2</sup> In 2013, the administrative employees were removed from the bargaining unit. *King County*, Decision 11441-A (PECB, 2013).

<sup>3</sup> Case 24955-U-12-6383. Processing of the TEA’s unfair labor practice complaint has been held in abeyance pending the outcome of this unit clarification proceeding.

two cases have been stayed pending the outcome of this case. The TEA continued to argue that the employer's petition was not timely because no change in circumstances has occurred that would render its existing bargaining unit inappropriate.

On November 8 and 9, 2012, Hearing Officer Dario de la Rosa conducted a hearing with the employer, TEA, and Local 17. The employer and TEA filed briefs in support of their respective petitions. Local 17 elected to not file a brief.

### ISSUES PRESENTED

1. Is the employer's unit clarification petition timely?
2. If the employer's unit clarification petition is timely, should the TEA's bargaining unit be clarified to remove the employees performing IT services?

The employer's unit clarification petition is timely because it was filed within a reasonable time period of the reorganization. The employer's petition to clarify the TEA's bargaining unit is granted. Although the reorganization of the employer's IT work did not impact the duties of the affected employees, it did impact their working conditions. The reorganization significantly changed the organizational structure of the employer's operation and changed the reporting structure for the impacted employees. Because the IT work has been centralized into a single vertical structure within KCIT, allowing the IT employees to remain in their current bargaining units would unduly fragment the employer's workforce and create work jurisdiction issues. Accordingly, the TEA's bargaining unit is clarified to remove those positions from the TEA's existing bargaining unit and the positions are added to Local 17's Information Technology bargaining unit.

### DISCUSSION

#### Applicable Legal Standard

The determination and modification of bargaining units and the certification of the exclusive bargaining representative of appropriate units is a function delegated to this Commission by the Legislature. RCW 41.56.060; *Snohomish County*, Decision 5375 (PECB, 1995). When this

Commission certifies a bargaining unit, the work performed by the employees in that bargaining unit becomes the historic work jurisdiction of that unit. *See, e.g., Washington State University, Decision 11498 (PSRA, 2012)*(bargaining unit work is defined as “work that bargaining unit employees have historically performed”). If an employer assigns new work to employees in a bargaining unit, that work becomes historical bargaining unit work unless there is a prior agreement between the employer and exclusive bargaining representative to make the transfer of work temporary. *City of Snoqualmie, Decision 9892-A (PECB, 2009)*; *see also State – Social and Health Services, Decision 9551-A (PSRA, 2008)*.

The Commission historically describes new bargaining units by the work performed by the employees in the unit, as opposed to the job classes within that unit. The use of generic terms also avoids the need to revisit and revise the bargaining unit description should a job title be changed or a new job title added within the occupational type. *University of Washington, Decision 8392 (PSRA, 2004)*. Defining bargaining units by the work the employees perform ensures that the duty to bargain is enforced if an attempt is made to transfer that work outside of the bargaining unit. *University of Washington, Decision 8392*.

Notwithstanding a historical preference for generic bargaining units, no hard-and-fast rule exists proscribing how the Commission will describe bargaining units. Where employers are larger and include multiple divisions or work groups, where similar duties are performed by several groups of employees, and where one or more unions represent employees performing the same or similar functions in different bargaining units, defining the bargaining unit by work is not always possible. *Central Washington University, Decision 10215-A (PSRA, 2009)*. Each unit is examined individually and, based upon the factual situation presented, bargaining units will be described in a manner that clearly provides the parties with a clear understanding of which employees are included in the bargaining unit.

Even where this Commission or the parties to a voluntary recognition define a bargaining unit by job class, the work being performed by the employees in the bargaining unit still becomes the historical work jurisdiction of the bargaining unit. A change in title does not presumptively or automatically result in an employee’s removal from a bargaining unit if that employee continues to

perform the same work. *Central Washington University*, Decision 10215-B; *see also City of Tacoma*, Decision 6780 (PECB, 1999)(an employer's civil service system and classifications cannot overrule this Commission's authority to place employees in appropriate bargaining units). Absent a timely filed unit clarification, any attempt to remove historical bargaining unit work is subject to collective bargaining. *See Snohomish County*, Decision 9540-A (PECB, 2007).

*The Unit Clarification Process –*

Included with this agency's authority to determine an appropriate bargaining unit is the power to, upon request, modify that unit through a unit clarification proceeding. *See Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of Chapter 391-35 WAC.

The general purpose of the unit clarification process is to provide this agency, as well as the parties to a collective bargaining relationship, a mechanism to make changes to an existing bargaining unit based upon a change in circumstances to ensure its continued appropriateness. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981)(outlining the procedures to remove supervisors from existing bargaining units). Because unit clarifications alter the composition of a bargaining unit, the Commission adopted WAC 391-35-020 to govern the time frames during which unit clarifications may be filed so as to minimize the disruptions on the parties as well as the employees. That rule states, in part:

Time for filing petition — Limitations on results of proceedings.

TIMELINESS OF PETITION

- (1) A unit clarification petition may be filed at any time, with regard to:
  - (a) *Disputes concerning positions which have been newly created by an employer.*
  - (b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.
  - (c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.
  - (d) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.
  - (e) Disputes under WAC 391-35-320 concerning status as a confidential employee.



(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

...

#### LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) *Employees or positions may be removed from an existing bargaining unit in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.*

(4) *Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:*

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; or

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

(5) Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC . . . .

(emphasis added).

The change in circumstance that triggers a unit clarification petition under WAC 391-35-020(3) and (4) must be a meaningful change in an employee's duties, responsibilities, or working conditions. *University of Washington*, Decision 10496-A (PSRA, 2011), *citing City of Richland*, Decision 279-A (PECB, 1978). A mere change in job titles is not necessarily a material change in working conditions that would qualify under Chapter 391-35 WAC to alter the composition of a bargaining unit through the unit clarification process. *See University of Washington*, Decision 10496-A. Other types of changes to the workplace environment, such as a reorganization of an employer's workforce, are occurrences that could trigger a unit clarification petition. *See Lewis County*, Decision 6750 (PECB, 1999). Absent a recent change in circumstances, a unit clarification petition will be dismissed as untimely. *See University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013).

The Commission's rules only state that the clarification petition must be filed within a reasonable time of the changes and do not set forth a particular timeframe in which the change must have occurred. *University of Washington*, Decision 11590 (PSRA, 2012). Timeliness is determined by the factual circumstances of each particular case. Reorganization and the reassignment of duties are events that do not occur overnight, and some deference must be granted to allow an employer to make changes mid-stream to any reorganization that might be occurring. The defining event is the material change to the duties or working conditions of the employee that creates the need for the employer to review and possibly reallocate the employee to the new job class.

If a unit clarification petition is found to be timely under WAC 391-35-020, the appropriateness of the existing bargaining unit or units are inherently before the Commission. The continued appropriateness of a bargaining unit will be reviewed even if the parties assume that the bargaining unit is appropriate. *Mead School District*, Decision 7183-A (2001). In determining whether an existing bargaining unit or units remain appropriate in a unit clarification proceeding, the Commission applies the same statutory unit determination criteria used to establish the unit's initial appropriateness.

*Accretions –*

Ordinarily, employees are permitted a voice in the selection of an exclusive bargaining representative. RCW 41.56.070. Accretions are the exception to the statutory rule of employee free choice. Accretions are a form of unit clarification where employees are placed into an existing bargaining unit without the benefit of being able to vote on representation. An accretion may be ordered where changed circumstances lead to the situation where unrepresented employees logically belong in only one existing bargaining unit and the positions can neither stand on their own as a separate unit nor be logically accreted to any other existing bargaining unit. *Pierce County*, Decision 6051-A (PECB, 1998), citing *City of Auburn*, Decision 4880-A (PECB, 1994). In order for an accretion to be directed, the resulting bargaining unit must be appropriate. The party proposing accretion bears the burden of demonstrating that the conditions for accretion are present. *Pierce County*, Decision 6051-A.

Application of Standard - Timeliness

The first step in the analysis for any unit clarification petition is to determine whether the petition is timely. Under WAC 391-35-020(3), positions may be removed from a bargaining unit only if a unit clarification petition is filed within a reasonable period of a change in circumstances. If a petition is untimely, the results sought by that petition cannot be granted. *See, e.g., University of Washington, 10496-A (PSRA, 2011).*

The King County Council passed the ordinance creating the KCIT in 2011. However, the employer did not reorganize the specific employees in question until June 9, 2012. The employer filed its petition on June 12, 2012. The employer asserts that its petition is timely because the petition was filed within a reasonable time of the actual reorganization of employees.

The TEA argues that the employer's petition concerning its bargaining unit is not timely because there has been no recent change in circumstances that affected the employee's wages, hours and working conditions. The TEA argues that any changes that occurred resulted from the passing of the ordinance, did not meaningfully impact the duties, skills and working conditions of the employees included in TEA's bargaining unit to render that unit inappropriate. The TEA points to *Pierce County, Decision 11123 (PECB, 2011)*, as standing for the proposition that a change in the reporting structure of employees is not a material change in circumstance that warrants unit clarification. The TEA also asserts that any changes to the reporting relationship for the employees actually occurred in 2010 and therefore the employer's petition is not timely because it was not filed within a reasonable time period of that change.

TEA's reliance on *Pierce County, Decision 11123*, is misplaced. In that case, the petitioner sought to remove an administrative officer from a bargaining unit based upon a purported change in the reporting relationship that the employee enjoyed. The petition was found untimely because the evidence demonstrated that the only change was the actual supervisor of the employee and none of the employees' duties and responsibilities changed.

In this case, the actual reorganization of the employer's IT workforce into KCIT, and not the passage of the ordinance itself, was a substantial event that warrants review of the bargaining units

within the employer's workforce. For example, in *Pierce County*, Decision 9268 (PECB, 2006), an employer reorganized its workforce to move employees in the "Booking Screener" job class from its probation branch to the detention branch of its operation. There was no evidence demonstrating that the duties of the Booking Screeners had been changed; only their place within the employer's organizational structure changed. The Executive Director found the petition to include the Booking Screeners into the petitioner's existing unit timely because it was filed within six weeks of the reorganization. In *City of Kent*, Decision 6111 (PECB, 1999), a reorganization that changed the employees' supervisor but did not in any other way impact the duties and skills of the employees was an event that triggered a unit clarification proceeding.

Here, by moving the IT employees to a new department, KCIT, the employer created a substantial change similar to that which occurred in *Pierce County*, Decision 9268. For the employees in the Wastewater Treatment Division and the Department of Natural Resources and Parks, those changes occurred on June 9, 2012. Not only were the employees moved to a new department within the employer's workforce, the budgeting component for the IT employees and services also changed when the employer implemented the service based budgeting process. The IT employees all experienced a change in supervision and KCIT became the entity that adjusted grievances for the employees.

Furthermore, if a department or division wants an IT service provided on a long term basis, such as the assignment of a specific employee, the department must make arrangements with KCIT. Thus, KCIT now has a significant level of control over the IT services delivered to individual departments or divisions. While the move might have been a "paper" move for some employees who continued to work with the department or divisions they had historically been assigned to, the changes nevertheless materially alter the organizational, budgetary, and reporting structure of the employer's workforce. Moreover, those changes will incrementally increase over time. Accordingly, the employer's petition is timely.

#### Application of Standards – Merits

Since the employer's petition is timely, the next step in the analysis is to determine whether the reorganization of the employer's IT work altered the employees' community of interest such as to

warrant revision of the existing bargaining units. The employees at issue are in the Application Developer and GIS Specialist job classification.

*Application Developers –*

Within KCIT is the Application Development Group. This group consists of all of the software developers that work for the employer. Application Developers create custom computer programs that are used by the various other departments of the employer. When developing an application, the Application Developers use specialized software to assist their work, such as C Sharp, Python, SQL, or Prism.

The Application Developers will work with a client-department to learn about that client's software needs and design a program to accomplish the desired task. The Application Developer will write the code for the program and perform any necessary maintenance that the software requires. The Application Developers will also maintain any older programs that are being utilized by the employer's workforce.

There are a total of 72 Application Developers in the employer's workforce. Two Applications Developers are working on projects for the Wastewater Treatment Division, Vickie Cowles and Tamir Hasan. These two positions have been assigned to work on the applications utilized by the Wastewater Treatment division both before and after the reorganization of the IT work. These two employees' work stations are located with the other Wastewater Treatment employees and although these employees rarely attend meetings with other Applications Developers, they have little interaction with the other IT employees in KCIT. If an insufficient amount of IT work exists for the Wastewater Treatment Division, these employees would be assigned to perform work for other departments or divisions.

The employer currently utilizes a "matrixed" supervision system for the Application Developers assigned to the Wastewater Treatment Division. The employees have two supervisors, one from the Wastewater Treatment Division and one from the KCIT Department. The employees' project duties are supervised by a Wastewater Treatment Division Supervisor, Bob Swarner. The Applications Developers KCIT Department supervisor, Doug Henderson, is sent a copy of basic

correspondence concerning the employees, such as approval of leave slips. Henderson is involved with preparing the employees' evaluations but does not interact with the employees on a regular basis. Employee grievances are processed through KCIT's administration.

*Geographic Information Systems Specialists –*

There are a total of 36 GIS Specialists in the employer's workforce. The GIS Specialists employed by King County are assigned to the GIS Center and report to George Horning. The GIS Center is the central hub for GIS activities for the county. The GIS Center is part of KCIT. The GIS Center manages all GIS data that is collected by the county from the Department of Natural Resources and Parks as well as entities outside of the county. The GIS Center also maintains the IT equipment that stores that data.

GIS Specialists utilize hardware, software, data, and procedures that are utilized to manage data that is on the face of the Earth, or geospatial information. For example, the GIS Specialists will create data layers for a certain location on a map that contains various types of information, such as manhole covers, pipelines, and other physical structures like buildings or homes. The GIS Specialists manage databases of geospatial information and create interfaces to allow other employees to access the information. Prior to Ordinance 17412, the GIS work was specifically placed within the Department of Natural Resources and Parks. Ordinance 17412 moved that work to KCIT.

The GIS Specialists work with either departments or divisions of the employer or private citizens and companies to analyze the geospatial data. For example, the GIS Specialists' work supported the meeting associated with the potential breach of the Howard Hansen Dam and the impacts that the water-flow would have on sites with hazardous materials, such as a gas station or other location with chemicals. The specific budget of any department within the employer's operation determines how many full-time equivalent (FTE) GIS employees are assigned to a department. For example, when the Wastewater Treatment Division's FTE requirement was lowered, one GIS position was removed from that division. When the Wastewater Treatment Division required more GIS staffing, staff was added. The GIS Center would not always assign the same staff to the

same division when staffing fluctuated. When the GIS Specialists work for private companies or individuals, they charge an hourly rate.

The GIS Specialists who work for the GIS Center also enjoy a matrixed relationship that is similar to the employees in the Application Specialist job class. Although all employees in the GIS Specialist job class are assigned to the GIS Center, KCIT will arrange with specific departments or divisions for the long-term assignment of a GIS Specialist to the requesting department or division. Three employees in the GIS Specialists – Senior job class, Shari Cross, Peter Keum and Shaun O’Neil, are assigned to the Wastewater Treatment Division. These three employees are currently included in TEA’s bargaining unit. Two employees in the GIS Specialist – Journey job class, Mary Ullrich and Crystal Murphy, are currently assigned to the Wastewater Treatment Division. Ullrich is included in TEA’s bargaining unit. Murphy has been temporarily assigned to the Wastewater Treatment Division and is included in Local 17’s Information Technology bargaining unit. Two other employees performing IT work, Michael Jenkins and Gavin Gray, have also been assigned to IT projects within the Wastewater Treatment Division.

#### The Appropriate Bargaining Unit

In determining the appropriate bargaining unit, RCW 41.56.060 directs the Commission to examine the following: the duties, skills, and working conditions of the employer; the history of collective bargaining; the extent of organization among the employees and the desires of the employees. Examining each component in turn demonstrates the following:

#### *Duties, Skills, and Working Conditions –*

The duties and skills of the Applications Specialist and GIS Specialist in the Wastewater Treatment Division are similar to the other employees in the employer’s workforce who are in the same job class. All of the Applications Developers are assigned to the Application Development Team. All of the GIS Specialists are assigned to the GIS Center. The fact that the employees in these job classes may be assigned to a particular department or division, like the Wastewater Treatment Division, to work on IT projects that are closely associated with the work performed by that division does not inherently make that IT work the work of that department or division. No

employee who performs Wastewater Treatment work is included in KCIT, the Application Development Team, or the GIS Center.

In *State – Enterprise Services (Technology Solutions)*, Decision 11663 (PSRA, 2013), this agency declined to create a bargaining unit of IT employees that was based on employee position numbers. In that case, the Legislature reorganized the employees from several abolished agencies and created a new state agency. The legislation creating the new agency permitted either the employer or any union representing a bargaining unit of employees transferred to the new agency the opportunity to petition this Commission to review the continued appropriateness of those transferred units. A bargaining unit of IT employees was transferred to the new agency and commingled with other nonrepresented IT employees. A union asked that a new bargaining unit be created of just the positions who were previously included in its former bargaining unit. The request to create a bargaining unit based upon position was denied because the employees all perform duties associated with computer and technology support. *State – Enterprise Services (Technology Solutions)*, Decision 11663. The decision also noted that while there may be differences between specific duties of the employees, such as purchasing duties or programming duties, the duties that are performed are all part of the continuum of functions needed to support the mission of the division.

While the specific method by which employees at KCIT deliver IT work to other departments within the employer's workforce are factually distinguishable from *State – Enterprise Services (Technology Solutions)*, the principals announced in the previous decision are nevertheless applicable to the instant case. The body of work that is at issue is IT work, not Wastewater Treatment Division work. The fact the employees currently assigned to the Wastewater Treatment Division have been working with that division for an extended period of time does not change the character of their work. O'Neil testified that while he had specific expertise analyzing the data associated with the work performed by the Wastewater Treatment Division, he could "make a map given the data" and that he "wouldn't need training for the technical part of [his job]."



The IT employees in the Wastewater Treatment Division also share other duties with other employees in Local 17's bargaining unit. Cheryl Wilder and Ullrich both teach GIS classes and work together at the same GIS center. All of the employees in KCIT attend the same meeting so that they are educated on providing the same standards as the other IT employees.

With respect to the working conditions of the employees, the evidence demonstrates that their project supervision is currently more directly controlled by the supervisors within the Wastewater Treatment Division. For example, O'Neil testified that he rarely interacts with the other employees in KCIT. Henderson also admitted that he had limited involvement with the IT employees working in the Wastewater Treatment Division. The ordinance specifically directed the CIO to create countywide policies and standards for the security, and to establish a standard methodology for IT projects that are utilized by all IT employees. However, grievances for IT employees are handled by KCIT. Thus, any direction that a local supervisor within a division gives to an IT employee must conform with the IT standards created by the CIO.

*History of Collective Bargaining –*

The "history of bargaining" factor requires consideration of the length of the bargaining relationship, evaluation of the potential disruption of bargaining stability if the historical unit is disturbed, and concern about fragmentation of bargaining units. *See King County*, Decision 11441-A; *see also Vancouver School District*, Decision 4022-A (PECB, 1993). TEA has represented this bargaining unit since the employer voluntarily recognized it in 2001.

Although the Commission recently ruled that the TEA's bargaining unit was inappropriate, the defects that existed in the bargaining have nevertheless been cured by severing the administrative employees from that unit. *King County*, Decision 11441-A. Nevertheless, where a bargaining unit is established by voluntary recognition, those agreements are not binding upon the Commission. *King County*, Decision 11441-A, *citing City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 559 (1981), *review denied*, 96 Wn.2d 1004 (1981). Thus, while the TEA has represented the IT employees since 2001, that bargaining history does not create a presumption that the IT employees are appropriately included in the Wastewater Treatment Division.

However, it must also be said that Local 17's Information Technology bargaining unit was also created by voluntary recognition. While the record demonstrates that Local 17 has represented most of the IT job classes in the employer's workforce, that bargaining history does not create a presumption that Local 17 should represent all of the employees in KCIT.

*Extent of Organization –*

Bargaining units encompassing "all non-supervisory employees of the employer" are generally considered appropriate, as it is generally accepted that all employees will share a community of interest in dealing with their common employer concerning their wages, hours, and working conditions. Units that are less than employer-wide have also been found appropriate where they encompass all of the employees within a generic occupational type (a "horizontal" unit), or where they encompass all of the employees with a branch of the employer's table of organization (a "vertical" unit). *City of Bellingham*, Decision 7322-A (PECB, 2001). Concerns about excessively fragmenting an employer's workforce are considered under the "extent of organization" component, which compares the unit sought in the particular case with the whole of the employer's workforce, but is not controlling where the other unit determination criteria are in alignment. *Riverside School District*, Decision 7098 (PECB, 2000).

Following the employer's reorganization, the employees in TEA's bargaining unit are now divided between two distinct departments of the employer's workforce, the Wastewater Treatment Division of the Department of Natural Resources and Parks and KCIT. Most of the employees that TEA represents are employees in professional job classes who are performing wastewater treatment work in the Wastewater Treatment Division. TEA represents most, but not all, of the employees in that division. TEA does not represent the employees in the Industrial Waste unit of the Environmental and Community Services Section as well as the administrative employees within the division. *See King County*, Decision 11441-A. TEA represents three employees in the Applications Developer job class and 4 employees in the GIS Specialist job class who are now assigned to KCIT.

There are 348 IT employees in KCIT. Local 17 currently represents 321 of those employees, all of whom are now included Local 17's newly created IT bargaining unit. These numbers include 84 employees in the Applications Developer job class and 29 GIS Specialist job classes. Sixteen employees who are included in the Teamsters Administrative Support bargaining unit and four employees who are included in WSCCCE's Department of Natural Resources and Parks Industrial and Hazardous Waste bargaining unit are also assigned to KCIT.

*Desires of Employees –*

Although “desires of the 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).

*Summary –*

The goal of any unit determination is to find employees who share common duties so that they may bargain effectively regarding the terms and conditions of their employment. *State – Enterprise Services (Facilities Division)*, Decision 11665 (PSRA, 2013). When Ordinance 17412 created the KCIT and shifted all GIS work to KCIT to create a centralized IT workforce, it shifted the community of interest for the IT employees away from the individual departments and divisions and to the KCIT. All Applications Developers and GIS Specialists within KCIT perform similar duties and the skills required to perform each job are also similar. All Applications Developers and GIS Specialists share common supervision and work under the same policies and procedures. The employees in the Application Specialist and GIS Specialist job classes share a community of interest with the other IT employees in employer's workforce. The fact that some Application Developer and GIS Specialist job classes are co-located with the other departments in the employer's workforce does not transfer the IT work to the other departments. The purpose of the ordinance is to standardize the employer's IT work. While there is different supervision for the co-located employees, this fact also does not alter their community of interest because any supervision of the IT employees must conform to the work standards created and adopted by KCIT.

Maintaining the existing unit structure would perpetuate work jurisdiction issues. For example, Ullrich and Wilder both provide GIS training services. However, these employees are in separate bargaining units. The evidence also demonstrates that the staffing level for the IT services provided to the Wastewater Treatment Division fluctuates depending on the budget. Murphy, Jenkins, and Gray are currently assigned to provide IT services to the Wastewater Treatment Division, yet these employees are included in Local 17's bargaining unit.

Maintaining the existing bargaining unit structures would also unduly fragment the employer's workforce and would perpetuate the creation of small bargaining units. The Wastewater Treatment Division is a division within the Department of Natural Resources and Parks. To allow the IT employees in the Wastewater Treatment Division to remain included in the TEA's bargaining unit would create a path for the IT employees in each department or division of the employer's workforce to be in a separate bargaining unit. This includes the employees represented by the Teamsters and WSCCCE. This level of fragmentation would defeat the type of centralized workforce that Ordinance 17412 sought to eliminate.

Finally, maintaining the existing bargaining unit structures will lead to other long term problems. The TEA focuses on the fact that the *existing* IT employees assigned to the Wastewater Treatment Division did not experience any significant change. This premise assumes that there will not be any future changes. The evidence in this case already demonstrates that the IT employees are being assigned to departments and divisions of the employer's workforce on an as-needed basis under the discretion of the CIO. If the IT employees are bifurcated into separate bargaining units despite being located in a distinct vertical silo of the employer's workforce, the organizational control of the employer's IT work that Ordinance 17412 sought to create through the creation of KCIT would be diminished.

### Conclusion

The community of interest for the Application Developers and GIS Specialists lies with the other employees in the employer's workforce performing IT duties. The evidence also demonstrates that Local 17's bargaining unit is the only appropriate bargaining unit for the Application Developers and GIS Specialists. Accordingly, TEA's Wastewater Treatment Division

bargaining unit is clarified to exclude any employee who is assigned to KCIT and those employees are included in Local 17's Information Technology bargaining unit.<sup>4</sup>

#### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(12).
2. The Technical Employees Association is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The Professional and Technical Employees, Local 17, is a bargaining representative within the meaning of RCW 41.56.030(2).
4. Prior to 2011, information technology (IT) work was decentralized throughout its various operations. Employees who performed IT work were assigned to the specific division or department that he or she supported.
5. In July 2011, the King County Council passed Ordinance 17412. That ordinance created a new department in the King County Executive Branch: King County Information Technology (KCIT). With limited exceptions, the ordinance directed the employer to consolidate most of its IT services within KCIT.
6. Ordinance 17412 specifically removes "the authority to manage, design, develop, operate, maintain and enhance the geographic information systems" for the county and other contracting agencies from the Department of Natural Resources and Parks to the KCIT.
7. Ordinance 17412 affects the budgeting process for county IT services and IT employees. Beginning fiscal year 2012, IT services would be provided to the employer's departments and divisions through a service based budget model. KCIT works with customer

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<sup>4</sup> As a result of this decision, the employer's petitions concerning the information technology employees currently represented by Teamsters, Local 117 and WSCCCE are granted.

departments and divisions to identify the IT services each department and division will need during the fiscal year. The KCIT quantifies those requirements and builds its budget accordingly. The KCIT then bills the respective department and divisions for the requested services.

8. At the time the King County Council passed the reorganization ordinance, the Technical Employees Association (TEA) represented a bargaining unit of employees in the Wastewater Treatment Division of the Department of Natural Resources and Parks. That bargaining unit included seven employees performing IT work. Two employees were in the Applications Developer series and five employees in the GIS Specialist series.
9. At the time the King County Council passed the reorganization ordinance, the Professional and Technical Employees, Local 17 (Local 17) represented a bargaining unit of IT employees. This bargaining unit consisted of 223 employees in 41 different job series, including employees in the Applications Developer and GIS Specialist series.
10. At the time the King County Council passed the reorganization ordinance, Local 17 represented 40 IT employees in its Department of Public Health and Community Services bargaining unit.
11. At the time the King County Council passed the reorganization ordinance, Local 17 represented 58 IT employees in its Department of Transportation bargaining unit.
12. At the time of the King County Council passed the reorganization ordinance, the International Brotherhood of Teamsters, Local 117 (Teamsters) represented 16 IT employees in its Administrative Support bargaining unit.
13. At the time the King County Council passed the reorganization ordinance, the Washington State Council of County and City Employees (WSCCCE) represented four IT employees in its Department of Natural Resources and Parks Industrial and Hazardous Waste bargaining unit.

14. In January 2012, the employer began the process of consolidating its IT functions and IT employees to KCIT. The Applications Developer and GIS Specialist series were among the IT job series that transferred to the KCIT as a result of the reorganization.
15. On June 12, 2012, the employer filed a series of unit clarification petitions concerning the IT employees in the six bargaining units. Described in Findings of Fact 6, 7, 8, 9, 10, and 11. The employer's petitions seek removal of the IT employees subject to Ordinance 17412 into the Local 17's Information Technology bargaining unit described in Finding of Fact 7.
16. The Teamsters and WSCCCE declined to participate in the hearing and agreed to be bound by the outcome of the proceeding between the employer, the TEA, and Local 17.
17. The employer and Local 17 agreed to consolidate the IT employees in the bargaining units described in Findings of Fact 10 and 11 into Local 17's Information Technology bargaining unit described in Finding of Fact 9.
18. Employees in the Applications Developer series work with a client-department to learn about that client's software needs and design a program to accomplish the desired task. The Application Developer will write the code for the program and perform any necessary maintenance that the software requires. The Application Developers will also maintain any older programs that are being utilized by the employer's workforce.
19. There are a total of 72 Application Developers in the employer's workforce. All of the Applications Developers are assigned to the Application Development Team in KCIT. The employer currently utilizes a "matrixed" supervision system for the Application Developers assigned to the Wastewater Treatment Division. The matrixed employees' project duties are supervised by the supervisor of the department or division where they are assigned to perform project work. Employee grievances are processed through KCIT.

20. The duties, skills, and working conditions of all Applications Developers employed by the employer and assigned to KCIT are similar.
21. GIS Specialists utilize hardware, software, data, and procedures that are utilized to manage data that is on the face of the Earth, or geospatial information. The GIS Specialists manage databases of geospatial information and create interfaces to allow other employees to access the information.
22. There are a total of 36 GIS Specialists in the employer's workforce. The GIS Specialists employed by King County are assigned to the GIS Center. The GIS Center is the central hub for GIS activities for the county. The GIS Center is part of KCIT. The GIS Center manages all GIS data that is collected by the county from the Department of Natural Resources and Parks as well as entities outside of the county. The GIS Center also maintains the IT equipment that stores that data.
23. The GIS Specialists who work for the GIS Center also enjoy a matrixed relationship that is similar to the employees in the Application Specialist job class. Although all employees in the GIS Specialist job class are assigned to the GIS Center, KCIT will arrange with specific departments or divisions for the long-term assignment of a GIS Specialist to the requesting department or division. Employee grievances are processed through KCIT.
24. The duties, skills, and working conditions of all GIS Specialists employed by the employer and assigned to KCIT are similar.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon Findings of Fact 5, 6, 7, 14, and 16, the unit clarification petition filed by King County is timely.



3. Based upon Findings of Fact 5, 6, 14, and 18 through 24, the bargaining unit described in Finding of Fact 8 is no longer appropriate because it includes employees in the Application Developer and GIS Specialist job series because those employees share a community of interest with the employees in the bargaining unit described in Findings of Fact 9 and 17.

ORDERED

1. The bargaining unit represented by the Technical Employees Association is modified to remove the employees in the Applications Developer and GIS Specialist job classes.<sup>5</sup>
2. The bargaining unit represented by Professional and Technical Employees, Local 17 is modified to include all information technology employees working at King County Information Technology, including employees in the Application Developer and GIS Specialist job series.<sup>6</sup>

ISSUED at Olympia, Washington, this 22<sup>nd</sup> day of July, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



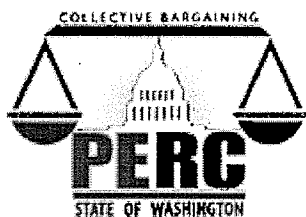
MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.

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<sup>5</sup> Because the Applications Developer and GIS Specialist are not assigned to any of the sections within the Wastewater Treatment Division, there is no need to modify the bargaining unit description.

<sup>6</sup> The modification of the unit description for Local 17's Information Technology bargaining unit will be accomplished through the employer's petition concerning that bargaining unit, Case 24877-C-12-1512.



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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

*[Signature]*  
BY: SI ROBBIE DUFFIELD

CASE NUMBER: 24873-C-12-01508 FILED: 06/12/2012 FILED BY: EMPLOYER  
DISPUTE: COMMUNITY INT  
BAR UNIT: TECHNICAL  
DETAILS:  
COMMENTS:

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