

Clark County, Decision 12271 (PECB, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

CLARK COUNTY

For clarification of an existing
bargaining unit represented by:

PROFESSIONAL AND TECHNICAL
EMPLOYEES, LOCAL 17

CASE 26462-C-14-1591

DECISION 12271 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Emily A. Sheldrick, Deputy Prosecuting Attorney, for the employer, Clark County.

Patrick Silvernale, Union Representative, for Professional and Technical Employees, Local 17.

Tedesco Law Group, by *Katelyn S. Oldham*, Attorney at Law, for Office and Professional Employees International Union, Local 11.

On May 9, 2014, Clark County (employer) filed a unit clarification petition to determine the appropriate bargaining unit for the Department Information Systems Coordinator (DISC) II positions in its Assessor's Office. The petition follows a reorganization of the office's Assessment Services Team and a reallocation of the position from an Appraisal Systems Analyst (ASA) to a DISC II. The position has been in the Appraisers and Other Professionals bargaining unit represented by Professional and Technical Employees, Local 17 (PTE 17).

The employer and PTE 17 argue that the DISC II positions in the Assessor's Office continues to share a community of interest with the Appraisers and Other Professionals bargaining unit represented by PTE 17. PTE 17 further asserts that there has been no material change to the working conditions for DISC II employee Tami McManus. McManus was represented by PTE 17

as an Appraisal Systems Analyst before the employer eliminated the position as part of its reorganization. The Office and Professional Employees International Union, Local 11 (OPEIU 11), which was granted permission to intervene in this proceeding, contends that the employer's reorganization led to a change in the body of work performed by McManus, and that the DISC II work performed by McManus and fellow DISC II Kim Nguyen gives those employees a community of interest with OPEIU 11's Office and Professionals bargaining unit. Hearing Officer Stephen W. Irvin conducted a hearing on September 16, 2014, and the parties submitted post-hearing written arguments in support of their positions.

The employer's reorganization of its workforce created a change in circumstances that renders the petition for unit clarification timely under the standards announced in WAC 391-35-020(3) and (4). The change in circumstances did not materially alter the community of interest of the employees or position. Although McManus no longer performs some of the duties that she performed as an ASA, most of her current job duties comprise work that has been part of the PTE 17's historic jurisdiction. McManus continues to perform many of the core ASA duties since moving to the DISC II job class after the reorganization. McManus's and Nguyen's DISC II duties, skills, and working conditions continue to align with the Appraisers and Other Professionals bargaining unit represented by PTE 17. There was no evidence presented to indicate there would be work jurisdiction issues created by the reorganization, and no evidence was presented to indicate that PTE 17 would be unable to successfully bargain for the DISC II positions held by McManus and Nguyen.

BACKGROUND

The Clark County Assessors' Office is responsible for setting the value of real property within Clark County. Those valuations are in turn used to determine the tax assessment for each parcel of property. The Assessor's Office is divided into three divisions: a Commercial division responsible for commercial, industrial, multi-family, and personal property appraisal; a Residential division primarily responsible for appraising residential properties; and an Assessment Services Team responsible for the office's technological and customer service needs.

The employer has two bargaining units that include positions within the Assessor's Office. The Appraisers and Other Professionals bargaining unit is represented by PTE 17 and includes the employees in the Commercial and Residential divisions. The Office and Professionals bargaining unit is represented by OPEIU 11 and includes the customer service employees on the Assessment Services Team. Both units are the result of a voluntary recognition between the unions and the employer. Neither unit was certified by this agency. Both units describe the unit by a list of each job class included in the bargaining unit.

Since 1989, the ASA job classification, and the work performed by that job class, has been part of the Appraisers and Other Professionals bargaining unit represented by PTE 17. Since 1995, the employees in the DISC job series in the Assessor's Office have been part of the Office and Professionals bargaining unit represented by OPEIU 11.

McManus became an ASA in 2004. In 2006, the Assessor's Office began transitioning to a new mass property appraisal and assessment system, Property Appraisal Collections System (PACS). McManus was the subject matter expert on residential appraisals for the transition team. By 2012, McManus's duties also included increased administrative rights within PACS as well as PACS-related duties concerning commercial appraisals.

In December 2012, McManus initiated a reclassification study of her position and was reclassified to the DISC II job classification. At that time, the employer's asserted that McManus's position should move from the Appraisers and Other Professionals bargaining unit represented by PTE 17 to the Office and Professionals bargaining unit represented by OPEIU 11 because the DISC job classification was part of that bargaining unit represented by OPEIU 11. PTE 17 opposed the move. It argued that McManus's job duties had not changed since 2006, and those duties had been PTE 17 work for decades.

On January 24, 2013, the employer and PTE 17 jointly filed a unit clarification petition to determine McManus's bargaining unit status. That petition was dismissed because no recent change in McManus's job duties or the employer's organizational structure warranted review of

McManus's community of interest. *Clark County*, Decision 11886 (PECB, 2013). The employer subsequently returned McManus to the ASA job class.

On February 18, 2014, the employer's Board of Commissioners approved a reorganization plan for the Assessor's Office that included several changes for the Assessment Services Team. The employees on the Assessment Services Team now work in an office overseen by Program Manager Shelley Price, who was hired in March of 2013.

Upon her hiring, Price analyzed the operations and needs of the Assessor's Office. She determined that the office had more technology-based needs than before, both within the office and in its ongoing relationship with the PACS vendor. Consequently she believed that a reorganization was necessary in order to meet the goals of the office. Therefore, Price proposed to utilize the DISC II job classes instead of the ASA job and DISC I job classes.

Price testified that the ASA job description did not match the needs of the Assessor's Office. Price reviewed the employer's DISC job description and found that although it was outdated in certain respects, it more accurately depicted what the office needed for the post-reorganization positions. Price helped to revise the job posting to emphasize the technology-related responsibilities that were part of the ASA job classification and eliminated many of the ASA responsibilities that pertained to sales data. The employer opened a recruitment for the two DISC II positions in February 2014. McManus was selected for one of the DISC II positions on April 11, 2014, and Nguyen was selected for the other on May 7, 2014.

When McManus was selected for the DISC II position, she received a letter confirming the selection from Chief Deputy Assessor Linda Latto on April 11, 2014. The letter included an expectations document that identified ASA work that would continue to be performed by employees in the DISC II role. The document also identified the ASA work that would not be performed by DISC II employees. The document indicated that "[t]raining and transition work plans will be developed to migrate this body of work to the appropriate Appraiser staff." The distinctions between the two positions that were expressed to McManus in the expectations document were as follows:

ASA duties to be performed by DISC II	ASA duties not performed by DISC II
<ul style="list-style-type: none"> • Translate appraisal information and Appraiser needs into computer terms; consult with data processing specialists in development of programs; review established and new programming to consider applicability to Assessor's needs. • Design and test computer screens and programs; write computer reports for supervisory and Appraiser use. • Determine and analyze applications of sales data for use in providing meaningful information to appraisers; consult with appraisers about sales data. • Conduct presentations to the Assessor and Chief Deputy, appraisal staff, and the public; provide technical assistance and training to appraisers and other staff in the use of computer resources; write data processing users manuals for each program. 	<ul style="list-style-type: none"> • Develop, compile and analyze data in preparation for physical reevaluation, annual adjustment, and Board of Equalization appeals. • Review real estate excise tax documents; apply Department of Revenue guidelines to determine sale quality; input or supervise input of sales data into sales analysis system. • Research, monitor and evaluate trends in the real estate market and make projections on new construction, price movements, and sales volume which are used in planning workloads and making presentations. • Prepare ratio report to the State. • Conduct presentations to the Board of Equalization.

On April 8, 2014, employer Senior Human Resources Representative Kathi Curtis notified OPEIU 11 Representative Maureen Colvin that the employer had determined that the newly created DISC II positions would be part of PTE 17's Appraisers and Other Professionals bargaining unit. One day later, Curtis confirmed the employer's determination in an email to Colvin.

On April 16, 2014, OPEIU 11 filed a grievance over the employer's decision. Human Resources Director Francine Reis responded to the grievance on May 9, 2014, stating that this agency should determine the appropriate bargaining unit for the DISC II positions, and that a unit clarification petition had been filed with the agency.

DISCUSSION

Determining appropriate bargaining units is a function delegated by the Legislature to this agency. *Bates Technical College*, Decision 10991-A (PECB, 2012), *citing City of Richland*, Decision 279-A (PECB, 1978), *aff'd, IAFF, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). When making unit determinations, the goal is to group together employees who have sufficient similarities (community of interest) to

indicate that they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

In making such determinations, this agency must 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.” RCW 41.56.060(1). This criteria is not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). 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 factual situation. *Kitsap Transit*, Decision 10234-A (PECB, 2009).

Included in this agency’s authority to determine an appropriate bargaining unit is the power to, upon request, modify that unit through unit clarification proceedings. *University of Washington*, Decision 11590 (PSRA, 2012), *aff’d*, Decision 11590-A (PSRA, 2013); *see also 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 a mechanism to make changes to an appropriate bargaining unit based upon a change of circumstances. *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, WAC 391-35-020 governs 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 that employees or positions may be removed from or added to an existing bargaining unit if a unit clarification petition is filed within a reasonable time after a change of circumstances altering the community of interest of the employees or positions.

The change of circumstances that triggers a unit clarification petition under WAC 391-35-020(3) and (4) must be a meaningful change in an employee’s duties and responsibilities. *University of Washington*, Decision 10496-A (PSRA, 2011), *citing City of Richland*, Decision 279-A. 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 of circumstances, a unit clarification petition will be dismissed as untimely. *University of Washington*, Decision 11590.

WAC 391-35-020(3) and (4) does not set forth a particular timeframe in which the change must have occurred. Rather, the rules only state that the petition must be filed within a reasonable time period of the change. 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 changes mid-stream to any reorganization that might be occurring. Furthermore, if employees are being reallocated to a new job classification based upon a recent change in duties, it may be necessary for the reallocation process to be completed so that a proper unit determination can be made. *See University of Washington*, Decision 10263 (PSRA, 2008). In sum, the defining event that makes a unit clarification petition timely is not the formal act of reallocating the job class; rather, the defining event is the material change to the duties and responsibilities of the employee that creates the need for the employer to review and possibly reallocate the employee to the new job class. *University of Washington*, Decision 11590.

Bargaining Unit Descriptions

The Commission historically describes new bargaining units by the work that the employees in the unit perform, as opposed to job classes within that bargaining unit. *See University of Washington*, Decision 11590. Describing bargaining units by the work the employees perform ensures that the duty to bargain is enforced if an attempt is made to transfer the work performed by the employees outside of the bargaining unit. *University of Washington*, Decision 8392 (PSRA, 2004). The use of generic terms also avoids the need to revisit and revise the bargaining unit description should a job be changed or a new job title added within the occupational type.

On occasion, the Commission has defined a bargaining unit by job class. The purpose in doing so is to describe the units in a manner that provides the parties with a clear understanding of which

employees are included in the bargaining unit. A “by job class” bargaining unit description is used in those instances where a more generic description is not feasible.

When a bargaining unit is described by job class, a title change or reallocation will not automatically result in an employee’s removal from a bargaining unit if that employee continues to perform the same work. *University of Washington*, Decision 11590. Even where the Commission defines a bargaining unit by job class, the work being performed by the employees in the bargaining unit becomes the historical work jurisdiction of the bargaining unit. *Id.* It is not uncommon for work to fit within one or more job classifications. When faced with a unit clarification petition based upon a change in job class, the Commission must examine whether there has been an actual recent material change to the work performed by the employees at issue.

Is the Petition Timely?

The first question to be answered is whether there has been a change of circumstances that may have altered the community of interest of the employee or position. If there has been such a change of circumstances, then the question shifts to whether the filing of the instant petition occurred within a reasonable time of that change.

The employer asserts that its petition is timely under WAC 391-35-020(3) and (4) because the personnel changes and revised DISC job class responsibilities that accompanied the reorganization of the Assessor’s Office in February 2014 are a change of circumstances. The employer points out that its petition was timely because it was filed less than three months after the Board of County Commissioners approved the reorganization plan.

PTE 17 contends that the unit clarification petition is untimely because neither McManus’s reclassification nor the recently redefined duties, skills and working conditions of the employees in the DISC II position constitute a change of circumstances. PTE 17 argues that the DISC II position’s duties naturally flow from the work McManus did as an ASA, and that the employer’s reorganization represents a reclassification instead of a material change to the body of work that would make a unit clarification timely.

OPEIU 11 concurs with the employer that the unit clarification petition is timely, although for different reasons. OPEIU 11 states that there has been a material change to the body of work performed by McManus after she was hired as a DISC II, and that she no longer performs ASA duties.

The employer's petition was timely. The reorganization of the Assessment Services Team brought about a meaningful change to the workplace environment that triggers a unit clarification petition under WAC 391-35-020(3) and (4). Before the reorganization, the ASA, DISC I employees and Office Assistants reported directly to Program Manager Price. The reorganization eliminated the ASA and DISC I positions, and set up a new supervisory structure in which the Office Assistants report to the Office Supervisor, while the DISC II employees report directly to Price. This reorganization was a substantial change to the workplace environment and review of the affected employees' community of interest is warranted to ensure that the existing bargaining units remain appropriate under RCW 41.56.060. Because the reorganization of the Assessment Services Team created a meaningful change in circumstances, it is necessary to consider community of interest factors in order to determine the appropriate bargaining unit for the DISC II positions.

Has McManus's and Nguyen's Community of Interest Been Altered?

Having determined the petition is timely, the next step in the analysis is to determine whether the change in circumstances has altered community of interest for the DISC II positions held by McManus and Nguyen, to warrant their removal from PTE 17's bargaining unit.

McManus's current duties demonstrate that her position still shares a community of interest with the PTE 17's bargaining unit. After the reorganization, McManus continues to perform the major job functions that she had performed since she became involved in the Assessor's Office's transition to the PACS system in 2006. McManus's DISC II job duties continue to revolve around the PACS system, just as they did when she was an ASA before the reorganization. This work was part of that bargaining unit's jurisdiction prior to the reorganization.

McManus testified that her duties have not changed significantly since the employer's first unit clarification petition. McManus's typical duties involve system support in connection with the

PACS system. The majority of her interactions are with Appraisers as she assists them in converting appraisal information and their needs into computer terms to support the core functions of the Assessor's Office. McManus also testified that she continues to serve as the liaison between the Assessor's Office and the PACS vendor. She continues to work with the employer's Information Technology Department and the office assistants on the Assessment Services Team as they troubleshoot system issues that occur during the normal course of business. Price's testimony supported McManus's contentions regarding the similarity between McManus's duties in the two positions.

Nguyen's body of work and working conditions are similar to McManus's. The DISC II employees each have administrative access to the PACS system that allows them to perform system updates, create specialized reporting tools, and control staff members' access to the system. McManus and Nguyen have work stations near each other in the back of the Assessor's Office, where they are in close proximity to the Appraisers, and both report directly to Price. McManus and Nguyen work collaboratively and Nguyen covered for McManus when she was on vacation during the summer.

The extent of organization in the employer's workforce supports a conclusion that the DISC II positions held by McManus and Nguyen should remain in PTE 17's bargaining unit. The work performed by McManus and Nguyen has historically been included in PTE 17's bargaining unit. Even though the DISC job series has been historically represented in this employer's workforce by the OPEIU 11, no evidence was presented that indicates that work jurisdiction issues existed for the Appraisal System Analyst position prior to the reorganization. Additionally, no work jurisdiction issues have been created for the DISC II employees after the reorganization.

The DISC II job class continue to perform work that is unique to their position, and that was performed by the ASA before the reorganization. The change of position titles has neither altered the body of work for the employees in question, nor changed the supervisory reporting structure for those employees.

Finally, PTE 17 has successfully bargained for employees performing the DISC II body of work since 1989, when the ASA job position was added to the Appraisers and Other Professionals bargaining unit. No evidence was presented that indicates that PTE 17 would be unable to successfully bargain for these employees in the future.

CONCLUSION

The Assessor's Office's reorganization did not materially alter the community of interest of the employees in the DISC II positions, especially as it pertains to McManus. Although McManus no longer performs some of the duties that she performed as an ASA, she continues to perform many of the core Appraisal System Analyst duties since moving to the DISC II job class after the reorganization. The duties, skills and working conditions for the DISC II positions occupied by McManus and Nguyen align the positions with the bargaining unit represented by PTE 17. There was no evidence presented to indicate there would be work jurisdiction issues created by the reorganization, and no evidence was presented to indicate that PTE 17 would be unable to successfully bargain for the employees in the DISC II job class.

FINDINGS OF FACT

1. Clark County is a public employer within the meaning of RCW 41.56.030(12).
2. Professional and Technical Employees, Local 17 (PTE 17) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Office and Professional Employees International Union, Local 11 (OPEIU 11) is a bargaining representative within the meaning of RCW 41.56.030(2).
4. The Clark County Assessors' Office is responsible for setting the value of real property within Clark County. Those valuations are in turn used to determine the tax assessment for each parcel of property. The Assessor's Office is divided into three divisions: a Commercial Division responsible for commercial, industrial, multi-family, and personal

property appraisal; a Residential Division primarily responsible for appraising residential properties; and an Assessment Services Team responsible for the office's technological and customer service needs.

5. The employer has two bargaining units that include positions within the Assessor's Office. The Appraisers and Other Professionals bargaining unit is represented by PTE 17, and includes the employees in the Commercial and Residential divisions. The Office and Professionals bargaining unit is represented by OPEIU 11 and includes the customer service employees on the Assessment Services Team. Both units are the result of a voluntary recognition between the unions and the employer. Neither unit was certified by this agency. Both units describe the unit by a list of each job class included in the bargaining unit.
6. Since 1989, the ASA job classification, and the work performed by that job class, has been part of the bargaining unit represented by PTE 17. Since 1995, the employees in the DISC job series in the Assessor's Office have been part of the bargaining unit represented by OPEIU 11.
7. Tami McManus became an ASA in 2004. In 2006, the Assessor's Office began transitioning to a new mass property appraisal and assessment system in 2006, Property Appraisal Collections System (PACS). McManus was the subject matter expert on residential appraisal for the transition team. By 2012, McManus's duties also included increased administrative rights within PACS, and she added PACS-related duties concerning commercial appraisals in 2012.
8. On February 18, 2014, the Clark County Board of Commissioners approved a reorganization plan for the Assessor's Office that included several changes for the Assessment Services Team. That plan added two DISC II positions, and eliminated two DISC I positions and the ASA position held by McManus, effective April 1, 2014.

9. McManus was selected for one of the DISC II positions on April 11, 2014, and Kim Nguyen was selected for the other on May 7, 2014.
10. The employees in the eliminated DISC I positions in the Assessor's Office were represented by OPEIU 11. Employees in the DISC I classification were responsible for using the PACS system to produce reports and other data for the Assessor's Office's daily operational needs. By contrast, employees in the DISC II classification are responsible for determining the Assessor's Office's operational needs and modifying the PACS system in order to meet those needs.
11. According to the employer's job description, key or typical tasks and responsibilities for ASAs included translating appraisal information and Appraiser needs into computer terms, developing programs that helped to meet those needs, and providing technical assistance and training for Appraisers and other staff in use of computer resources. In addition to computer system-related responsibilities, ASAs were also involved in developing, compiling and analyzing sales data.
12. On February 18, 2014, the employer's Board of Commissioners approved a reorganization plan for the Assessor's Office that included several changes for the Assessment Services Team. The employees on the Assessment Services Team now work in an office overseen by Program Manager Shelley Price, who was hired in March of 2013.
13. When the employer opened recruitment for the two DISC II positions in February of 2014, the revised job posting Price helped create emphasized the technology-related responsibilities that were part of the ASA job classification and eliminated many of the ASA responsibilities that pertained to sales data.
14. When McManus was selected for the DISC II position, she received a letter confirming the selection from Chief Deputy Assessor Linda Latto on April 11, 2014. The letter included an expectations document that identified ASA work that would continue to be performed by employees in the DISC II role. The document also identified ASA work that would not

be performed by DISC II employees and indicated that “[t]raining and transition work plans will be developed to migrate this body of work to the appropriate Appraiser staff.”

15. McManus’s typical duties both before and after the reorganization involve system support in connection with the PACS system. The majority of her interactions are with Appraisers as she assists them in converting appraisal information and their needs into computer terms to support the core functions of the Assessor’s Office. McManus also continues to serve as the liaison between the Assessor’s Office and the PACS vendor. She continues to work with the employer’s Information Technology Department and the office assistants on the Assessment Services Team as they troubleshoot system issues that occur during the normal course of business.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon Findings of Fact 8 and 9, the unit clarification petition filed by Clark County is timely under WAC 391-35-020(3) and (4).
3. Based upon Findings of Fact 10 through 15, the DISC II employees on the Assessment Services Team in the employer’s Assessor’s Office share a community of interest with the employees in the Appraisers and Other Professionals bargaining unit represented by PTE 17.

ORDER

1. The Appraisers and Other Professionals bargaining unit represented by Professional and Technical Employees, Local 17 is modified to add the employees in the Department Information Systems Coordinator II job class working at the Clark County Assessor’s Office.

2. The Office and Professionals bargaining unit represented by the Office and Professional Employees International Union, Local 11, is modified to exclude the employees in the Department Information Systems Coordinator II job class working at the Clark County Assessor's Office.

ISSUED at Olympia, Washington, this 5th day of February, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'M. Sellars', is written over the printed name.

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

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