

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 77

For clarification of an existing bargaining
unit of employees of:

CITY OF SEATTLE

CASE 128097-C-16

DECISION 12598 - PECB

ORDER CLARIFYING
BARGAINING UNIT

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

Paul Olsen, Assistant City Attorney, City Attorney Peter Holmes, for the City of
Seattle.

On April 5, 2016, the International Brotherhood of Electrical Workers, Local 77 (union) filed a petition seeking to clarify its bargaining unit of employees in the Information Technology Professional B and C job classes working for the City of Seattle (employer). The bargaining unit employees work in multiple city departments, including the Department of Information Technology. *City of Seattle*, Decision 12293 (PECB, 2015).

In April 2016 the employer eliminated the Department of Information Technology and created a new centralized information technology department—the Seattle Information Technology Department. Most, but not all, of the employer’s information technology workforce was transferred to that department as part of the reorganization, including the majority of the Information Technology Professionals represented by the union. The employer also transferred historically unrepresented Information Technology Professionals to Seattle Information Technology.

The union requests that the historically unrepresented Information Technology Professionals who were transferred to Seattle Information Technology be accreted to its Information Technology Professionals bargaining unit because those positions share a community of interest with the

bargaining unit. The union also requests that the single unrepresented Information Technology Professional working in the employer's Department of Transportation be provided an opportunity to vote on being included in the union's existing bargaining unit. Finally, the union asks that the bargaining unit description be amended to reflect that the employees it represents work in the Seattle Information Technology Department.

The employer agrees that the historically unrepresented Information Technology Professionals that were transferred to Seattle Information Technology should be included in the union's Information Technology Professionals bargaining unit. The employer also agrees that the Information Technology Professional in the Department of Transportation could be added to the existing bargaining unit if that employee elects union representation. The employer agrees that the bargaining unit description should be amended to reflect the recent changes.

The union's bargaining unit is clarified to include the historically unrepresented employees in the Information Technology Professional B and C job classes that were transferred to Seattle Information Technology as a result of the employer's reorganization. If any Information Technology Professionals in the Seattle Information Technology Department were left unrepresented, the employer's workforce would be unduly fragmented and work jurisdiction issues would arise.

The historically excluded Information Technology Professional in the employer's Department of Transportation affirmatively voted to be included in the existing bargaining unit. That employee will be added to the union's bargaining unit, and the bargaining unit description shall be modified to reflect that any Information Technology Professional working in the Department of Transportation is now within the scope of the bargaining unit's historical work jurisdiction.

BACKGROUND

The City of Seattle 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 April 2016, the employer's

information technology work was decentralized throughout its various operations. Employees who performed information technology work, including the Information Technology Professionals, were assigned to the specific division or department that they supported.

The union's Information Technology Professionals bargaining unit includes employees working in Seattle City Light, Seattle Public Utilities, the Seattle Fire Department, the Seattle Police Department, the Seattle Municipal Court, Financial and Administrative Services, the Human Services Department, the Department of Information Technology, the Department of Planning and Development, and the Department of Neighborhoods. *City of Seattle*, Decision 12293. Although the union represents most of the employees in the Information Technology Professional job classes, some have been historically excluded from the union's bargaining unit. For example, the Information Technology Professionals working in the Department of Transportation are excluded from the bargaining unit.

In April 2016 the employer reorganized and consolidated its information technology workforce into a new department—the Seattle Information Technology Department. This department replaced the Department of Information Technology and is a more centralized information technology department. The employer realigned its information technology services to accomplish its goal of increasing its service capacity to deliver technology within the employer's existing staffing levels. The information technology consolidation project facilitates this goal by bringing together information technology employees from among the employer's various departments and moving to a new service delivery model.

Most, but not all, of the employees in the Information Technology Professional job classes were transferred to Seattle Information Technology.¹ Of the transferred Information Technology Professionals, approximately 244 are represented and 29 have been historically unrepresented. The unrepresented Information Technology Professionals work side-by-side with their represented

¹ For example, the Information Technology Professional positions that were not consolidated into Seattle Information Technology included positions that primarily perform work on Supervisory Control and Data Acquisition systems that are not routable from the city's network or the department's main network. Additionally, Information Technology Professionals performing business analyst work not related to technology and GIS map maintenance work were not transferred to Seattle Information Technology.

counterparts, perform the same duties, and have the same working conditions and lines of supervision.

DISCUSSION

Applicable Legal Standards

The intent and purpose of Chapter 41.56 RCW is to implement the rights of employees to choose whether to organize and be represented by labor organizations. The determination of appropriate bargaining units is a function delegated to this agency by the Legislature. RCW 41.56.060; *Central Washington University*, Decision 10215-B (PSRA, 2010). The goal in making bargaining unit determinations 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).

RCW 41.56.060 provides that this agency, in making bargaining unit determinations, 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.” The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). Not all of the factors exist in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Id.* The criteria are applied collectively to discern the existence of a community of interest among the employees of a particular employer, and not one criteria is of greater import than the others. 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.

Included in this agency’s authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *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 this agency as well as the parties to a collective bargaining relationship 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 bargaining units, this agency has adopted rules to govern the timing of certain types of petitions in order to maintain stability in the bargaining units. For example, petitions to amend a bargaining unit certification to reflect a change that does not alter the composition of the bargaining unit, such as the name of a department or job title, may be filed at any time. WAC 391-35-085. Petitions to add or remove employees from an existing bargaining unit may only be made after a recent change in circumstances, such as a reorganization. *University of Washington*, Decision 11590.

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. An accretion may be ordered when a group of unrepresented employees logically belongs in only one existing bargaining unit and the positions can neither stand alone in a separate bargaining unit nor logically be placed in another unit configuration. *Pierce County*, Decision 6051-A (PECB, 1998), *citing City of Auburn*, Decision 4880-A (PECB, 1995). Under those circumstances, the employees will be added or accreted to the existing bargaining unit without a vote of the employees. In order for an accretion to be directed, the resulting bargaining unit must be an appropriate unit. The party proposing accretion bears the burden of demonstrating that the conditions for accretion are present. *Pierce County*, Decision 6051-A.

Application of Standards

The Information Technology Professionals Transferred to Seattle Information Technology

The historically unrepresented Information Technology Professionals who were transferred to Seattle Information Technology as a result of the reorganization should be included in the union's Information Technology Professionals bargaining unit without the need for an election. The

union represents 244 of the Information Technology Professionals in Seattle Information Technology while only 29 Information Technology Professionals in that department are unrepresented.

All of the Information Technology Professionals in Seattle Information Technology perform similar duties and maintain the same reporting structure. Therefore, all of the Information Technology Professionals logically belong in the same bargaining unit. Continuing to exclude the small group of historically unrepresented employees would create work jurisdiction issues and fragment the employer's workforce. *See King County, Decision 11828 (PECB, 2013)* (placing information technology employees who were transferred to a new centralized information technology department in the same bargaining unit to avoid work jurisdiction issues and fragmentation). Additionally, if the historically unrepresented Information Technology Professionals were allowed to remain unrepresented and excluded from the union's Information Technology Professionals bargaining unit, the possibility would exist that the employees could select a different bargaining representative, which would also lead to excessive fragmentation of the workforce. Because the union represents the vast majority of the Information Technology Professionals in the department, it is appropriate to accrete the unrepresented employees into the union's bargaining unit without the need for an election. *See, e.g., State – Enterprise Services (Contracts & Legal Services), Decision 11652 (PSRA, 2013)* (explaining where accretion is appropriate following a workforce reorganization). The description of the union's Information Technology Professionals bargaining unit shall be amended to reflect the change in circumstances.

The Information Technology Professional in the Department of Transportation

The Information Technology Professional in the Department of Transportation has been historically excluded from the union's bargaining unit. Although that position shares a community of interest with the union's Information Technology Professionals bargaining unit, that position cannot be added to the bargaining unit through an accretion unless there has been a change of circumstances involving that position. WAC 391-35-020(4)(a); *see also City of Dayton, Decision 1432 (PECB, 1982)*.

The Information Technology Professional position in the Department of Transportation was not impacted by the reorganization of the information technology workforce. Because no change in circumstances exists for that position, it cannot be accreted to the union's bargaining unit through a unit clarification proceeding. *Id.* However, the employee has expressed a desire to be included in the bargaining unit. This desire was ascertained through a confidential cross-check conducted by agency staff under the provisions of Chapter 391-25 WAC. Accordingly, the union's bargaining unit shall be modified to include the Information Technology Professional working in the employer's Department of Transportation, and the bargaining unit description shall be amended to reflect this change.

FINDINGS OF FACT

1. The City of Seattle 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. Prior to April 2016, the employer's information technology work was decentralized throughout its various operations. Employees who performed information technology work, including the Information Technology Professionals, were assigned to the specific division or department that they supported.
4. The union represents a bargaining unit of employees in the Information Technology Professional B and C job classes. Those employees work in Seattle City Light, Seattle Public Utilities, the Seattle Fire Department, the Seattle Police Department, the Seattle Municipal Court, Financial and Administrative Services, the Human Services Department, the Department of Information Technology, the Department of Planning and Development, and the Department of Neighborhoods.

5. The employer also employs employees in the Information Technology Professional B and C job classes that do not work in the departments described in Finding of Fact 4 and have been historically excluded from the bargaining unit described in Finding of Fact 4.
6. In April 2016 the employer reorganized and consolidated its information technology workforce into a new department—the Seattle Information Technology Department. This department replaced the Department of Information Technology and is a more centralized information technology department.
7. The information technology consolidation project brought together information technology employees from among the employer’s various departments. Most, but not all, of the employees in the Information Technology Professional job classes were transferred to Seattle Information Technology. Of the transferred Information Technology Professionals, approximately 244 are represented and 29 have been historically unrepresented.
8. The unrepresented Information Technology Professionals work side-by-side with their represented counterparts, perform the same duties, and have the same working conditions and lines of supervision.
9. One historically excluded employee in the Information Technology Professional job class works in the employer’s Department of Transportation. This employee performs the same work as the Information Technology Professionals described in Finding of Fact 4.
10. The Commission conducted a confidential cross-check of employer and union documents to determine if the employee described in Finding of Fact 9 desired to be included in the bargaining unit described in Finding of Fact 4. A tally of the results was previously furnished to the parties and no meritorious objections have been filed with respect to that proceeding. The employee affirmatively voted to be included in the 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 391-35 WAC.
2. Based upon Findings of Fact 6 through 8, the 29 historically unrepresented employees in the Information Technology Professional B and C job classes that were transferred to Seattle Information Technology share a community of interest with the 244 represented employees in the Information Technology Professional B and C job classes described in Finding of Fact 4.
3. The Information Technology Professional described in Finding of Fact 9 shares a community of interest with the employees described in Findings of Fact 4 through 7.

ORDER

The 29 historically unrepresented employees in the Information Technology Professional B and C job classes that were transferred to Seattle Information Technology shall be included in the bargaining unit certified in *City of Seattle*, Decision 12293, without the need for an election.

The employees in the Information Technology Professional B and C job classes working in the Department of Transportation shall be included in the bargaining unit certified in *City of Seattle*, Decision 12293.

The description for the bargaining unit certified in *City of Seattle*, Decision 12293, shall be modified as follows:

All full-time and regular part-time Information Technology Professional B and C positions employed by the City of Seattle in the following departments: Seattle Information Technology Department, Seattle Department of Transportation, Seattle City Light, Seattle Public Utilities, Seattle Fire Department, Seattle Police Department, Seattle Municipal Court, Financial and Administrative Services, Human Services Department, Seattle Department of Construction and Inspections,

and the Department of Neighborhoods, excluding supervisors, confidential employees, and all other employees.

ISSUED at Olympia, Washington, this 26th day of July, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'M. Sellars', written in a cursive style.

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.



TALLY OF CROSS-CHECK

PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 40919, Olympia, WA 98504
360.570.7300 www.perc.wa.gov

Case Number 125097-C

Employer City of Seattle

The Public Employment Relations Commission has conducted a confidential cross-check under WAC 391-25-410 and certifies the results as follows:

- | | |
|---|----------|
| 1. Employees eligible to be in the bargaining unit | <u>1</u> |
| 2. Employees whose inclusion in the unit is challenged | <u>0</u> |
| 3. Total employees to be considered (Total of Lines 1 and 2) | <u>1</u> |
| 4. Valid authorization cards required (Majority of line 3) | <u>1</u> |
| 5. Total cards of eligible employees examined | <u>1</u> |
| 6. Cards rejected as invalid | <u>0</u> |
| 7. Valid cards accepted in support of <u>I.B.E.W., Local 77</u> | <u>1</u> |
| 8. The Result of the Cross-Check is: | |

- Eligibility challenges affect the result
- In favor of the organization listed on line 7
- In favor of No Representation

Date Issued: July 1, 2016

By: [Signature]



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 07/26/2016

DECISION 12598 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 128097-C-16

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