

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 763

For clarification of an existing bargaining
unit of employees of:

SNOHOMISH COUNTY

CASE 128149-C-16

DECISION 12642 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Jack Holland, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for the
Teamsters Local 763.

Steven J. Bladek, Deputy Prosecuting Attorney, Mark K. Roe, Prosecuting Attorney
for Snohomish County.

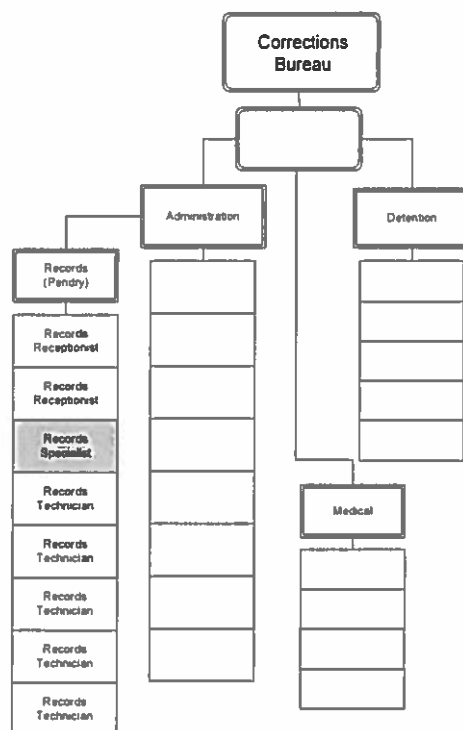
On April 25, 2016, the Teamsters Local 763 (union) filed a unit clarification petition seeking to add the Public Information and Records Specialist – Corrections (Records Specialist) position to its existing Corrections Support bargaining unit (Corrections Support) at Snohomish County (employer). The union claims the Records Specialist position belongs in the Corrections Support bargaining unit because that bargaining unit is the only logical unit placement for that the position. The employer claims the Records Specialist position does not share a community of interest with only the Corrections Support bargaining unit and claims that other unit placements are possible for the position. Specifically, the employer argues that the Records Specialist position performs duties and functions that have never been performed by the Corrections Support unit. The employer also argues that the position does not regularly interact with other employees in the Corrections Support bargaining unit and that the duties of the Records Specialist align more with Law Enforcement Technician positions that are outside of the Corrections Support unit and in a different bureau of the employer's workforce. Hearing Officer Daniel Comeau held a hearing on August 3, 2016, and the parties filed post-hearing briefs.

The Records Specialist position is appropriately included within the Corrections Support bargaining unit because the extent of organization demands that the position be placed there. The

Corrections Support bargaining unit is a vertical bargaining unit that includes all of the employees in the Corrections Bureau's Records Section. The Records Specialist is part of the Records Section and shares a common supervision and organizational structure with the other employees in the department. The employer's workforce would be unduly fragmented if the position were to remain unrepresented or included in a different bargaining unit.

BACKGROUND

The employer's Sheriff's Office is divided into four separate bureaus: Staff Services, Operations, Administrative Services, and Corrections. The Corrections Bureau performs the detention function for Snohomish County and is run by Corrections Bureau Chief Anthony Aston. The Corrections Bureau is divided into three separate departments: Detention, Medical Services, and Administration. The bureau is structured as follows:



The Administration Department is run by Captain Dan Stites. The Administration Department has multiple sections, including the Records Section. Patricia Pendry runs the Records Section.

There are three different bargaining units in the Corrections Bureau. The Corrections Support bargaining unit is a mixed class bargaining unit that includes employees in the Administration and Medical Departments, including the employees in the Records Section. *Snohomish County*, Decision 12455 (PECB, 2015). The union also represents a bargaining unit of corrections sergeants and lieutenants in the Detention Department. The Snohomish County Corrections Guild represents the non-supervisory corrections deputies in the Detention Department.

The Records Specialist Position

The Records Section ensures that court paperwork is processed timely so that inmates are correctly released or transferred and works with other areas of the jail to process and retain records. In 2015, the employer created the Records Specialist position as a new position in the Records Section of the Administration Department that reports directly to Pendry. Pendry also supervises five Records Technicians and two Receptionists in the Records Section.

Prior to the creation of the Records Specialist position, records and data requests directed to the Corrections Bureau came in many forms. The categories of requests included public records requests, inmate requests for records, law enforcement requests and subpoenas, and Snohomish County Prosecutor requests for information in aid of litigation support. Each type of request was subject to different rules and statutes.

Prior to 2010, records requests for the Corrections Bureau were fulfilled by Mary Halberg, an unrepresented Administrative Assistant. Starting in 2010, Pendry served as both the Corrections Records and Data Management Supervisor and as the Bureau's Public Records Officer. She was ultimately responsible for handling all of the records requests for the Corrections Bureau. Pendry and other employees within the Corrections Bureau were responsible for all data, information, and records housed within the Bureau.

In 2015, Pendry and the other employees fulfilling data requests found it difficult to complete their duties in a timely manner. In response, the employer created a Records Specialist position that would focus on handling records requests. The position would also administer the Bureau's records retention policies and practices. The Records Specialist administers the Bureau's public

records request system and ensures that it is compliant with Chapter 42.56 RCW and works to streamline the same. The position also administers the paper and electronic records management program. Specifically, it analyzes end user needs for information and facilitates the appropriate processing, filing, indexing, retrieval, retention, storage, and disposal of this information. The position develops the records retention schedules and guidelines and develops, implements, and maintains procedures, guidelines, and controls for the storage, retrieval, refiling, and tracking of records. The Records Specialist also sets short and long range goals for the data and records management program and is expected to provide training and guidance to Corrections Bureau staff on these matters. In late 2015, the employer hired Mikelle Gaines into the position.

Gaines worked in the employer's Administrative Services Bureau as a Law Enforcement Technician before being hired as the Records Specialist in the Corrections Bureau. The Administrative Services Bureau is a separate bureau in the Sheriff's Office that performs administrative services for the Sheriff's Office, such as finance, human resources, civil writ enforcement, and public disclosure. The Law Enforcement Technician in the Administrative Services Bureau performs some, but not all, of the public records functions for the entire Sheriff's Office. The Law Enforcement Technicians are currently included in the Law Enforcement Support Services bargaining unit that is also represented by the union.

DISCUSSION

Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the Legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. PERC*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The goal in making bargaining unit determinations is to group together employees who have sufficient similarities (community of interest) that indicate they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 5910-A (PECB, 1997).

Normally, this agency is required to certify *an* appropriate bargaining unit configuration, not the most appropriate bargaining unit configuration. *See State – Social and Health Services*, Decision 12542-B (PSRA, 2016). When determining whether a bargaining unit is appropriate, RCW 41.56.060(1) directs this agency to consider “the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives;¹ the extent of organization among the public employees; and the desire of the public employees.”² The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors will arise in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff’d Renton Education Association v. PERC*, 101 Wn.2d 435 (1984).

An accretion is the exception to the rule that this agency is not required to certify the most appropriate bargaining unit configuration. 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). An accretion is especially appropriate in circumstances where an individual would otherwise be isolated or stranded, without representation or the ability to exercise the collective bargaining rights conferred by statute. *City of Tacoma*, Decision 8982 (PECB, 2005). For these reasons, accretions are also the exception to the statutory rule of allowing employee free choice in the selection of their bargaining representatives. *King County*, Decision 11828 (PECB, 2103) *aff’d* Decision 11828-A (PECB, 2013).

1 The history of bargaining for a position only needs to be considered where there is a history of representation for the position. *Washington State University*, Decision 9613-A (PSRA, 2007). Because no history of bargaining can be established in this case, this factor neither supports nor works against a conclusion that the Records Specialist shares a community of interest with the Corrections Support bargaining unit.

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

Application of Legal Standards

The Records Specialist position must be included within the Corrections Support bargaining unit because the employer's workforce would be unduly fragmented if the position was permitted to remain unrepresented or be placed in another bargaining unit configuration. Additionally, the duties, skills, and working conditions support a conclusion that the Records Specialist shares a community of interest with Corrections Support bargaining unit.

The extent of organization among employees examines how the employer's workforce is organized and compares the organizational structure of the at-issue employees and the other bargaining units in the employer's workforce. *See Washington State University*, Decision 10115 (PSRA, 2008). The application of this factor is designed to ensure that an employee or group of employees is not stranded in a unit too small to effectively exercise its right to collectively bargain. *Id.*

The Corrections Support bargaining unit has been historically organized along the vertical departmental structure of the Administration and Medical Services Departments within the Corrections Bureau. All of the employees in the Records Section are included in the union's Corrections Support bargaining unit. This includes the Records Technicians and Receptionists within the Records Section. These positions, along with the Records Specialist, report directly to Pendry. If the Records Specialist was excluded from the Corrections Support bargaining unit or allowed to be included in another bargaining unit, it would be the only position reporting to Pendry *not* included in the Corrections Support bargaining unit. Moreover, it would be the only support employee in the Administration and Medical Departments not included in the Court Support bargaining unit.

The Records Specialist shares a community of interest with the other employees in the Corrections Support bargaining unit due to a sufficient similarity of working conditions. The Records Specialist is responsible for training and providing guidance to staff on proper retention and disposal schedules and facilitating appropriate records processing to make it easier for staff to process, file, index, retrieve, retain, store, and dispose of Corrections Bureau records. The position serves to support and facilitate the Corrections Bureau and its staff in its records handling

and retention of its data and records and the position is within the continuum of functions that logically place the position within the Corrections Support unit. Furthermore, the Records Specialist, Records Technicians, and Receptionists in the Records Section all share a common supervisor, Pendry.

The employer argues that the Records Specialist does not share a community of interest with the Corrections Support unit because the bargaining unit has not historically performed the Records Specialist work. The employer also asserts that the position shares a community of interest with the Law Enforcement Technicians working in a separate bureau, Administrative Services, and work jurisdiction issues would be created if these positions were not included in the same bargaining unit. These arguments are not persuasive.

Although the Corrections Support bargaining unit has not historically performed the Records Specialist work, that fact is not dispositive to the outcome of this case. Prior to the creation of the position, Pendry performed the Records Specialist work while in charge of the Records Section. However, the employer decided to move this work to the Records Specialist position, which has no supervisory responsibility and serves in a supporting role to Pendry and the Records Section's mission.

While the Records Specialist in the Corrections Bureau and Law Enforcement Technicians in the Administrative Services Bureau both process records requests, the evidence demonstrates that no work jurisdiction issues would be created if these employees were in separate bargaining units. Pendry testified that any public records requests filed directly with the Records Section would be directed to the Law Enforcement Technicians to make the initial contact with the requester and provide an estimated time for completion. If the request was for a public record that was held by the Records Section and the document was disclosable, the Law Enforcement Technician would forward the request to the Records Specialist to locate, gather, and prepare the record to be sent back to the Law Enforcement Technician for distribution to the requestor. Thus, while both the Records Specialist and Law Enforcement Technician handle public records, there is not actual overlap in function as both employees have their own distinct role within their respective bureaus.

Finally, the employer's argument also fails to take into consideration that the Records Specialist also sets goals for data and records management within the Corrections Bureau and provides meaningful advice and recommendations to supervisors and management concerning data management and compliance issues. No evidence in this record suggests that the Law Enforcement Technicians in the Administrative Services Bureau provide this same kind of advice to the Corrections Bureau staff.

CONCLUSION

The Records Specialist shares a community of interest with only the union's Corrections Support bargaining unit. Because that position logically belongs in that bargaining unit and can neither stand alone in a separate bargaining unit nor logically be placed in another unit configuration, it will be included in the union's Court Support bargaining unit without the need of an election.

FINDINGS OF FACT

1. Snohomish County is a public employer within the meaning of RCW 41.56.030(12).
2. The Teamsters Local 763 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer's Sheriff's Office is divided into four separate bureaus: Staff Services, Operations, Administrative Services, and Corrections. The Corrections Bureau performs the detention function for Snohomish County. The Corrections Bureau is divided into three separate departments: Detention, Medical Services, and Administration.
4. The Administration Department has multiple sections, including the Records Section. The Records Section is run by Patricia Pendry.
5. The union represents a mixed class bargaining unit that includes employees in the Administration and Medical Departments. The employees in the Records Section are also included in this bargaining unit.

6. Prior to 2010, records request for the Corrections Bureau were fulfilled by Mary Halberg, an unrepresented Administrative Assistant. Starting in 2010, Pendry served as both the Corrections Records and Data Management Supervisor and as the Corrections Bureau's Public Records Officer and ultimately was responsible for handling all of the records requests for the Corrections Bureau.
7. In 2015, the employer created a Records Specialist position that would focus on handling records requests. The position would also administer the Bureau's records retention policies and practices. The position also administers the paper and electronic records management program. Specifically, it analyzes end user needs for information and facilitates the appropriate processing, filing, indexing, retrieval, retention, storage, and disposal of this information. The position develops the records retention schedules and guidelines and develops, implements, and maintains procedures, guidelines, and controls for the storage, retrieval, refiling, and tracking of records.
8. All of the employees in the Records Section are included in the Corrections Support bargaining unit. These positions, along with the Records Specialist, report directly to Pendry.
9. The Administrative Services Bureau is a separate bureau in the Sheriff's Office that performs administrative services for the Sheriff's Office, such as finance, human resources, civil writ enforcement, and public disclosure. The Law Enforcement Technician in the Administrative Services Bureau performs some, but not all, of the public records functions for the entire Sheriff's Office.
10. No work jurisdiction issues would be created if the Records Specialist in the Records Department and the Law Enforcement Technicians in the Administrative Services Bureau were in separate bargaining units. While both the Records Specialist and Law Enforcement Technicians handle public records, there is not actual overlap in functions as both employees have their own distinct role within their respective bureaus.

CONCLUSIONS OF LAW

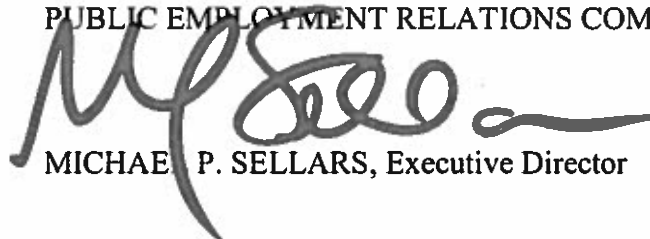
1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon Findings of Fact 6 through 10, the Records Specialist position described in Findings of Fact 7 only shared a community of interest with the bargaining unit described in Findings of Fact 5.

ORDER

The bargaining unit described in Findings of Fact 5 shall be modified to include the Records Specialist position described in Findings of Fact 7.

ISSUED at Olympia, Washington, this 19th day of December, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Michael P. Sellars", is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke at the end.

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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RECORD OF SERVICE - ISSUED 12/19/2016

DECISION 12642 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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