

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 302

For clarification of an existing bargaining
unit of employees of:

BELLEVUE SCHOOL DISTRICT

CASE 130985-C-18

DECISION 12987 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Margie Englund, Business Representative, for the International Union of Operating Engineers, Local 302.

Jeffrey Thomas, Assistant Superintendent of Human Resources, for the Bellevue School District.

On September 27, 2018, the International Union of Operating Engineers, Local 302 (union) filed a petition to remove the employees in the emergency management program coordinator job class from its custodial and security employees bargaining unit at the Bellevue School District (employer).¹ The union claims that the duties and responsibilities of the emergency management program coordinators recently changed from monitoring and conducting surveillance of the employer facilities to researching and training emergency management practices. The union asserts that these changes disrupted the existing community of interest for the emergency management program coordinators and custodians bargaining unit. The employer agrees that the recent changes disrupted the community of interest and supports the union's petition to remove the positions.

The employer's decision to alter the duties and responsibilities of the emergency management program coordinators is a change in circumstances that altered the existing community of interest for the custodial bargaining unit. The new duties, skills, and working conditions of the positions

¹ The International Union of Operating Engineers, Local 286 originally filed the unit clarification petition. Local 286 was subsequently merged into Local 302.

demonstrate that they no longer share a community of interest with the custodians bargaining unit. The union's bargaining unit is clarified to remove the emergency management program coordinators.

BACKGROUND

The union represents a bargaining unit of custodians and security personnel in the employer's workforce. When the bargaining unit was originally created, it included just custodians. The custodians are responsible for cleaning facilities, moving furniture for special events, performing minor maintenance, and ensuring that buildings are secure by locking doors, closing windows, and setting alarms.

Based upon a need for building surveillance outside of normal work hours, the employer converted several custodians into security monitors. The primary duties of the security monitors included surveillance of the employer's facilities. Because the security monitors were originally custodians, the union and employer kept the security monitor positions in the custodians bargaining unit.

The security monitors worked various shifts, including day, swing, graveyard, weekends, and holidays. Their work was performed either on foot or by vehicle. The security monitors were responsible for responding to fire alarms and conducting building searches. Building searches could require the security monitor to operate in areas where hazardous materials were kept or to access areas that required specialized equipment.

The security monitors were also responsible for contacting suspicious individuals on the employer's properties to determine their intentions and, if necessary, contact local law enforcement. If the suspicious individual was hostile or distraught, the security monitor would employ de-escalation or self-defense techniques to ensure his or her safety.

Emergency Management Program Coordinators

The employer recently changed the security monitors' duties and position title to emergency management program coordinators. The positions are no longer responsible for conducting surveillance of the employer's facilities. Rather, their duties now focus on developing the district's emergency management policies and strategies and instructing the district's staff on these policies and strategies. Facility surveillance work is now performed by local law enforcement.

The emergency management program coordinators are responsible for identifying and mitigating hazards, risks, and vulnerabilities. They research and develop strategies for disaster recovery and perform emergency management drills and maintain the proper documentation for these activities. The positions coordinate and manage emergency response and preparedness with other municipalities and organizations, such as City of Bellevue police and fire departments and the King County Sheriff's office.

The emergency management program coordinators' duties require verbal and written communication skills and the ability to effectively speak before large audiences. Unlike the security monitors, the emergency management program coordinator positions work a regular Monday through Friday schedule and are not eligible for overtime.

ANALYSIS*Applicable Legal Standard*

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

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).

The legislature delegated to the Commission the authority to determine appropriate bargaining units. RCW 41.80.070(1). When the Commission certifies a bargaining unit, a presumption that the bargaining unit is appropriate attaches. *Cowlitz County*, Decision 12115 (PECB, 2014). That other groupings of employees may also be appropriate, or more appropriate, does not render a bargaining unit certified by the Commission inappropriate. The Commission is required to certify an appropriate bargaining unit, not the most appropriate bargaining unit. We decline to use severance as a means to create a more perfect unit.

Severance

A petition to sever employees from an existing bargaining unit seeks to disrupt the status quo of the existing bargaining unit. To obtain severance, the petitioner must overcome the stability and maturity of relationships usually present in established bargaining units that lead to sound labor relations. To do so, the petitioner must establish either that (1) the petitioned-for employees no longer share a community of interest with the existing bargaining unit or (2) the incumbent bargaining representative has inadequately represented the petitioned-for employees. *State – Social and Health Services*, Decision 12542-B (PSRA, 2016).

The petitioner must show that a change in the community of interest has occurred to make the existing bargaining unit inappropriate. This is usually demonstrated by substantial changes to the

job duties or working conditions of the petitioned-for employees or substantial changes in the employer's operations. *King County*, Decision 11441-A (PECB, 2013).

To show inadequate representation, the petitioner must demonstrate more than a short-term inability of the incumbent union to achieve the bargaining goals of the petitioned-for employees or the employees' dissatisfaction with their bargaining representative's accomplishments. *State – Social and Health Services*, Decision 12542-B. Inadequate representation may be shown by factors such as lack of opportunities to participate in union affairs, lack of collective bargaining agreement provisions addressing specific concerns of the employees at issue, lack of involvement by the petitioned-for employees in negotiation processes. Inadequate representation may also be demonstrated by a lack of any formal or informal efforts by the incumbent union to resolve issues of concern to the employees at issue. Where a bargaining relationship has been in existence, the "history of bargaining" weighs against its disruption by severing the unit into two or more components. *Cowlitz County*, Decision 4960 (PECB, 1995). These considerations should not be read as a mechanical test, as each case is fact dependent and may present different variables worthy of consideration.

If the petitioner meets its burden of proof and the conditions for severance are met, the Commission will evaluate the appropriateness of the petitioned-for bargaining unit and whether the residual unit would maintain its appropriateness. *State – Social and Health Services*, Decision 12542-B. If either of the resulting bargaining units would be inappropriate under the statute, then severance shall not be granted and the original unit shall be maintained. *Id.*

Application of Standards

The union's request to remove the emergency management program coordinators from the existing custodial bargaining unit is granted. The recent change to the duties, skills, and working conditions for the emergency management program coordinators demonstrate they no longer share a community of interest with the custodians. The research and training components of the emergency management program coordinators is dramatically different from the building surveillance duties performed by the security monitors.

The positions now primarily focus on developing emergency management policies and strategies and instructing the districts staff on how to implement these policies and strategies. To accomplish these tasks, the position requires verbal and written communication skills and the ability to effectively speak before large audiences. The security monitor positions did not perform these types of duties or require these types of skills prior to the change. Rather, those positions primarily focused on surveilling the employer's facilities.

These new duties have little in common with the custodians whose duties focus on cleaning buildings and significantly disrupted the existing community of interest. The existing custodians bargaining unit shall be modified to remove the emergency management program coordinator positions.

FINDINGS OF FACT

1. The Bellevue School District is a public employer within the meaning of RCW 41.56.030(12).
2. The International Union of Operating Engineers, Local 302 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit of custodians and security monitors in the employer's workforce.
4. When the bargaining unit was originally created, it included just custodians. The custodians are responsible for cleaning facilities, moving furniture for special events, performing minor maintenance, and ensuring that buildings are secure by locking doors, closing windows, and setting alarms.

5. Based upon a need for building surveillance outside of normal work hours, the employer converted several custodians into security monitors. The primary duties of the security monitors included surveillance of the employer's facilities.
6. The employer recently changed the security monitors' duties and position title to emergency management program coordinators. The duties of the emergency management program coordinators now focus on developing the district's emergency management policies and strategies and instructing the district's staff on these policies and strategies.
7. The emergency management program coordinators are responsible for identifying and mitigating hazards, risks, and vulnerabilities. They research and develop strategies for disaster recovery and perform emergency management drills and maintain the proper documentation for these activities. The positions coordinate and manage emergency response and preparedness with other municipalities and organizations, such as City of Bellevue police and fire departments and the King County Sheriff's office.
8. The emergency management program coordinators' duties require verbal and written communication skills and the ability to effectively speak before large audiences. Unlike the security monitors, the emergency management program coordinator positions work a regular Monday through Friday schedule and are not eligible for overtime.

CONCLUSIONS OF LAW

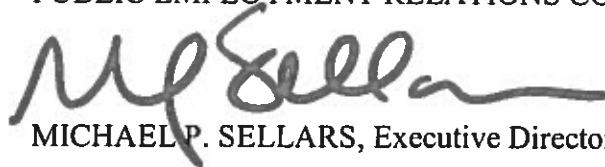
1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-35 WAC.
2. Based upon findings of fact 3 through 8, the emergency management program coordinators described in findings of fact 6 through 8 no longer share a community of interest with the bargaining unit described in findings of fact 3.

ORDER

The bargaining unit described in findings of fact 3 shall be clarified to remove the employees in the emergency management program coordinator job class.

ISSUED at Olympia, Washington, this 9th day of April, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", is written over the printed name of the Executive Director.

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.



RECORD OF SERVICE

ISSUED ON 04/09/2019

DECISION 12987 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 130985-C-18

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