

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

CITY OF SEDRO-WOOLLEY

and

SEDRO-WOOLLEY PUB SAFETY  
GUILD

For clarification of an existing  
bargaining unit.

CASE 131489-C-19

DECISION 13007 - PECB

ORDER CLARIFYING  
BARGAINING UNIT

Austin McCombs, President, for the Sedro-Woolley Pub Safety Guild.

Sofia D. Mabee, Attorney at law, Summit Law Group PLLC, for the City of Sedro Woolley.

The Sedro-Woolley Public Safety Guild (union) represents a bargaining unit of all uniformed employees of the City of Sedro-Woolley (employer). According to the original certification and a subsequent order clarifying bargaining unit, the bargaining unit includes full-time firefighters and commissioned police officers of the employer. *See City of Sedro Woolley*, Decision 8938 (PECB, 2005); *City of Sedro Woolley*, Decision 7713-A (PECB, 2002). The employer has not employed full-time firefighters since 2008. In January 2019, the employer created new firefighter/paramedic positions. The parties jointly requested the unit be clarified to remove the full-time firefighters from the bargaining unit because they no longer share a community of interest.

The request to remove the full-time firefighters from the bargaining unit is granted. The full-time firefighters no longer share a community of interest with the commissioned police officers.

**BACKGROUND**

In 2002, the guild was certified as the exclusive bargaining representative of all uniformed employees of the employer including commissioned police officers and full-time firefighters.

*City of Sedro Woolley*, Decision 7713-A. In 2005, the employer filed a unit clarification petition to attempt to remove the firefighters from the bargaining unit. The Executive Director concluded that the existing bargaining unit continued to be appropriate and did not warrant a modification at that time. *City of Sedro Woolley*, Decision 8938. The employer and union are parties to a collective bargaining agreement effective January 1, 2017, through December 31, 2019.

Prior to the negotiations for the 2007-2009 successor collective bargaining agreement, the employer notified the union of its firefighter staffing difficulties. The employer was having difficulty retaining firefighters working a full-time schedule. The parties agreed to allow the employer to change the staffing from two full-time firefighters to a pool of part-time firefighters. Because there were no longer full-time firefighters employed, the union decided to relinquish its representation of the firefighter positions in the bargaining unit. The parties documented this agreement by entering into a memorandum of understanding (MOU) on August 25, 2008. After the parties entered into the MOU, full-time firefighters were no longer employed by the employer and the firefighters were no longer identified or included in any future collective bargaining agreements. The union continues to represent the commissioned police officers and the current collective bargaining agreement between the parties contains provisions that are only applicable to the commissioned police officers.

In January 2019, there was a change in circumstances. The employer absorbed a portion of a paramedic service that had served Skagit County for over 30 years. The employer took these absorbed employees and created full-time firefighter/paramedic positions. Prior to January 2019, the employer had not employed firefighter/paramedics.

## ANALYSIS

### Community of Interest

#### *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). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County (ATU Local 587)*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

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). Unit clarification proceedings can be used to determine the bargaining unit placement of newly-created positions. WAC 391-35-020(1)(a).

In making bargaining unit determinations, the Commission considers "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). 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 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. Public Employment Relations Commission*, 101 Wn.2d 435 (1984).

Because unit clarifications alter the composition of bargaining units and in order to maintain stability in the bargaining units, the Commission adopted WAC 391-35-020 to govern the time frames in which unit clarification petitions may be filed. For example, a petition 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.

#### *Application of Standard*

The firefighter/paramedics no longer share a community of interest with the commissioned police officers. The employer recently absorbed and created the firefighter/paramedic positions, which is a change that warrants review of the existing bargaining unit. The facts show the firefighter/paramedics have different working conditions from the commissioned police officers.

The history of bargaining is significant in this case. *See e.g., Snohomish County*, Decision 12655 (PECB, 2017); *Grant County*, Decision 6704 (PECB, 1999) (explaining that although the historical unit configuration made sense at the time it was created, it “no longer made any practical or legal sense” following changed circumstances); *Lewis County*, Decision 6750 (PECB, 1999) (“[H]istory can be nullified by intervening events.”). The history of bargaining demonstrates the union effectively bargained away jurisdiction over the full-time firefighter work in August 2008. The facts demonstrate that the employer has not employed full-time firefighters since before 2008, and the union has not bargained over firefighter terms and conditions of employment since that time. Thus these intervening events have nullified the history of bargaining. The union’s bargaining unit is clarified to exclude the firefighter positions from the bargaining unit.

#### FINDINGS OF FACT

1. The City of Sedro-Woolley is a public employer within the meaning of RCW 41.56.030(12).

2. The Sedro-Woolley Public Safety Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. In 2002, the guild was certified as the exclusive bargaining representative of all uniformed employees of the employer including commissioned police officers and full-time firefighters. *City of Sedro Woolley*, Decision 7713-A. In 2005, the employer filed a unit clarification petition to attempt to remove the firefighters from the bargaining unit. The Executive Director concluded that the existing bargaining unit continued to be appropriate and did not warrant a modification at that time. *City of Sedro Woolley*, Decision 8938.
4. The employer and union are parties to a collective bargaining agreement effective January 1, 2017, through December 31, 2019.
5. Prior to the negotiations for the 2007-2009 successor collective bargaining agreement, the employer notified the union of its firefighter staffing difficulties. The employer was having difficulty retaining firefighters working a full-time schedule. The parties agreed to allow the employer to change the staffing from two full-time firefighters to a pool of part-time firefighters. Because there were no longer full-time firefighters employed, the union decided to relinquish its representation of the firefighter positions in the bargaining unit. The parties documented this agreement by entering into a memorandum of understanding (MOU) on August 25, 2008. After the parties entered into the MOU, full-time firefighters were no longer employed by the employer and the firefighters were no longer identified or included in any future collective bargaining agreements. The union continues to represent the commissioned police officers and the current collective bargaining agreement between the parties contains provisions that are only applicable to the commissioned police officers.
6. In January 2019, there was a change in circumstances. The employer absorbed a portion of a paramedic service that had served Skagit County for over 30 years. The employer took these absorbed employees and created full-time firefighter/paramedic

positions. Prior to January 2019, the employer had not employed firefighter/paramedics.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon finding of fact 6, the existing certification must be amended to reflect the changes in the employer's workforce structure.
3. Based upon findings of fact 5 and 6, the historically represented firefighter positions should be excluded from the bargaining unit described in finding of fact 3 because those positions no longer share a community of interest.

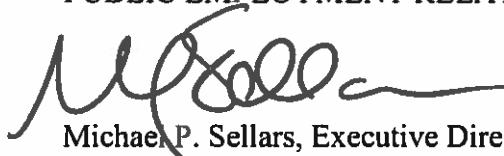
ORDER

The bargaining unit described in finding of fact 3 shall be modified as follows:

All full-time commissioned police employees employed by the City of Sedro-Woolley Police Department, excluding the chief, assistant chief, lieutenant, confidential employees, and all other employees.

ISSUED at Olympia, Washington, this 21st day of May, 2019.

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.



# RECORD OF SERVICE

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ISSUED ON 05/21/2019

DECISION 13007 - 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 131489-C-19

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