

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 760

For clarification of an existing bargaining
unit of employees of:

CITY OF SUNNYSIDE

CASE 130695-C-18

DECISION 13052 - PECB

ORDER CLARIFYING
BARGAINING UNIT

David W. Ballew, and Thomas A. Leahy, Attorneys at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for Teamsters Local 760.

Eric W. Ferguson, Matthew R. Sturtevant, and Tom Lee, Attorneys at Law, Kerr Law Group, for the City of Sunnyside.

On June 18, 2018, Teamsters Local 760 (union) filed a unit clarification petition seeking to add the planning supervisor and a finance supervisor position to the union's existing bargaining unit of supervisors at the City of Sunnyside (employer). The employer claimed the union's petition was not timely and that the petitioned-for positions do not share a community of interest with the union's bargaining unit. Hearing Officer Katelyn M. Sypher conducted a hearing on May 9, 2019.

The issues to be decided in this case are the timeliness of the union's petition and the appropriate unit placement of the two positions. The petition is timely. The job duties and working conditions of the planning supervisor and finance supervisor show that these positions only share a community of interest with the union's supervisory bargaining unit. The bargaining unit is clarified to include the planning supervisor and finance supervisor positions.

BACKGROUND

The employer has approximately 105 regular employees, with up to 155 employees during seasonal summer operations. There are six existing bargaining units of represented employees: a

nonsupervisory office-clerical bargaining unit represented by the union; a nonsupervisory public works bargaining unit represented by the union; a nonsupervisory police support bargaining unit represented by the union, a supervisory bargaining unit represented by the union; a uniformed police bargaining unit represented by the Sunnyside Police Officers Guild, and a firefighters bargaining unit represented by the International Association of Fire Fighters, Local 3542. The employer is headed by a city manager, department directors, and a handful of other positions that remain unrepresented.

The supervisory bargaining unit was created in 2015. *See City of Sunnyside*, Decision 12242 (PECB, 2015). That bargaining unit includes the sewer supervisor, water supervisor, streets supervisor, and parks and facilities supervisor (collectively referred to as “the public works supervisors”); the court divisions supervisor; and the corrections sergeant—all of which are noninterest arbitration-eligible supervisor positions.¹

When the supervisory bargaining unit was created, the parties agreed that the supervisors would “have working conditions different from the other employees in the nonsupervisory bargaining unit” and the positions would be “responsible for planning, coordinating, and assigning the activities of the employees they oversee as well as evaluating those employees.” *Id.* The positions would also be responsible for scheduling and approving leave for employees. *Id.*

These similarities outweigh any differences between the positions. For example, bargaining unit members work in different municipal departments for several different supervisors, although all the bargaining unit positions have in common their placement in the middle tiers of the employer’s organizational structure. Many of their job duties differ. The minimum education requirements for the positions range from a high school diploma (or equivalent) to a bachelor’s degree, and other qualifications vary. The wages for the positions also vary.

¹ Job titles for some of the positions have been updated since the 2015 unit certification, but there have been no substantial changes to the job duties or descriptions.

Duties of At-Issue Positions

The planning supervisor is a full-time position and is organizationally beneath the department heads, similar to the employees currently in the union's supervisory bargaining unit. The position is responsible for all community development functions of the city, for compliance with the Growth Management Act, and for providing staff support to the planning commission. The planning supervisor assists the public and contractors with land use and permitting issues and conducts site visits, including joint site visits with the building inspector/plan reviewer. The planning supervisor position requires a bachelor's degree.

The planning supervisor's primary work location is a city hall office that the position shares with two direct reports, the building inspector/plan reviewer and the permit coordinator. The building inspector/plan reviewer is a represented position in the union's nonsupervisory public works unit. The permit coordinator is a represented position in the union's nonsupervisory office-clerical unit.

The planning supervisor works closely with the building inspector/plan reviewer and the permit coordinator and coordinates, assigns, and oversees the job activities of both positions. The planning supervisor works directly with the building inspector/plan reviewer on code review as well as permit and plan reviews. The planning supervisor closely oversees the permitting work of the permit coordinator and works with the permit coordinator to assist people visiting the office to pick up permits. The planning supervisor evaluates both employees' job performance, can recommend or issue discipline to them, and oversees their schedules.

Prior to 2018, the planning supervisor reported directly to the city manager, and the office functioned as an autonomous department of the employer. During that time, the planning supervisor was treated as a department director and attended the employer's leadership team meetings with other directors and the city manager. In late 2017, the city manager announced a reorganization. The city manager changed the supervisory structure for the planning supervisor and made the position and department subordinate to the director of public works and community development, who also supervises the four public works supervisors in the union's supervisory bargaining unit.

Following the January 2018 reorganization, the planning supervisor no longer attends the employer's leadership meetings and now occasionally attends weekly meetings that the director of public works and community development holds with the public works supervisors.

The finance supervisor is also a full-time position and is organizationally beneath the department heads, similar to the employees currently in the union's supervisory bargaining unit. The finance supervisor is a new job classification created effective January 1, 2018. Prior to 2018, the employer had a position called financial analyst that had job duties similar to those of the finance supervisor. However, the financial analyst position had no formal or primary supervisory authority over finance technicians. The finance supervisor reports to the director of finance and administration.

The finance supervisor's job duties include bank reconciliation, electronic fund transfers, and Department of Revenue reporting. The finance supervisor is also responsible for the supervision of the employer's finance technicians, who perform frontline work for the employer on payroll, accounts payable, and utility billing functions.² The finance supervisor plans, assigns, and reviews the work of the finance technicians and provides training to the finance technicians on subjects including accounts payable and receipting. The position evaluates the finance technicians' performance and has the power to discipline finance technicians in consultation with the director of administration and finance. The finance supervisor approves the leave requests of finance technicians. The finance supervisor position requires a bachelor's degree.

The finance supervisor's primary work location is a private office inside city hall. However, at times when the finance supervisor has had new staff, the finance supervisor has worked alongside the finance technicians behind their public-facing counter in city hall.

Organizational Structure Changes

In October 2017, then city manager Don Day announced several planned organizational structure changes for 2018. Day planned to downgrade the planning supervisor position on the employer's

² The finance technicians are bargaining unit members of the union's nonsupervisory office-clerical bargaining unit.

organizational chart and hand over direct supervision of the position to the public works and community development director, as discussed above. This change made the planning supervisor position equal to other members of the union's supervisory unit. Day also planned to turn the position of financial analyst into a new finance supervisor position and give the position direct supervision responsibilities over the finance technicians. These changes went into effect January 1, 2018.

In February 2018, union business representative Richard Salinas first became aware of the creation of the finance supervisor position when Salinas was contacted by a member of the union's office-clerical bargaining unit to ask about the finance technicians' change of supervisor. Salinas scheduled a meeting with Day and another employer representative in March 2018 to discuss the organizational changes. Salinas advocated that the finance supervisor and planning supervisor be added to the supervisory bargaining unit and Day did not agree.

Salinas and Day continued their negotiations over the positions during a phone call approximately one month to one-and-one-half months later. The parties did not reach agreement and the union filed a unit clarification petition on June 18, 2018.

ANALYSIS

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. 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*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

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 unrepresented employees logically belong in only one existing bargaining unit and the position can neither stand on its own as a separate unit nor be logically accreted to any other existing bargaining unit. *Pierce County*, Decision 6051-A (PECB, 1998), *citing City of Auburn*, Decision 4880-A (PECB, 1995). The resulting bargaining unit must be an appropriate unit. The party proposing accretion bears the burden of demonstrating that conditions for accretion are present. *State – Enterprise Services (Contracts & Legal Services)*, Decision 11652-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). These statutory factors are applied to cases involving accretions. *State – Enterprise Services (Contracts & Legal Services)*, Decision 11652-A (PSRA, 2013).

WAC 391-35-020 states that a unit clarification petition must be filed within a reasonable period of time following a change in circumstances and does not set forth a particular time frame in which the change must have occurred. Timeliness is determined by the factual circumstances of each particular case. Reorganizations and reassignments of duties are events that do not occur overnight, and some deference must be granted to allow an employer to make midstream changes to any reorganization that might be occurring. *King County*, Decision 11828 (PECB, 2013), *aff’d*, Decision 11828-A (PECB, 2013). The defining event is a material change to duties or working conditions that necessitates the employer’s review and possible reallocation of the affected employees or positions. *University of Washington*, Decision 11590 (PSRA, 2012). However, a

petition to add positions to a bargaining unit that is the only appropriate unit may be filed at any time. WAC 391-35-020(4)(b).

Application of Standards—Timeliness

The union's petition is timely pursuant to WAC 391-35-020. WAC 391-35-020(1) and WAC 391-35-020(5)(a) permit a petitioner to file for a unit clarification within a reasonable time period after the creation of a new position. The finance supervisor was a new position created by the employer effective January 1, 2018. WAC 391-35-020(4) permits the accretion of an existing position into a bargaining unit either within a reasonable time period after a change of circumstances alters the position's community of interest or when the bargaining unit is the only appropriate unit for the position in question. The union's petition is timely under this set of rules.

The employer contends that the change it made was on paper only, simply moving the planning supervisor down a tier on its organizational chart. The record shows that the scope of the employer's changes were more meaningful. The employer changed not just the planning supervisor's placement on a chart but also the position's function as a department head, its supervision structure, and its attendance at various meetings. These changes present an appropriate opportunity to consider whether the position may share a community of interest with other employees.

The timing of the union's filing was also reasonable. The creation of the finance supervisor position and the alteration of the organizational structure as to the planning supervisor were announced in October 2017 and took effect January 1, 2018. The union did not become aware of the changes until February 2018. The union filed the petition in June 2018.

The five-month time period between the changes and the filing of the petition is explained by the record. Upon learning of the existence of the two positions, the union promptly sought to negotiate with the employer about including these positions in the existing supervisory bargaining unit. These negotiations progressed in person and by telephone for several months. Informal, harmonious resolutions of disputes are encouraged by the agency and do not cause an unreasonable delay in the filing of the petition.

Application of Standards—Community of Interest

The planning supervisor and finance supervisor positions are appropriately included in the union's supervisory bargaining unit because the positions share a community of interest with only the supervisory bargaining unit. The planning supervisor's and finance supervisor's job duties include directly supervising members of the union's nonsupervisory bargaining units. They coordinate and assign the activities of such employees. They oversee and evaluate those employees' performance, and each has the power to either effectively recommend or independently discipline direct reports. They are responsible for the employees' schedules. These are duties similar in nature to the positions in the existing bargaining unit. *City of Sunnyside*, Decision 12242.

The planning supervisor and finance supervisor positions and the bargaining unit positions also share equal placement in the employer's organizational structure. All of the positions are middle-tier positions that function as supervisors within their respective departments, but they are not department directors on the employer's leadership team.

The employer argues that the petitioned-for positions are distinct from the bargaining unit positions because the petitioned-for positions have more independent job functions and do not spend time working closely with their direct reports. The employer relies heavily on testimony from the director of public works and community development, Shane Fisher, who compared the planning supervisor position to the public works supervisor positions. Fisher testified that the public works supervisors are more like "working supervisors" who do not spend time "pushing paper around." The record does not support the claimed distinction.

The planning supervisor and finance supervisor perform independent job duties in addition to their supervisory tasks, similar to existing bargaining unit members. For example, all of the bargaining unit positions manage their offices' budgets, including the public works supervisors. The job

descriptions for the existing bargaining unit positions also reflect various independent job duties beyond supervising employees.³

Both petitioned-for positions and existing bargaining unit positions work alongside their direct reports. The planning supervisor works with direct reports in both the field and the office on projects such as site visits, code review, permit review, and public assistance. The finance supervisor reviews the work of the finance technicians and works alongside them behind the public-facing counter when new employees are on shift. The petitioned-for positions are not uniquely situated.

The fact that the union does not have a history of bargaining on behalf of the planning supervisor or finance supervisor positions is not determinative to the outcome of this matter. The union has represented the supervisory bargaining unit since 2015. When that bargaining unit was created, the planning supervisor position had different duties and working conditions and lacked a community of interest with the supervisory bargaining unit. For example, the position reported directly to the city manager. The finance supervisor is a new position that has no history of bargaining.

Finally, excluding the planning supervisor and finance supervisor from the existing supervisory bargaining unit would unduly fragment the employer's workforce. The similarity of supervisory job duties, the same organizational placement, and the extent of organization of the employer's workforce makes the supervisory unit not only an appropriate unit for the petitioned-for positions but the only appropriate unit. While the employer has five other bargaining units, there is no other unit of noninterest arbitration-eligible supervisors for these positions to join. The record presents no unique identity factor shared by just the planning supervisor and finance supervisor nor any other good reason to merit carving the positions into a separate unit of two employees.

³ See, e.g., Union Exs. 3–4 (public works supervisors estimate project costs and equipment and material needs, develop projects, and coordinate with other city departments and contractors); Union Ex. 5 (among other tasks, the court divisions supervisor manages judicial case flow, jury management, court records, and equipment needs; and monitors grants, contracts, and certifications).

FINDINGS OF FACT

1. The City of Sunnyside is a public employer within the meaning of RCW 41.56.030(12).
2. The Teamsters Local 760 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit that includes the sewer supervisor, water supervisor, streets supervisor, and parks and facilities supervisor (collectively referred to as “the public works supervisors”); the court divisions supervisor; and the corrections sergeant—all of which are noninterest arbitration-eligible supervisor positions.
4. The employees in the supervisory bargaining unit have working conditions different from the other employees in the nonsupervisory bargaining unit and the positions are responsible for planning, coordinating, and assigning the activities of the employees they oversee as well as evaluating those employees. The positions are also responsible for scheduling and approving leave for employees.
5. These similarities outweigh any differences between the positions. For example, bargaining unit members work in different municipal departments for several different supervisors, although all the bargaining unit positions have in common their placement in the middle tiers of the employer’s organizational structure. Many of their job duties differ. The minimum education requirements for the positions range from a high school diploma (or equivalent) to a bachelor’s degree, and other qualifications vary. The wages for the positions also vary.
6. The planning supervisor is a full-time position and is organizationally beneath the department heads, similar to the employees currently in the union’s supervisory bargaining unit. The position is responsible for all community development functions of the city, for compliance with the Growth Management Act, and for providing staff support to the planning commission. The planning supervisor assists the public and contractors with

- land use and permitting issues and conducts site visits, including joint site visits with the building inspector/plan reviewer. The planning supervisor position requires a bachelor's degree.
7. The planning supervisor's primary work location is a city hall office that the position shares with two direct reports, the building inspector/plan reviewer and the permit coordinator. The building inspector/plan reviewer is a represented position in the union's nonsupervisory public works unit. The permit coordinator is a represented position in the union's nonsupervisory office-clerical unit.
 8. The planning supervisor works closely with the building inspector/plan reviewer and the permit coordinator and coordinates, assigns, and oversees the job activities of both positions. The planning supervisor works directly with the building inspector/plan reviewer on code review as well as permit and plan reviews. The planning supervisor closely oversees the permitting work of the permit coordinator and works with the permit coordinator to assist people visiting the office to pick up permits. The planning supervisor evaluates both employees' job performance, can recommend or issue discipline to them, and oversees their schedules.
 9. Prior to 2018, the planning supervisor reported directly to the city manager, and the office functioned as an autonomous department of the employer. During that time, the planning supervisor was treated as a department director and attended the employer's leadership team meetings with other directors and the city manager. In late 2017, the city manager announced a reorganization. The city manager changed the supervisory structure for the planning supervisor and made the position and department subordinate to the director of public works and community development, who also supervises the four public works supervisors in the union's supervisory bargaining unit.
 10. Following the January 2018 reorganization, the planning supervisor no longer attends the employer's leadership meetings and now occasionally attends weekly meetings that the director of public works and community development holds with the public works supervisors.

11. The finance supervisor is also a full-time position and is organizationally beneath the department heads, similar to the employees currently in the union's supervisory bargaining unit. The finance supervisor is a new job classification created effective January 1, 2018.
12. The finance supervisor's job duties include bank reconciliation, electronic fund transfers, and Department of Revenue reporting. The finance supervisor is also responsible for the supervision of the employer's finance technicians, who perform frontline work for the employer on payroll, accounts payable, and utility billing functions. The finance supervisor plans, assigns, and reviews the work of the finance technicians and provides training to the finance technicians on subjects including accounts payable and receipting. The position evaluates the finance technicians' performance and has the power to discipline finance technicians in consultation with the director of administration and finance. The finance supervisor approves the leave requests of finance technicians. The finance supervisor position requires a bachelor's degree.
13. In October 2017, then city manager Don Day announced several planned organizational structure changes for 2018. Day planned to downgrade the planning supervisor position on the employer's organizational chart and hand over direct supervision of the position to the public works and community development director, as discussed above. This change made the planning supervisor position equal to other members of the union's supervisory unit. Day also planned to turn the position of financial analyst into a new finance supervisor position and give the position direct supervision responsibilities over the finance technicians.
14. In February 2018, union business representative Richard Salinas first became aware of the creation of the finance supervisor position when Salinas was contacted by a member of the union's office-clerical bargaining unit to ask about the finance technicians' change of supervisor. Salinas scheduled a meeting with Day and another employer representative in March 2018 to discuss the organizational changes. Salinas advocated that the finance supervisor and planning supervisor be added to the supervisory bargaining unit and Day did not agree.

15. Salinas and Day continued their negotiations over the positions during a phone call approximately one month to one-and-one-half months later. The parties did not reach agreement and the union filed a unit clarification petition on June 18, 2018.

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 13 through 15, the union's unit clarification petition is timely under WAC 39-35-020.
3. Based upon findings of fact 3 through 12, the planning supervisor and finance supervisor employed by the City of Sunnyside only share a community of interest with the bargaining unit described in finding of fact 3.

ORDER

The bargaining unit described in finding of fact 3 shall be modified to include the planning supervisor and finance supervisor positions.

ISSUED at Olympia, Washington, this 19th day of August, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "M. Sellars", is written over the printed name of Michael P. Sellars.

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 08/19/2019

DECISION 13052 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 130695-C-18

EMPLOYER: CITY OF SUNNYSIDE

REP BY: JULIA HART
CITY OF SUNNYSIDE
818 E EDISON AVE
SUNNYSIDE, WA 98944-2206
jhart@sunnyside-wa.gov

ERIC W. FERGUSON
KERR LAW GROUP
7025 W GRANDRIDGE BLVD STE A
KENNEWICK, WA 99336
eferguson@kerrlawgroup.net

MATTHEW R. STURTEVANT
KERR LAW GROUP
7025 W GRANDRIDGE BLVD STE A
KENNEWICK, WA 99336
msturtevant@kerrlawgroup.net

TOM LEE
KERR LAW GROUP
7025 W GRANDRIDGE BLVD STE A
KENNEWICK, WA 99336
tlee@kerrlawgroup.net

PARTY 2: TEAMSTERS LOCAL 760

REP BY: LEONARD CROUCH
TEAMSTERS LOCAL 760
1211 W LINCOLN AVE
YAKIMA, WA 98902-2535
leonard@teamsters760.org

RICHARD SALINAS
TEAMSTERS LOCAL 760
1211 W LINCOLN AVE
YAKIMA, WA 98902
richard@teamsters760.org

THOMAS A. LEAHY
REID, MCCARTHY, BALLEW & LEAHY, L.L.P.
NORTH TOWER STE 300
100 W HARRISON ST
SEATTLE, WA 98119-4143
tom@rmbllaw.com

DAVID W. BALLEW
REID, MCCARTHY, BALLEW & LEAHY, L.L.P.
NORTH TOWER STE 300
100 W HARRISON ST
SEATTLE, WA 98119-4143
david@rmbllaw.com