

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

CITY OF BLAINE

For clarification of an existing bargaining
unit represented by:

TEAMSTERS LOCAL 231

CASE 130707-C-18

DECISION 13087 - PECB

ORDER OF DISMISSAL

Russell J. Reid, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for
Teamsters Local 231.

Richard A. Davis III, Attorney at Law, Chemelik Sitkin & Davis P.S., for the City
of Blaine.

On June 22, 2018, the City of Blaine (employer) filed a unit clarification petition seeking to remove the utility billing administrator (administrator) position from a nonsupervisory bargaining unit represented by Teamsters Local 231 (Teamsters) and place that position in a managerial bargaining unit represented by the International Association of Machinists and Aerospace Workers, Lodge 160 (IAM).¹ Teamsters claimed the employer failed to demonstrate a change in circumstances sufficient to justify the change in representation. Teamsters also claimed that because the administrator is not a managerial, professional, or supervisory employee, the IAM unit is not an appropriate bargaining unit for the utility billing administrator. Hearing Officer Dario de la Rosa conducted a hearing on June 25, 2019, and the parties filed post-hearing briefs.

The issues to be decided in this case are whether the employer's petition is timely and, if so, the appropriate union placement for the administrator position. The changes in circumstances that

¹ IAM participated in prehearing discussions but did not formally intervene or appear at the hearing.

the employer claims justify a change in representation all occurred more than one year before the employer's filing of the petition. The petition is dismissed as untimely.²

BACKGROUND

The employer has approximately 65 employees. The IAM represents a bargaining unit of supervisory professional and technical employees. *City of Blaine*, Decision 6619-B (PECB, 1999). Teamsters represents a bargaining unit that includes "all employees of the City" with the exception of positions expressly listed in its contract with the employer. *See also City of Blaine*, Decision 6122 (PECB, 1997). The excepted positions include the city manager, department heads, commissioned police officers, various senior level employees and their assistants, interns, contract workers, seasonal workers, and supervisors. There are lead workers in the Teamsters unit who give direction to other workers in the unit. The employer and Teamsters executed a new collective bargaining agreement on May 21, 2018.

Utility Administrative Coordinator Position

Prior to January 2018, the employer's utility billing department employed two positions: a utility administrative coordinator (coordinator) and a utility billing specialist (specialist). The coordinator position was responsible for coordinating various activities related to utility billing, including meter reading, accounting, customer service, auditing, generating reports, and maintaining computer systems. The specialist assisted the coordinator in performance of these activities. The coordinator and specialist worked in the same office location and worked closely with one another. The employer's finance director supervised the coordinator and specialist positions. The coordinator is responsible for providing day-to-day direction to the specialist. Both the coordinator and specialist are part of the Teamsters bargaining unit. Brenna Sartain has occupied the coordinator position for the past 15 years.

² Because the petition is dismissed as untimely, this decision will not address whether the change in job duties cited by the employer altered the nature of the utility billing administrator position such that Teamsters is an inappropriate bargaining unit.

Four years ago, the employer hired Stacey Wood as the specialist. Prior to Wood's hiring, Sartain directed the work and schedule of the specialist but did not conduct personnel evaluations and was not involved in discipline of the specialist. After Wood was hired, Sartain conducted Wood's performance evaluations and was involved with decisions to discipline her.

Change to Utility Billing Administrator Position

In May 2017, the employer upgraded its meter reading software. As a result this change, some of Sartain's duties changed, including the way she managed the automated metering system. The employer and Teamsters entered into an agreement that allowed Sartain to have a flexible schedule to accommodate these changes.

In January 2018, the employer reclassified Sartain's coordinator position into the new utility billing administrator position. The job description for the new classification designated the administrator as the first level supervisor for the specialist. The final authority for hiring, firing, and discipline was retained by the finance director. The employer intended to make the administrator position exempt under the Fair Labor Standards Act (FLSA). Because the IAM bargaining unit currently contains all city employees who are FLSA exempt, the employer has not yet made the administrator position FLSA exempt.

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).

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).

Timeliness

WAC 391-35-020 states that a unit clarification petition must be filed within a reasonable period of time following a change in circumstances, but it does not set forth a particular time frame in which the change must have occurred. 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).

Timeliness is determined by the factual circumstances of each particular case. *Port of Seattle*, Decision 13059 (PORT, 2019). 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).

The change in circumstances that leads to the filing of a unit clarification petition must be a meaningful change in an employee’s duties, responsibilities, or working conditions. *University of Washington*, Decision 10496-A (PSRA, 2011), *citing City of Richland*, Decision 279-A (PECB, 1978). A mere change in job titles is not necessarily a material change in working conditions that would qualify under chapter 391-35 WAC to alter the composition of a bargaining unit through

the unit clarification process. *See University of Washington*, Decision 10496-A. Other types of changes to the workplace environment, such as a reorganization of an employer's workforce, are occurrences that could warrant the filing of a unit clarification petition. *See Lewis County*, Decision 6750 (PECB, 1999). Absent a recent change in circumstances, a unit clarification petition will be dismissed as untimely. *University of Washington*, Decision 11590.

Application of Standards

The employer's petition is not timely under WAC 391-35-020. WAC 391-35-020(4) permits a petitioner to file for a unit clarification within a reasonable period of time after a change in circumstances that alters a position's community of interests or when the bargaining unit is the only appropriate unit for the position in question. Application of that rule to these facts demonstrates that the employer did not file its petition in a reasonable time period.

The employer alleged two broad categories of a material change in circumstance to justify the change in representation: a change in duties related to managing new billing software and a change in supervisory duties of the coordinator position. The changes in duties related to the new billing software occurred in May 2017—approximately 13 months before the employer's June 2018 petition. The changes related to coordinator's supervision of the specialist position occurred four years ago.³

The employer argues that the January 2018 reclassification should be the triggering date for timeliness. However, a reclassification that simply involves a title change does not by itself constitute a change in circumstances. This agency has previously rejected similar arguments. In *Clark County*, Decision 11886 (PECB, 2013), an employer and a bargaining representative filed a unit clarification petition to remove a position represented by a different union based upon a recent reclassification. That petition was dismissed because the facts demonstrated there was no recent

³ There was conflicting testimony about the effective date of some these changes. Sartain credibly testified as to the timing of the changes.

change in circumstances other than the change in job title. A similar result was reached in *State – Corrections*, Decision 12005 (PSRA, 2014), *aff'd*, Decision 12005-A (PSRA, 2014).

The reclassification in this case appears to have been merely a retitling of the position to conform to changes that occurred over time. The reclassification itself did not constitute a material change in job duties. Following the reclassification, Sartain continued to coordinate utility billing activities and work with the specialist just as she had been doing for the past four years. While some of Sartain's duties related to management of the software and reporting changed in May 2017, there were no material changes to Sartain's duties following that date.

Where the agency has found a 13-month or longer gap between a material change and a unit clarification petition timely, there has been evidence of the parties working together toward a resolution of the bargaining unit placement and/or additional factors that explained the delay in filing the petition. *See, e.g., Port of Seattle*, Decision 13059 (showing a 20-month delay in filing of petition explained by delay in hiring for position, the discovery of need for additional positions, and the parties' continued engagement in discussions about proper placement of the positions). There was no such explanation in the present case. While the employer and Teamsters apparently adopted a memorandum of understanding regarding a flexible time schedule for Sartain, it does not appear that the parties engaged in significant negotiations over the proper placement of the position prior to the employer's filing of the petition in June 2018.

The employer has asserted that the IAM is the "only appropriate unit" for the administrator. WAC 391-35-020(4)(b). The employer's argument centers on the fact that the employer intends make the administrator position FLSA exempt similar to the other employees in the IAM's unit. RCW 41.56.060 does not require that all employees in a bargaining unit be identically situated but only that they share a "common essence." *Pierce County*, Decision 8892 (PECB, 2005), *aff'd*, Decision 8892-A (PECB, 2006); *see also South Central School District*, Decision 5670-A (PECB, 1997). The employer's interpretation of federal law does not require or bind this agency to apply different standards to the unit determination criteria found in RCW 41.56.060. *City of Blaine*, Decision 6122 (PECB, 1997), *aff'd*, Decision 6122-A (PECB, 1998) (affirming that FLSA-exempt status did not override other factors establishing community of interest). Given this, the history

of the position at issue, and the fact that there are other lead workers in the Teamsters unit, it would appear that either the Teamsters unit or the IAM unit may be appropriate. Thus, under WAC 391-35-020(4), because there is more than one appropriate unit, the petition needed to be filed within a reasonable period of time. That did not occur here. The petition is dismissed.

FINDINGS OF FACT

1. The City of Blaine is a public employer within the meaning of RCW 41.56.030(12).
2. Teamsters Local 231 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. International Association Machinists and Aerospace Workers, Lodge 160 is a bargaining representative within the meaning of RCW 41.56.030(2).
4. Teamsters represents a bargaining unit that includes “all employees of the City” with the exception of positions expressly listed in its contract with the employer. The excepted positions include the city manager, department heads, commissioned police officers, various senior level employees and their assistants, interns, contract workers, seasonal workers, and supervisors.
5. The IAM represents a bargaining unit of supervisory professional and technical employees.
6. Prior to January 2018, the employer’s utility billing department employed two positions: a utility administrative coordinator (coordinator) and a utility billing specialist (specialist). The coordinator position was responsible for coordinating various activities related to utility billing, including meter reading, accounting, customer service, auditing, generating reports, and maintaining computer systems. The specialist assisted the coordinator in performance of these activities. Brenna Sartain has occupied the coordinator position for the past 15 years.

7. Four years ago, the employer hired Stacey Wood as the specialist. Prior to Wood's hiring, Sartain directed the work and schedule of the specialist but did not conduct personnel evaluations and was not involved in discipline of the specialist. After Wood was hired, Sartain conducted Wood's performance evaluations and was involved with decisions to discipline her.
8. In May 2017, the employer upgraded its meter reading software. As a result this change, some of Sartain's duties changed, including the way she managed the automated metering system. The employer and Teamsters entered into an agreement that allowed Sartain to have a flexible schedule to accommodate these changes.
9. In January 2018, the employer reclassified Sartain's coordinator position into the new utility billing administrator position. The job description for the new classification designated the administrator as the first level supervisor for the specialist. The final authority for hiring, firing, and discipline was retained by the finance director.
10. On June 22, 2018, the employer filed a unit clarification petition seeking to remove the administrator position from a nonsupervisory bargaining unit represented by Teamsters and place that position in a managerial bargaining unit represented by the International Association of Machinists and Aerospace Workers.

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 5 through 10, the employer's unit clarification petition is untimely under WAC 391-35-020.

ORDER

The petition filed by the City of Blaine in the above entitled matter is DISMISSED as untimely.

ISSUED at Olympia, Washington, this 16th day of October, 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

ISSUED ON 10/16/2019

DECISION 13087 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 130707-C-18

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