

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

KING COUNTY

For clarification of an existing bargaining unit  
represented by:

TECHNICAL EMPLOYEES ASSOCIATION

CASES 131969-C-19 and 131973-C-19<sup>1</sup>

DECISION 13603 - PECB

ORDER OF DISMISSAL

*James M. Cline and Cynthia McNabb*, Attorneys at Law, Cline & Associates, for  
the Technical Employees Association.

*Sasha Alessi*, Labor Negotiator, for King County.

In 2018, the King County Council adopted ordinance 18777 to reorganize its transit services into the newly created Metro Transit Department effective January 1, 2019. This process became known as the “division to Department” (d2D), as organizational structures that were formally divisions within the Transportation Department were being reorganized and combined into the new department. Following this reorganization, King County (employer) filed a series of unit clarification petitions concerning certain nonsupervisory positions in the Capital Division of the Metro Transit Department and who have historically been represented by either the Technical Employees Association (TEA) or PROTEC17.

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<sup>1</sup> The employer filed a total of five petitions seeking clarification of various bargaining units, including the TEA’s nonsupervisory Design and Construction bargaining unit, Teamsters Local 117’s nonsupervisory and supervisory administrators bargaining units, and PROTEC17’s nonsupervisory Professional and Technical bargaining unit as well as PROTEC17’s nonsupervisory and supervisory Transit Administrative Support bargaining units. Because certain petitions, such as case 131969-C-19, sought clarification of bargaining units represented by both the TEA and Teamsters, this agency has administratively separated the petitions to avoid confusion.

In these cases, the employer proposes moving the employees in the Administrative Specialist II and III job classes represented by the TEA to PROTEC17's nonsupervisory Transit Administrative Support bargaining unit. The employer also proposes moving the employees in the Business and Finance Officer III job class and the Project/Program Manager III job class represented by the TEA to PROTEC17's nonsupervisory Professional and Technical bargaining unit.<sup>2</sup> The employer asserts that all of these changes are needed to reflect a horizontal bargaining unit structure across the Metro Transit Department. TEA opposes the petitions and asserts that its bargaining units continue to be appropriate despite the reorganization.

The employer's request to move the petitioned-for employees to PROTEC17's respective bargaining units is denied. Although the d2D reorganization represents a change in circumstances that altered the reporting structure for the disputed positions, the reorganization did not disrupt the community of interest for those positions to the degree that warrants clarification. PERC is only required to certify an appropriate bargaining unit, not a more perfect bargaining unit. The extent of organization within the Capital Division does not compel a perfect horizontal bargaining unit structure. TEA's bargaining unit remains appropriate if the disputed positions are kept in their current bargaining unit configuration because no work jurisdiction issues are created as a result of the reorganization. Accordingly, the employer's petitions are dismissed.

## BACKGROUND

Historically, the employer's transportation services were part of the Department of Transportation. In 1999, the King County Auditor published the Transit Management Audit which recommended moving the employer's transit services to a stand-alone department.<sup>3</sup> In 2015, the King County

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<sup>2</sup> The Business and Finance Officer III position was vacant at the time of hearing and minimal evidence was included in the record concerning this position. While not a hard and fast rule, this agency generally does not clarify vacant positions. The Business and Finance Officer III position will not be clarified until the position is filled.

<sup>3</sup> See exhibit 19.

Council directed the King County Executive to detail the costs, financial changes, county code changes, and operational issues associated with transitioning the Metro Transit Division to an independent executive department. In 2017, the directors of the Department of Transportation and Transit Division developed a plan for making the Metro Transit Department its own stand-alone department by 2019. The King County Council subsequently passed resolution 18777 which formally created the Metro Transit Department. The employer began implementing the d2D reorganization in January 2019.

#### *TEA's Bargaining Units*

The TEA represents a mixed-class bargaining unit that includes all the employees in the former Design and Construction section of the Department of Transportation. The employer voluntarily recognized this bargaining unit, which has not been certified by this agency.<sup>4</sup> The recognition agreement between the employer and TEA describes the bargaining unit as:

The County recognizes the [TEA] as the exclusive bargaining representative with respect to ages, hours, and working conditions of employment for all employees in the Design and Construction section of the Transit Division of the Department of Transportation, excluding supervisors, managers, confidential employees, short term temporary employees, and all other employees of the employer.

Addendum A of the collective bargaining agreement includes the various job classifications in the bargaining unit, including four employees in the Administrative Support Specialist job class and six employees in the Project/Program Manager job class who work in the Metro Transit Department.

#### *PROTEC17's Professional and Technical Bargaining Unit*

Prior to the reorganization, PROTEC17's Professional and Technical bargaining unit was a mixed-class horizontal bargaining unit that included employees in specific job classes in certain

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<sup>4</sup> The TEA made two separate attempts to organize the at-issue employees and in both instances the petitions were dismissed because TEA either petitioned for an inappropriate bargaining unit configuration or filed untimely petitions. *See King County*, Decision 5910 (PECB, 1997), *aff'd*, Decision 5910-A (PECB, 1998) and *King County*, Decision 6291 (PECB, 1998), *aff'd*, Decision 6291-A (PECB, 1998).

departments of the employer's organization. When this agency certified the bargaining unit in 1996, it included all "professional and technical employees of the King County Transit Division and Transportation Planning Division" and specifically excluded employees in the Design and Construction section. *King County*, Decision 5785 (PECB, 1996). The recognition agreement between the employer and PROTEC17 described the bargaining unit as:

The County recognizes [PROTEC17] as the exclusive bargaining representative of all full-time and part-time regular and term-limited temporary (TLT) employees holding positions in classifications listed in Addendum A, and made part hereof by this reference, who work in the Department of Transportation Metro Transit Division, excluding:

1. All employees in the Design and Construction Section.
2. All employees in the Finance and Administrative Services Section.
3. All employees in the Human Resources Section.
4. All employees in the General Manager's immediate staff.
5. All managerial employees and their confidential assistants.
6. All employees who have a "labor nexus" to the Employer.
7. All employees who are ineligible for representation per the terms of RCW 41.56, et seq.
8. All employees who are designated as employees of King County Information Technology (KCIT).

The recognition agreement specifically identified the TEA represented employees in the Design and Construction section as being excluded from this bargaining unit. In 2022, this agency redefined PROTEC17's Professional and Technical bargaining unit as:

All full-time and regular part-time nonsupervisory professional and technical employees working for King County in the following job classes: Administrative Staff Assistant; Administrator I, II, III, and IV; Bus Assembly Inspector; Business Analyst; Business Analyst – Senior; Business and Finance Officer I, II, III, and IV; Buyer - Lead Senior; Communications Specialist I, II, III, and IV; Customer Services Coordinator; Customer Services Coordinator – Lead; Data Administrator; Database Specialist – Senior; Educator Consultant I and II; Engineer I, II, III, and IV; Environmental Scientist I, II, III, and IV; Functional Analyst I, II, III, and IV; GIS Specialist – Journey; GIS Specialist – Senior; IT Project Manager I and II; IT Systems Specialist – Master; Maintenance Planner Scheduler; Marketing and Sales Specialist I, II, and III; Occupational Education and Training Instructor; Occupational Education and Training Coordinator; Occupational Education and Training Program Administrator; Occupational Education and Training Program Administrator – Senior; Power Distribution Technical Assistant; Project/Program

Manager I, II, III, and IV; Rail SCADA Systems Specialist; Rail SCADA Systems Specialist – Senior; Rideshare Services Representative; Safety and Health Administrator I, II, III, and IV; Special Projects Manager I and III; Transit Maintenance Analyst; Transit Vehicle Procurement Administrator; Transportation Compliance Administrator; Transportation Planner I, II, III, and IV; Van Pool Risk Specialist; and Website Developer – Senior. Excluding statutory supervisors, confidential employees, employees in other bargaining units, and all other employees.

*King County*, Decision 13464 (PECB, 2022). The updated bargaining unit description was based upon Addendum A of the parties collective bargaining agreement. Following the reorganization, the employer and PROTEC17 modified the recognition language in the collective bargaining agreement as follows:

The County recognizes [PROTEC17] as the exclusive bargaining representative of all full-time and part-time regular and term-limited temporary (TLT) employees holding positions in classifications listed in Addendum A, and made part hereof by this reference, who work in the Metro Transit Department, excluding:

1. All employees in the Design and Construction Section.
2. All employees in the Finance and Administrative Services Section.
3. All employees in the Human Resources Section.
4. All employees in the General Manager's immediate staff.
5. All managerial employees and their confidential assistants.
6. All employees who have a "labor nexus" to the Employer.
7. All employees who are ineligible for representation per the terms of RCW 41.56, et seq.
8. All employees who are designated as employees of King County Information Technology (KCIT).

The agreed upon language attempted to maintain the horizontal nature of the Professional and Technical bargaining unit.

*PROTEC17's Transit Administrative Support Bargaining Unit*

PROTEC17's Transit Administrative Support bargaining unit was originally certified as a mixed-class horizontal bargaining unit that included all employees in specific job classes across certain departments of the employer's organization. The bargaining unit was described as follows:

All full-time and regular part-time Administrative Support Assistant I, II, III and Administrative Specialist I, II of the King County Transit Division and Transportation Planning Division, excluding supervisors, confidential employees, employees in Design and Construction section of the Transit Division, transit security officers, library employees, employees in Transit Human Resources Section, employees in Regional Transit Planning/Regional Transit Authority section of the Transportation Planning Division, and all other employees.

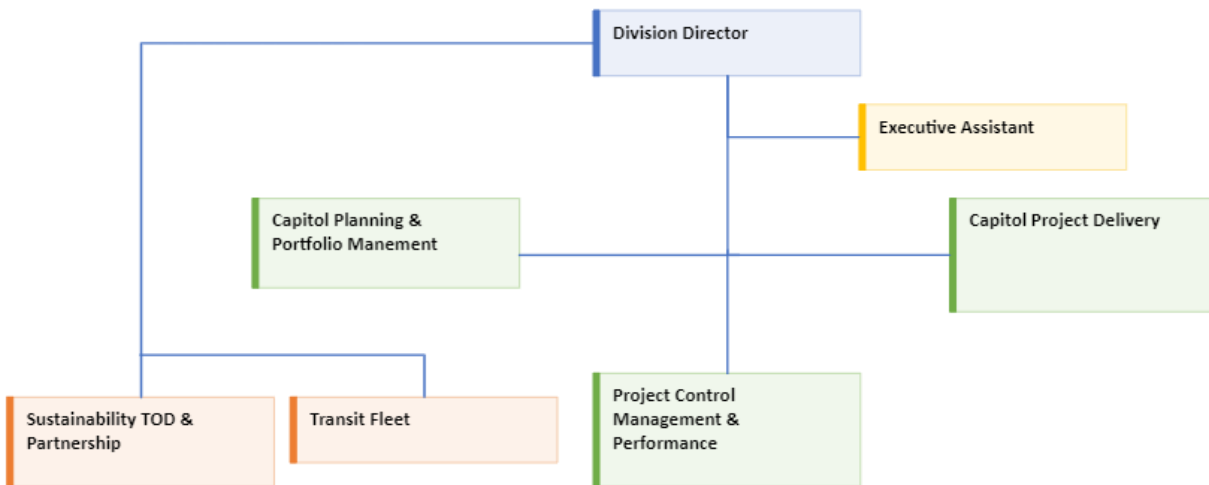
*King County*, Decision 5786 (PECB, 1996). The current recognition agreement between the employer and PROTEC17 describes the bargaining unit as follows:

The County recognizes the Union as the exclusive collective bargaining representative of all full-time and part-time regular and term-limited temporary employees whose job classifications are listed in the attached Addendum A and made a part hereof by this reference.

*The Metro Transit Department Capital Division*

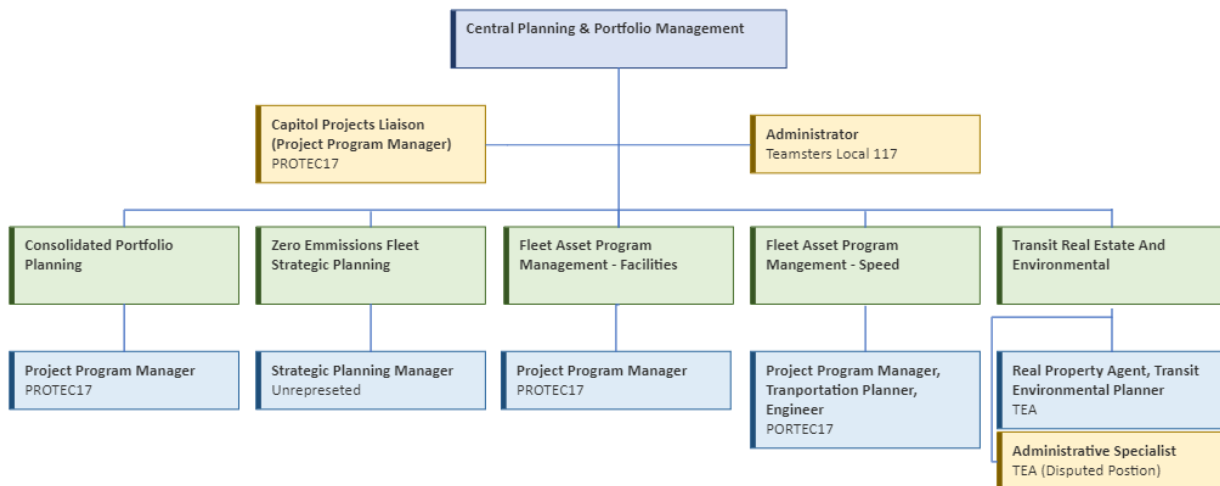
The newly created Metro Transit Department includes several divisions, including Capital, Marine, Bus Operations, Transit Facilities, Rail Mobility, and Vehicle Maintenance. Following the d2D reorganization, the employer moved employees from various bargaining units into the Metro Transit Department divisions. Employees from the TEA's Design and Construction bargaining unit and PROTEC17's Professional and Technical and Transit Administrative Support bargaining units were moved to the Metro Transit Department's Capital Division.

The Capital Division supports other Metro divisions and work groups by ensuring the divisions have the infrastructure necessary to meet service delivery and sustainability goals. Diane Carlson serves as the division's director. The Capitol Division includes two major subdivisions: Capital Planning & Portfolio Management and Capital Projects Delivery. Each subdivision is headed by an employee in the Transit Capital Section Manager job class. Various work groups make up each subdivision. The Capital Division also includes Project Controls, Management & Performance, Sustainability, Transit-Oriented Development & Partnerships, and Transit Fleet Procurement & Contract Management work groups, each of which reports to the division director. The management structure of the division is organized as follows:



Capital Planning & Portfolio Management Subdivision

The Capital Planning & Portfolio Management Subdivision ensures coordinated capital planning efforts to meet Metro’s service goals and strategic plan targets. Tina Rogers oversees this subdivision. The subdivision is arranged as follows:



The Coordinated Portfolio Planning work group coordinates Metro’s capital portfolios with the service, financial, and workforce planning efforts conducted outside the Capital Division. The employees in this work group are in the Project Program Manger job class and are represented by PROTEC17. The Zero-Emission Fleet Strategic Planning position leads Metro’s fleet electrification effort with a focus on its fixed-route bus fleet. The position coordinates with Vehicle

Maintenance, Bus Operations, Capital Planning, and Fleet Procurement. The position is in the Strategic Planning Manager job class and is currently unrepresented.

The Fixed Asset Program Management—Facilities and State of Good Repair work group conducts program management for all departments physical assets, including the Operational Capacity Growth, Operational Facility Improvements, Comfort Stations, and Electric Vehicle Charging Stations programs. Most employees in this work group are in the Project Program Manager job class and included in PROTEC17's professional and technical bargaining unit. One employee in the Special Projects Manager job class is not represented. No positions in this work group are subject to the employer's petition.

The Fixed Asset Program Management—Speed and Reliability and Passenger Facilities work group leads the program management role for the following portions of the Fixed Asset Portfolio: Spot and Corridor Improvements, Safety and Traffic Operational Improvements, Partnerships, Transit Signal Priority, Bus Stops, Trolley Infrastructure, and Transit Oriented Development. The employees in this work group are the Project Program Manager, Transportation Planner, or Engineer job classes and are included in PROTEC17's professional and technical bargaining unit.

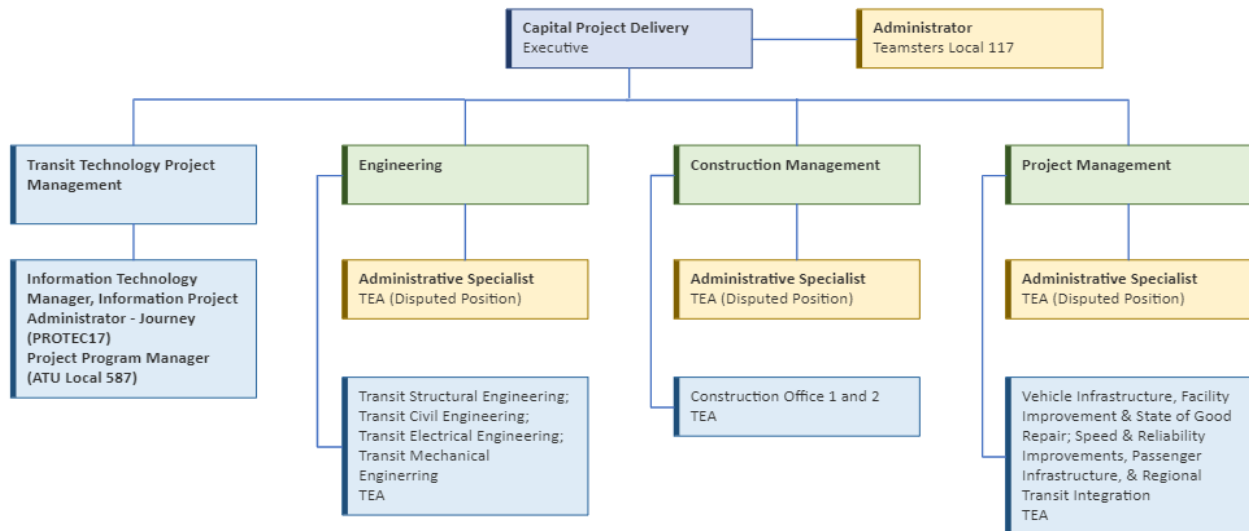
The Transit, Real Estate, and Environmental work group performs all real estate functions on Metro's behalf including the acquisition, management, and disposition of Metro's real estate assets. The employees in this work group are in the Real Property Agent and Transit Environment Planner job classes and are represented by TEA. There is also one employee in the Administrative Specialist job class that is represented by TEA. The employer asserts the Administrative Specialist position should be removed from that bargaining unit and placed in PROTEC17's administrative support bargaining unit.

#### Capital Project Delivery Subdivision

The Capital Project Delivery subdivision manages, designs, and constructs Metro's funded projects and provides technical support to internal operations and maintenance clients and external partners. Liz Krenzel oversees this subdivision. The Capital Project Deliver subdivision includes three different teams: Engineering, Construction Management, and Project Management. The



Transit Technology Project Management work group also reports to Krenznel. The subdivision is arranged as follows:



The Transit Structural Engineering, Transit Electrical Engineering, and Transit Mechanical Engineering work groups make up the Engineering team. The employees in the Engineering team are in the Transit Engineer and Transit Designer job classes and are represented by the TEA as part of that union’s Transit Division bargaining unit. Paul Eng oversees the Engineering team. One employee in the Administrative Specialist job class reports to Eng. The Administrative Specialist is currently represented by the TEA. The employer asserts the Administrative Specialist position should be removed from TEA’s Transit Division bargaining unit and placed in PROTEC17’s Transit Administrative Support bargaining unit.

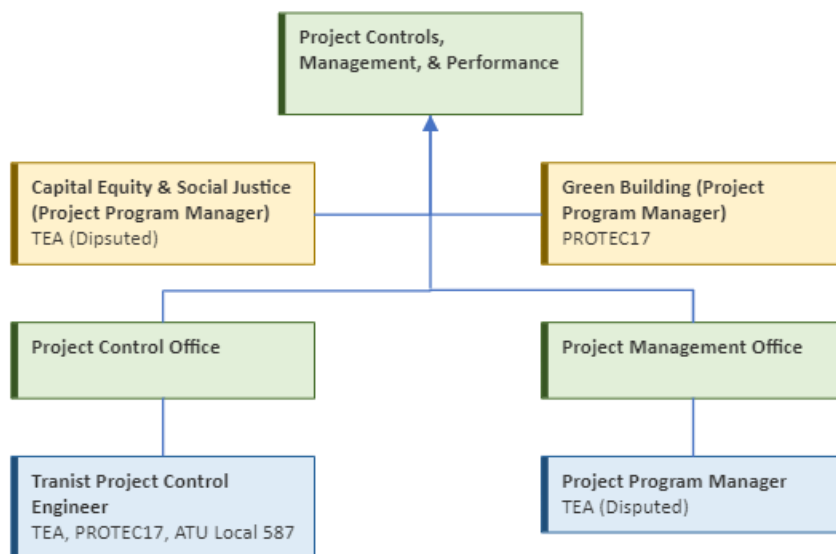
The Construction Offices I and II work groups make up the Construction Management Team. The employees in the Construction Management Team are in the Transit Construction Management job class and are represented by the TEA as part of that union’s Transit Division bargaining unit. At the time of the hearing, the supervisor of the Construction Management Team was an open position. One employee in the Administrative Specialist job class reports to the supervisor of the Construction Management Team. The Administrative Specialist is currently represented by the TEA. The employer asserts the Administrative Specialist position should be removed from TEA’s

Transit Division bargaining unit and placed in PROTEC17's Transit Administrative Support bargaining unit.

The Vehicle Infrastructure, Facility Improvements & State of Good Repair and Speed & Reliability Improvements, Passenger Infrastructure & Regional Transit Integration work groups make up the Project Management team. The employees in the Project Management Team are in the Transit Engineer and Transit Construction Management job classes. One employee in the Administrative Specialist job class reports to the supervisor of the Project Management Team. The Administrative Specialist is currently represented by the TEA. The employer asserts this position should be removed from TEA's Transit Division bargaining unit and placed in PROTEC17's Transit Administrative Support bargaining unit.

Project Controls, Management & Performance Team

The Project Controls, Management & Performance team is responsible for performance monitoring, budget and finance contract procurement, and process development. The team consists of the Project Control Office and Project Management Office work groups. Mike Chargualaf oversees the team. The team is organized as follows:



In addition to the Project Control Office and Project Management Office work groups, the Capital Equity & Social Justice position and Green Building position report directly to Chargualaf.<sup>5</sup>

The Project Control Office performs control work, such as contracting and payments. The employees in this work group are in the Project Program Managers job class and are included in PROTEC17's professional and technical bargaining unit. The Project Management Office controls management performance, such as understanding the processes and requirements of the Capital Division and setting up systems to monitor and control performance of capital programs. The employees in this work group are in the Project Program Manager job class and are included in the TEA's Transit Division bargaining unit. The employer asserts that the Project Program Managers in the Project Management Office should be removed from TEA's Transit Division bargaining unit and placed in PROTEC17's professional and technical bargaining unit.

*Capital Equity & Social Justice and Green Building positions*

The Capital Equity & Social Justice position and Green Building position are unique positions in the Project Management office. When planning a capital project, one of the tools used is a "sustainable infrastructure scorecard" that uses equity and social justice credits as a scoring element. The Capital Equity & Social Justice position operationalizes equity and social justice into capital projects and is involved in all phases of projects, including two- and ten-year forecast planning, project planning, and works with the project teams to develop and follow an equity and social justice plan. An employee in the Project/Program Manager III job class currently holds the Capital Equity & Social Justice position and that position is represented by the TEA.

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<sup>5</sup> The employees in the Project Control Office are in the Transit Project Control Engineer job class. PROTEC17 and the Amalgamated Transit Union Local 587 each represent one employee in the work group. The TEA represents the rest of the employees in this work group. The employer's petition does not seek to clarification of the Transit Project Control Engineers represented by PROTEC17 or the Amalgamated Transit Union Local 587. On its face, the employer's failure to seek clarification regarding these positions appears to be a glaring omission in need of rectification. However, there is no evidence in this record concerning these positions and the Amalgamated Transit Union Local 587 is not a party to any of the employer's petitions so clarification of these positions would be inappropriate at this time.

The Green Building position works in concert with the Capital Equity & Social Justice position but instead focuses on ensuring that green building elements are incorporated into the work projects. Similar to the Capital Equity & Social Justice position, the Green Building position uses a “sustainable infrastructure scorecard” that uses green building credits as a scoring element for capital projects. The Green Building position is involved in all phases of capital projects, including two- and ten-year forecast planning, project planning, and works with the project teams to ensure that green building plan elements are incorporated at the delivery phase of the project. An employee in the Project/Program Manager III job class currently holds the Green Building position and that position is represented by PROTEC17 as part of its Professional and Technical bargaining unit.

## ANALYSIS

### Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. RCW 41.56.060. The goal in making 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. *Central Washington University*, Decision 9963-B (PSRA, 2010); *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 existing bargaining unit based upon a change in circumstances to ensure its continued appropriateness. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

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 (Teamsters Local 252)*, Decision 6750 (PECB, 1999). Absent a recent change in circumstances, a unit clarification petition will be dismissed as untimely. *University of Washington*, Decision 11590.

A unit clarification petition must be filed within a reasonable period of time following a change in circumstances and the statute does not set forth a particular time frame in which the change must have occurred. WAC 391-35-020. Timeliness is determined by the factual circumstances of each 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.

#### *Horizontal and Vertical Bargaining Unit Configurations*

A bargaining unit that constitutes the entirety of a vertical structure of an employer's workforce, such as a department or division, is generally considered to be an appropriate bargaining unit. *State – Secretary of State*, Decision 12442 (PSRA, 2015). For example, in *Washington State University*, Decision 9613-A (PSRA, 2007), the Commission held that a vertical bargaining unit consisting of university's dining services employees was an appropriate bargaining unit. Additionally, bargaining units that encompass all employees in a single job class of an employer's workforce are horizontally structured bargaining units and are generally considered appropriate.

*See University of Washington*, Decision 8392 (PSRA, 2004). While Commission precedent favors bargaining unit configurations that are vertical or horizontal or consist of all employees of an employer's workforce, there is no absolute requirement that employees be organized in these fashions and neither horizontal nor vertical bargaining unit configurations are presumptively appropriate. *See State – Attorney General*, Decision 9951-A (PSRA, 2009). Provided justification under the unit determination criteria exists, other unit configurations are possible.

### Application of Standards

#### *Change in Circumstances*

The first step in the analysis is to determine whether the employer's petition is timely. The King County Council passed the ordinance creating the Metro Transit Department in 2018 and began the process of reorganizing the specific employees in question in January 2019. The employer filed its petition on August 5, 2019. The employer asserts that its petition is timely because the petition was filed within a reasonable time of the actual reorganization of employees. The TEA argues that the employer's petition concerning its bargaining unit positions is not timely because there has not been a recent change in circumstances that affected the employees it represents. The TEA also asserts that any changes resulting from the passing of the ordinance only occurred at the managerial level and did not meaningfully impact the duties, skills, and working conditions of the employees included in TEA's bargaining unit.

A reorganization does not need to impact the general duties of employees to constitute a change in circumstances. For example, in *King County*, Decision 11828 (PECB, 2013), *aff'd*, Decision 11828-A (PECB, 2013), the employer reorganized its information technology work force to consolidate those employees into a single department. Although the reporting structure for the impacted employees changed, employee duties did not change and many of the impacted employees did not move work locations. The Executive Director found, and the Commission agreed, that this kind of "paper" reorganization to constitute a change in circumstances that warranted review of the bargaining unit's continued appropriateness despite the minimal impact felt by the at-issue employees.

In this case, the creation of the Metro Transit Division and the reorganization of the employer's workforce constituted a similar change in circumstances that warrants review of the bargaining units impacted by the employer's change. The TEA represented employees that had once been included in the Department of Transportation's Design and Construction section were moved to an entirely new department and division and comingled with other represented employees. Furthermore, the reporting structure for the at-issue employees changed even though the reorganization did not change the general duties of the at-issue employees. The fact the day-to-day duties of the TEA represented employees were not substantially impacted by the reorganization does not mitigate the fact that other working conditions for those employees were substantially altered by the reorganization.

The employer also filed its petition within a reasonable period of the change in circumstances. In *King County*, Decision 11828 the start of the actual reorganization, and not the date of the passage of ordinance directing reorganization, was deemed the triggering date for the timeliness analysis. Applying that standard here, the employer began reorganizing its workforce in January 2019 and filed its petitions eight months later in August. The amount of time between the start of the reorganization and the filing of the unit clarification petition was reasonable. In *City of Auburn*, Decision 4880-A (PECB, 1995), the Commission overturned a hearing officer's ruling that a unit clarification petition was not timely because it was filed almost two years after the position at issue was created. The Commission stated that ensuring the appropriateness of existing bargaining units outweighed any claim of timeliness that may have existed. The Commission therefore signaled that the statutory requirement that bargaining units remain appropriate could supersede a claim that the unit clarification petition has not been timely filed, particularly where the evidence strongly suggests an inappropriate bargaining unit would result through inaction.

#### *Community of Interest*

Turning to the merits of the employer's petition, the duties, skills, and working conditions of the at-issue positions support maintaining the existing bargaining unit structure in these cases. The duties of the at-issue Project/Program Managers did not change resulting from the reorganization.

The employees continue to perform the same body of work and no work jurisdiction issues would be created if the current bargaining unit configurations were maintained.

The Project/Program Managers job series is a generic job title that serves as an entry level to advanced analytical and research work expert and technical resource for work teams. The positions typically work on projects involving interagency, interjurisdictional, or multidisciplinary coordination and public involvement to develop and/or implement analyses, plans, policies, budgets, systems, or technology. The Project/Program Managers responsibilities include analysis, research, planning, policy development, systems development, technology implementation, and program development and/or coordination. While the Project/Program Managers perform generally the same kinds of skills, their actual duties vary. In this employer's workforce, these positions specialize in a particular function or specialty and the work of one Project/Program Manager is not necessarily transferrable to another Project/Program Manager.

For example, the Project/Program Managers in the Project Control Office perform controls work, such as contracting and payments. The disputed Project/Program Managers in the Project Management Office control management performance, such as understanding the processes and requirements of the Capital Division and setting up systems to monitor and control performance of capital programs. While capital projects move in a distinct path across the entire Capital Division giving nearly every employee input on the project that was performed by these separate groups without issue prior to the reorganization.

The duties, skills, and working conditions of the TEA represented Administrative Support Specialists also support finding that the community of interest for these employees has not been disrupted. The TEA represented Administrative Support Specialists have no interaction with the other administrative employees in either the Capital Division or Metro Transit Department. The TEA represented Administrative Support Specialists are also included in work groups that include other TEA represented employees and have historically worked independently. These positions existed in separate bargaining units without work jurisdiction issues in the former Metro Transit Division. Nothing in this record suggests that work jurisdiction issues would be created if the Administrative Support Specialists maintained TEA representation.



The employer asserts that the work performed by the TEA represented Administrative Support Specialists is identical to the Transit Administrative Support Specialist positions represented by PROTEC17 and therefore these positions share a community of interest. Both job classes do perform general administrative duties, such as calendaring, developing agendas, writing meeting minutes, coordinating record retentions, purchasing items for the team, and editing documents. However, the similar duties do not, by themselves, create a presumption that the TEA represented Administrative Support Specialists share a community of interest with PROTEC17's administrative support bargaining unit.

The history of bargaining supports maintaining the existing bargaining unit configuration for the at-issue employees.<sup>6</sup> The record clearly establishes that the TEA has a long history of representing the at-issue employees when they were included in the Design and Construction bargaining unit. The TEA successfully negotiated collective bargaining agreements that covered both professional and office-clerical employees regardless of the kinds of work performed. The TEA also negotiates independently for the employees it represents and does not participate in coalition bargaining. Nothing in this record suggests that the employer, TEA, and PROTEC17 will not be able to continue the pattern of bargaining that they historically enjoyed.

The extent of organization in the employer's workforce demonstrates that the community of interest between the at-issue employees and TEA's bargaining unit has not been disrupted. The extent of organization among employees looks at the extent to which the employer's workforce is organized and compares the employees involved in the at-issue bargaining unit with the employer's overall workforce. *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 extent

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<sup>6</sup> The TEA's bargaining unit was established through voluntary recognition and therefore the existing bargaining history between the employer and the TEA is not binding. *See King County*, Decision 11441. The history of bargaining nevertheless provides a compelling factor demonstrating the at-issue employees maintain a community of interest with TEA's existing bargaining unit.

of organization in the Capital Division demonstrates a tendency towards a horizontally organized bargaining unit, but the Capital Division is not perfectly organized in this fashion. For example, the employees in the Transit Construction Management job class are all represented by the TEA while most, but not all, of the employees in the Project/Program Manager job class are represented by PROTEC17.

To support its argument for horizontal organization within the Capital Division, the employer cites to agency decisions that stand for the proposition that an inherent risk exists for vertically organized bargaining units following a change in circumstances. In *Cowlitz County*, Decision 1652-A (PECB, 1984), the executive director held that while a “‘departmental’ bargaining unit can be an appropriate bargaining unit within the meaning of RCW 41.56.060 . . . the parties to such a bargaining unit structure should expect to encounter some bargaining obligations and some unit determination problems at any time the employer finds it necessary or desirable to alter its table of organization.” The employer argues that the warning announced in *Cowlitz County* is readily applicable here as the employer has reorganized employees in both horizontal and vertical bargaining unit configurations. The employer asks this agency to use its unit determination authority to determine the appropriate bargaining units moving forward.

The employer’s argument that TEA’s bargaining unit is inappropriate following the d2D reorganization would hold merit if the reorganization created workforce jurisdiction issues amongst the at-issue employees. Those facts are critically lacking in these cases.

The evidence and testimony indicates that each work group in the Capital Division touches a capital project by providing input and analysis. The employer is not arguing, however, that the employees in the Capital Division perform a continuum of services and therefore should all be in the same vertical bargaining unit of all employees within the division. Instead, the employer is essentially conceding that the work performed by the TEA represented Transit Construction Engineer job class continues to share a community of interest with TEA’s existing bargaining unit. If the TEA represented Project Program Managers had a different job title that more accurately reflected the work those employees performed, as opposed to the generic job title they currently

hold, there would be no basis for removing those employees from the TEA's bargaining unit based upon a horizontal bargaining unit configuration.

The extent of organization also does not demonstrate that the community of interest for the Administrative Specialists has been disrupted. Previous Commission decisions have recognized that office-clerical employees are a class of employees for which a distinct tradition of separate representation exists. *See, e.g., Quincy School District*, Decision 3962-A (PECB, 1993). Nothing in the statute mandates such an outcome where no work jurisdiction issues have been created because of the reorganization. This case is distinguishable from other cases where the evidence demonstrated the office-clerical employees were part of an inappropriate bargaining unit. *Cf., e.g., King County*, Decision 11441 (PECB, 2012) (severing office-clerical employees from a larger mixed-class bargaining unit where the underlying bargaining unit was deemed inappropriate).

Finally, although "desires of the 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). The desires of employees are only ascertained through the election process. *Central Washington University*, Decision 9963-B.

### CONCLUSION

The TEA's bargaining unit continues to be appropriate following the employer's decision to create the Metro Transit Department and reorganize its work force. The duties, skills, and working conditions of the petitioned-for employees and extent of organization do not mandate a horizontal bargaining unit configuration because the transfer of the TEA represented employees to the Capital Division did not create work jurisdiction issues. The employer's request for clarification is denied.

### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(13).

2. The Technical Employees Association is a bargaining representative within the meaning of RCW 41.56.030(2).
3. PROTEC17 is a bargaining representative within the meaning of RCW 41.56.030(2).
4. Historically, the employer's transportation services were part of the Department of Transportation. In 2017, the directors of the Department of Transportation and Transit Division developed a plan for making the Metro Transit Department its own stand-alone department by 2019. The King County Council subsequently passed resolution 18777 which formally created the Metro Transit Department. The employer began implementing the d2D reorganization in January 2019.
5. The TEA represents a mixed-class bargaining unit that includes all the employees in the former Design and Construction section of the Department of Transportation. The employer voluntarily recognized this bargaining unit, which has not been certified by this agency.
6. Prior to the reorganization, PROTEC17's Professional and Technical bargaining unit was a mixed-class horizontal bargaining unit that included employees in specific job classes in certain departments of the employer's organization. When this agency certified the bargaining unit in 1996, it included all "professional and technical employees of the King County Transit Division and Transportation Planning Division" and specifically excluded employees in the Design and Construction section.
7. PROTEC17's Transit Administrative Support bargaining unit was originally certified as a mixed-class horizontal bargaining unit that included all employees in specific job classes across certain departments of the employer's organization.
8. The newly created Metro Transit Department includes several divisions, including Capital, Marine, Bus Operations, Transit Facilities, Rail Mobility, and Vehicle Maintenance. Following the d2D reorganization, the employer moved employees from various

bargaining units into the Metro Transit Department divisions. Employees from the TEA's Design and Construction bargaining unit and PROTEC17's Professional and Technical and Transit Administrative Support bargaining units were moved to the Metro Transit Department's Capital Division.

9. The Capital Division supports other Metro divisions and work groups by ensuring the divisions have the infrastructure necessary to meet service delivery and sustainability goals. Diane Carlson serves as the division's director. The Capitol Division includes two major subdivisions: Capital Planning & Portfolio Management and Capital Projects Delivery. Each subdivision is headed by an employee in the Transit Capital Section Manager job class. Various work groups make up each subdivision.
10. The Capital Planning & Portfolio Management Subdivision ensures coordinated capital planning efforts to meet Metro's service goals and strategic plan targets. Several workgroups are included in this subdivision. The Coordinated Portfolio Planning work group coordinates Metro's capital portfolios with the service, financial, and workforce planning efforts conducted outside the Capital Division. The Zero-Emission Fleet Strategic Planning position leads Metro's fleet electrification effort with a focus on its fixed-route bus fleet. The Fixed Asset Program Management—Facilities and State of Good Repair work group conducts program management for all departments physical assets, including the Operational Capacity Growth, Operational Facility Improvements, Comfort Stations, and Electric Vehicle Charging Stations programs. The Transit Real Estate and Environmental work group performs all real estate functions on Metro's behalf including the acquisition, management, and disposition of Metro's real estate assets.
11. The employer asserts the Administrative Specialist position in the Transit, Real Estate, and Environmental work group should be removed from that bargaining unit and placed in PROTEC17's administrative support bargaining unit.
12. The Capital Project Delivery subdivision manages, designs, and constructs Metro's funded projects and provides technical support to internal operations and maintenance clients and

external partners. The Capital Project Deliver subdivision includes three different teams: Engineering, Construction Management, and Project Management. The Transit Technology Project Management work group is also included in this subdivision.

13. The Transit Structural Engineering, Transit Electrical Engineering, and Transit Mechanical Engineering work groups make up the Engineering team. The employer asserts the Administrative Specialist position in the Engineering Team should be removed from TEA's Transit Division bargaining unit and placed in PROTEC17's Transit Administrative Support bargaining unit.
14. The Construction Offices I and II work groups make up the Construction Management Team. The employer asserts the Administrative Specialist position in the Construction Management Team should be removed from TEA's Transit Division bargaining unit and placed in PROTEC17's Transit Administrative Support bargaining unit.
15. The Vehicle Infrastructure, Facility Improvements & State of Good Repair and Speed & Reliability Improvements, Passenger Infrastructure & Regional Transit Integration work groups make up the Project Management team. The employer asserts the Administrative Specialist position in the Project Management Team should be removed from TEA's Transit Division bargaining unit and placed in PROTEC17's Transit Administrative Support bargaining unit.
16. The Project Controls, Management & Performance team is responsible for performance monitoring, budget and finance contract procurement, and process development. The team consists of the Project Control Office and Project Management Office work groups. In addition to the Project Control Office and Project Management Office work groups, the Capital Equity & Social Justice position and Green Building position are included in this team.

17. The Project Control Office performs control work, such as contracting and payments. The employees in this work group are in the Project Program Managers job class and are included in PROTEC17's professional and technical bargaining unit.
18. The Project Management Office controls management performance, such as understanding the processes and requirements of the Capital Division and setting up systems to monitor and control performance of capital programs. The employees in this work group are in the Project Program Manager job class and are included in the TEA's Transit Division bargaining unit. The employer asserts that the Project Program Managers in the Project Management Office should be removed from TEA's Transit Division bargaining unit and placed in PROTEC17's professional and technical bargaining unit.
19. The Capital Equity & Social Justice position and Green Building position are unique positions in the Project Management office. When planning a capital project, one of the tools used is a "sustainable infrastructure scorecard" that uses equity and social justice credits as a scoring element.
20. The Capital Equity & Social Justice position operationalizes equity and social justice into capital projects and is involved in all phases of projects, including two- and ten-year forecast planning, project planning, and works with the project teams to develop and follow an equity and social justice plan. An employee in the Project/Program Manager III job class currently holds the Capital Equity & Social Justice position and that position is represented by the TEA.
21. The Green Building position works in concert with the Capital Equity & Social Justice position but instead focuses on ensuring that green building elements are incorporated into the work projects. Similar to the Capital Equity & Social Justice position, the Green Building position uses a "sustainable infrastructure scorecard" that uses green building credits as a scoring element for capital projects. An employee in the Project/Program Manager III job class currently holds the Green Building position and that position is represented by PROTEC17 as part of its Professional and Technical bargaining unit.

22. The Project/Program Managers job series is a generic job title that serves as an entry level to advanced analytical and research work expert and technical resource for work teams. The positions typically work on projects involving interagency, interjurisdictional, or multidisciplinary coordination and public involvement to develop and/or implement analyses, plans, policies, budgets, systems, or technology. The Project/Program Managers responsibilities include analysis, research, planning, policy development, systems development, technology implementation, and program development and/or coordination. While the Project/Program Managers perform generally the same kinds of skills, their actual duties vary. In this employer's workforce, these positions specialize in a particular function or specialty and the work of one Project/Program Manager is not necessarily transferrable to another Project/Program Manager.
  
23. The TEA represented Administrative Support Specialists have no interaction with the other administrative employees in either the Capital Division or Metro Transit Department. The TEA represented Administrative Support Specialists are also included in work groups that include other TEA represented employees and have historically worked independently. These positions existed in separate bargaining units without work jurisdiction issues in the former Metro Transit Division. Nothing in this record suggests that work jurisdiction issues would be created if the Administrative Support Specialists maintained TEA representation.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-35 WAC.
  
2. Based upon findings of fact 4 through 23, the employees in the Project/Program Managers and Administrative Specialist job classes that are included in the bargaining unit described in finding of fact 5 continue to share a community of interest with that bargaining unit.



ORDER

King County's unit clarification petitions are DISMISSED.

ISSUED at Olympia, Washington, this 9th day of December, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", written over the printed name below.

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 12/09/2022

DECISION 13603 - 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 131969-C-19

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# RECORD OF SERVICE

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BY: DEBBIE BATES

CASE 131973-C-19

EMPLOYER: KING COUNTY

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