

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

CITY OF SUNNYSIDE

and

TEAMSTERS LOCAL 760

For clarification of an existing bargaining unit.

CASE 138997-C-24

DECISION 13884 - PECB

ORDER CLARIFYING BARGAINING
UNIT

Carl Keller, Business Agent, for Teamsters Local 760.

Jamison Horner, Finance Director, for the City of Sunnyside.

Teamsters Local 760 (union) represents a bargaining unit of public works and other employees at the City of Sunnyside (employer). *City of Sunnyside*, Decision 12296 (PECB, 2015). Among the other positions in the bargaining unit are a Building Inspector, Code Enforcement Officer, and Planner. The parties jointly filed a unit clarification petition to sever those positions into their own distinct bargaining unit continuing to be represented by the union.

The parties request to sever the Building Inspector, Code Enforcement Officer, and Planner into their own bargaining unit is granted. The parties agree that the current make-up of the bargaining unit is severely inhibiting the union's ability to represent the Building Inspector, Code Enforcement Officer, and Planner and that their community of interest to the bargaining unit has been ruptured.

BACKGROUND

The union represents a bargaining unit last described by this agency as:

All employees of the City of Sunnyside in the Code Enforcement, Building Inspector, Waste Water Treatment Operator, Waste Water Collection Technician, Waste Water Laboratory Technician, Water Systems Specialist, Maintenance Worker, and Mechanics Parks Work job classes, excluding confidential employees and all other employees.

City of Sunnyside, Decision 12296 (PECB, 2015). Since that clarification in 2015, the parties have voluntarily recognized and added the Planner, Fleet Maintenance Mechanic, Recreation Coordinator, and Facilities Maintenance Custodian positions to the bargaining unit.

With the exception of the petitioned-for employees, all the employees in the bargaining unit work outside, in the field, or in satellite buildings. They engage in manual labor associated with their area of expertise. They report to various sites throughout the city. These positions are routinely scheduled for shifts on nights or weekends and are often reporting for call-out overtime to address emergent needs.

The Code Enforcement Officers, Building Inspector, and Planner are located in City Hall, separated from the rest of the bargaining unit. While the Code Enforcement Officers, Building Inspector, and Planner may perform site visits or inspections, they spend a majority of their time working in City Hall. These positions do not perform manual labor like the rest of the bargaining unit.

The petitioned-for employees do not share the same interests as the rest of the bargaining unit. The petitioned-for employees' interests are routinely not accounted for in bargaining. Their divergent interests routinely impact bargaining. The parties' most recent collective bargaining agreement expired on December 31, 2023. The issues currently impacting negotiations over a successor contract do not impact or would not be available to the petitioned-for employees.

ANALYSIS

Applicable Legal Standard

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The purpose of this function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of chapter 391-35 WAC. The general purpose of the unit clarification process is to provide this agency, as well as the parties to a collective bargaining relationship, a mechanism to make changes to an appropriate bargaining unit based upon a change of circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981). Unit clarification proceedings can be used to determine the bargaining unit placement of newly created positions. WAC 391-35-020(1)(a).

Severance

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

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

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

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

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

Application of Standard

Severing the Code Enforcement Officers, Building Inspector, and Planner positions out of the current bargaining unit is appropriate because the community of interest of the existing bargaining unit has been ruptured. The two separate units are appropriate and no work jurisdiction issues will result.

There are several factors contributing to the rupture of the petitioned-for employees' community of interest to the bargaining unit. First, the employees perform very different work and in a very

different manner. The petitioned-for employees do not regularly perform night and weekend work like the rest of the bargaining unit. They are not frequently called out for overtime to deal with emergent issues. The petitioned-for employees largely work in the office, and they do not perform manual labor like the rest of the bargaining unit.

These differences inhibit the union's ability to represent the petitioned-for employees in a combined bargaining unit. The petitioned-for employees do not share the same interests as the rest of the bargaining unit. The petitioned-for employees' interests are routinely not accounted for in bargaining. Their divergent interests routinely impact bargaining. The parties' most recent collective bargaining agreement expired on December 31, 2023. The issues currently impacting negotiations over a successor contract do not impact or would not be available to the petitioned-for employees.

Separating the Code Enforcement Officer, Building Inspector, and Planner into a separate bargaining unit is appropriate. The existing bargaining unit shall be modified to remove the Code Enforcement Officer, Building Inspector, and Planner. Both bargaining units will continue to be represented by Teamsters Local 760. The public works bargaining unit will be described as:

All employees of the City of Sunnyside in the Recreation Coordinator, Facilities Maintenance Custodians, Fleet Maintenance, Waste Water Waste Treatment Operator, Waste Water Collection Technician, Waste Water Laboratory Technician, Water Systems Specialist, Maintenance Worker, and Mechanics Parks Work job classes, excluding confidential employees and all other employees.

The new separate bargaining unit will be described as:

All employees of the City of Sunnyside in the Code Enforcement Officer, Building Inspector, and Planner job classes, excluding confidential employees and all other employees.

FINDINGS OF FACT

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

2. Teamsters Local 760 is a bargaining representative within the meaning of RCW 41.56.030(2).

3. Teamsters Local 760 represents a bargaining unit currently described as:

All employees of the City of Sunnyside in the Code Enforcement, Building Inspector, Waste Water Treatment Operator, Waste Water Collection Technician, Waste Water Laboratory Technician, Water Systems Specialist, Maintenance Worker, and Mechanics Parks Work job classes, excluding confidential employees and all other employees.

4. Since 2015, the parties have voluntarily recognized and added the Planner, Fleet Maintenance Mechanic, Recreation Coordinator, and Facilities Maintenance Custodian positions to the bargaining unit.

5. With the exception of the Building Inspector, Code Enforcement Officers, and Planner, all the employees in the bargaining unit work outside, in the field, or in satellite buildings. They engage in manual labor associated with their area of expertise. They report to various sites throughout the city. These positions are routinely scheduled for shifts on nights or weekends and are often reporting for call-out overtime to address emergent needs.

6. The Code Enforcement Officers, Building Inspector, and Planner are located in City Hall, separated from the rest of the bargaining unit. While the Code Enforcement Officers, Building Inspector, and Planner may perform site visits or inspections, they spend a majority of their time working in City Hall. These positions do not perform manual labor like the rest of the bargaining unit.

7. The Code Enforcement Officers, Building Inspector, and Planner do not share the same interests as the rest of the bargaining unit. The Code Enforcement Officers, Building Inspector, and Planner interests are routinely not accounted for in bargaining. Their divergent interests routinely impact bargaining. The parties' most recent collective bargaining agreement expired on December 31, 2023. The issues currently impacting

negotiations over a successor contract do not impact or would not be available to the Code Enforcement Officers, Building Inspector, and Planner.

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 on findings of fact 3 through 7, the Code Enforcement Officers, Building Inspector, and Planner no longer share a community of interest with the bargaining unit described in finding of fact 3.

ORDER

1. The bargaining unit described in finding of fact 3 shall be clarified to remove the Code Enforcement Officer, Building Inspector, and Planner positions. These employees will be placed in a bargaining unit described as follows:

All employees of the City of Sunnyside in the Code Enforcement Officer, Building Inspector, and Planner job classes, excluding confidential employees and all other employees.

Teamsters Local 760 will continue to be the representative for the bargaining unit described in this paragraph.

2. The bargaining unit of public works employees shall be modified to remove the Code Enforcement Officer, Building Inspector, and Planner positions. The remaining bargaining units shall be described as follows:

All employees of the City of Sunnyside in the Recreation Coordinator, Facilities Maintenance Custodians, Fleet Maintenance, Waste Water Waste Treatment Operator, Waste Water Collection Technician, Waste Water Laboratory Technician, Water Systems Specialist, Maintenance Worker, and Mechanics Parks Work job classes, excluding confidential employees and all other employees.

Teamsters Local 760 will continue to represent the bargaining unit described in this paragraph.

ISSUED at Olympia, Washington, this 24th day of June, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MICHAEL E. 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 06/24/2024

DECISION 13884 - 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 138997-C-24

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