

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

CLARK COUNTY INFORMATION
TECHNOLOGY GUILD

For clarification of an existing bargaining unit
of employees of:

CLARK COUNTY

CASE 137653-C-23

DECISION 13905 - PECB

ORDER CLARIFYING BARGAINING
UNITS

Chris Wyrostek, Attorney at Law, Public Safety Labor Group, LLP, for the Clark County Information Technical Guild.

Sean Lemoine, Attorney at Law, Lemoine Legal Services, P.C., for the Clark County Sheriff's Office Support Guild.

Amanda Migchelbrink, Sr. Prosecuting Attorney, for Clark County.

On September 5, 2023, Clark County (employer) announced that it was reassigning two employees in the Department Information Systems Coordinator II (DISC) job class from the Sheriff's Office to the Information Technology Department (IT Department). At that time, the positions were in a bargaining unit of noncommissioned employees represented by the Clark County Support Officer's Guild (Support Guild). The employer moved the positions to the IT Department to ensure the implementation of technological best practices and cyber security standards. The employer's announcement noted that the "only change to the current DISC positions will be the employee(s) supervisory manager will now be the IT Manager. The affected employee(s) will see no change in location and no change to existing guild membership will be made, they will remain in the Sheriff's Office Support Guild." Most of the employees in the IT Department are in a bargaining unit represented by the Clark County Information Technology Guild (IT Guild).

The IT Guild disagreed with the employer's determination that the DISC positions should remain in the Support Guild's bargaining unit and asserted the positions should be moved to the IT Guild. The employer disagreed, and on September 22, 2023, the IT Guild filed this petition seeking clarification about the appropriate bargaining unit placement for the DISC positions. Hearing Officer Erin Slone-Gomez conducted a hearing on February 28, 2024. The employer and IT guild participated in the hearing and submitted post-hearing briefs on April 10, 2024, to complete the record. The Support Guild did not participate in the hearing and did not submit a brief.

The employer's decision to reorganize the DISC employees by assigning them to the IT Department represents a change in circumstances that disrupted the community of interest for the employees. The community of interest for the DISC employees now lies with the IT Guild's bargaining unit. The bargaining units shall be clarified to remove the at-issue DISC employees from the Support Guild's bargaining unit and place those positions in the IT Guild's bargaining unit.

BACKGROUND

Clark County employs approximately 1700 staff divided among 19 departments. Twelve of these departments report to the County Manager and seven report to elected officials.¹ Most of the information technology work is performed by employees working for the IT Department who report to the County Manager.

The Bargaining Units

At the time of the petition, the IT Department included approximately 64 employees, including the two employees in the DISC job class that are subject to this petition. Seven employees in the department are unrepresented, including the Director Mike Sprinkle, four managers, and two assistants to the Director. All other employees in the IT Department are represented by the IT

¹ In 2021-2022, the jail services work was moved from the Sheriff's Office to the county services departments overseen by the County Manager.

Guild. The IT Guild's bargaining unit is currently defined as "All full-time and regular part-time employees in the Clark County Department of Information Technology and the Joint Office of Information Technology, excluding supervisors and confidential employees." *Clark County*, Decision 6151-A (PECB, 1997); *see also Clark County*, Decision 7233 (PECB, 2000).

The Sheriff is an elected official who directs the work at the Sheriff's Office. The Sheriff is aided by an Undersheriff who oversees both the commissioned and noncommissioned staff members. The Support Guild represents a bargaining unit of noncommissioned support positions and is currently defined as "All full-time and regular part-time non-commissioned employees of the Clark County Sheriff's Department, excluding elected officials, supervisors, confidential employees, commissioned law officers and correctional officers." *Clark County*, Decision 5960 (PECB, 1997). The Support Guild's bargaining unit includes employees in the Cadet, Civil Division Supervisor, Crime Analyst, Food Services Coordinator, Jail Industries Coordinator and Supervisor, Logistics Assistant, Program Assistant, Property Technician, Accounting Specialists, Legal Assistant, Support Specialists and Supervisor, and Health and Safety Coordinator job classes.

The DISC Job Class

Generally, employees in the DISC job class develop and manage a county work unit's or department's use of specialized PC-resident computer systems. Employees in the DISC job class design or customize software based upon established standards to fit the needs of that department and oversee the use and operation of the system. The positions assist staff with the system and serve as liaison between department staff and the IT Department. The positions are also responsible for assisting departmental staff in understanding and working with county-wide systems provided through the IT Department. These responsibilities necessitate an understanding of the processes of each department and comprehensive knowledge of the capabilities of the commonly available computer software and departmentally-developed systems.

There are approximately 16 employees in the DISC job class across the employer's workforce. Historically, none of DISCs were included in the IT Department. Sprinkle testified that about half

of the DISC positions are not particularly technical in nature and the classification has been used as a catch all job class in certain departments.

The two DISC positions formerly housed in the Sheriff's Office are technical in nature. The two at-issue DISC positions support two different departments – the Sheriff's Office and Jail Services. In contrast, none of the other DISC positions support more than the department in which they are housed. Sprinkle testified that this multiple department support was one of the reasons he believed the reallocation to the IT Department was appropriate. Sprinkle also testified that he hopes to move all the technical DISC positions to the IT Department and that the two positions in the Sheriff's Office are the first to move. The DISC positions in the Sheriff's Office do not work with other DISCs at the county.

At the time of the hearing the other DISCs, who are members of five other bargaining units or are not represented were paid two percent more in accordance with their collective bargaining agreements (CBA) or according to employer policy. The Support Guild and employer were still in CBA negotiations at the time of the hearing. There are other differences in compensation based on the parties' CBA such as holidays. Both members of the Support Guild and the IT Guild are subject to background checks as a condition of their employment, however the DISCs review is more in-depth.

In 2023, an incident occurred that compromised the employer's cybersecurity. As a result, the employer reviewed the DISC positions working at the Sheriff's Office. The employer determined that those positions and one unrepresented Program Manager position should move to the IT Department and be dedicated back to the Sheriff's Office through a staffing operational agreement. The Sheriff's Office and Information Technology Department entered into an operational agreement where the two DISC positions represented by the Support Guild and the program manager would be moved to the IT Department and then dedicated back to the Sheriff's Office. These positions are managed by the IT Department, but the work performed by these positions is specific to the Sheriff's Office and Jail Services.

Following the decision to move the two DISC positions to the IT Department, the position held by Kiki Lam now reports to IT Manager Chris McCombs and the DISC position held by Ben Miles reports to IT Manager Jodie Toliver. At the time of the hearing, Miles had been promoted to a different IT position, also within the IT Department, and the DISC position was vacant. Miles's former work was being done by Lam and Monaghan.

Lam testified that his work has not appreciably changed since moving to the IT Department. Lam also testified that he now has increased authorization and access to resources he did not previously have when he was in the Sheriff's Office. Lam also participates in team meetings with other IT Department staff, in addition to his previous meetings with records staff in the Sheriff's Office and jail services staff in the Jail Services Department. McCombs performed Lam's most recent performance evaluation and Lam testified that he had not received a performance evaluation when he was in the Sheriff's Office. McCombs authorizes Lam's requests for leave and the Sheriff's Office is not consulted. Lam has not moved offices and continues to work in the Sheriff's Office.

When the Sheriff's Office managed the DISCs, if a DISC was on leave the other DISC or the program manager would cover their work duties. Other employees represented by the Support Guild staff did not provide coverage for the DISC positions. Sprinkle may ask other employees in the IT Department to cross train or familiarize themselves with the at-issue DISC's work. Sprinkle also indicated that he was not concerned about the appropriate bargaining unit of these positions. However, Sprinkle also testified that he reviewed the support guild's collective bargaining agreement and expressed concern about his ability to supervise employees if the ability to address employee performance was restricted to a different department.

ANALYSIS

Applicable Legal Standard

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. RCW 41.56.060; *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), *rev. denied*, 96 Wn.2d 1004 (1981). 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).

This agency's role is to determine whether there is *a* community of interest, not what the *best* community of interest is. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render another configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015) (citing *Snohomish County*, Decision 12071 (PECB, 2014); *City of Winslow*, Decision 3520-A (PECB, 1990)).

In examining the community of interest for the purpose of making bargaining unit determinations, this agency 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. Bargaining unit determinations are made on a case-by-case basis, and the criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). Not all of the factors will arise in every case, and where they do exist, 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).

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 clarifications 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, with 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).

Generally, established bargaining units present a stability and maturity that lead to sound labor relations. *City of Grand Coulee*, Decision 13806 (PECB, 2024). A unit clarification petition disrupts that status quo and stability. Accordingly, a unit clarification petition requires a recent, meaningful change in circumstances that alters the existing community of interest such that clarification is necessary. WAC 391-35-020.²; *University of Washington*, Decision 10496-A (PSRA, 2011) (citing *City of Richland*, Decision 279-A); *South Sound 911*, Decision 13736 (PECB, 2023). A change in circumstances is meaningful if the bargaining unit is no longer appropriate without clarification. The question is not whether the purported changes result in other or more appropriate unit configurations. The question is whether the bargaining unit remains appropriate. If the bargaining unit remains appropriate, clarification under this process is not required. In conducting this examination, the agency applies the same statutory unit determination criteria as RCW 41.80.070, which is used to establish the unit's initial appropriateness. *See South Sound 911*, Decision 13736.

Among the types of changes that can alter an existing community of interest and necessitate clarification are meaningful changes to job duties, reorganization of the workforce, or other significant changes to the workplace environment. *See Lewis County (Teamsters Local 252)*, Decision 6750 (PECB, 1999). 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.

When modifying bargaining units, this Commission is mindful that a close relationship exists between a bargaining unit and the work jurisdiction of that bargaining unit. *Port of Seattle (Seattle/King County Building and Construction Trades Council and HOD Carriers and Gen Laborers Local 242)*, Decision 6181 (PORT, 1998) (citing *South Kitsap School District*, Decision 472 (PECB, 1978)). If an employer assigns new work to employees in a bargaining unit, that work

² In accordance with WAC-391-35-020(4)(c), parties may waive the timeliness requirement of WAC 391-35-020(4)(a).

becomes historical bargaining unit work unless there is a prior agreement between the employer and the exclusive bargaining representative to make the transfer of work temporary. *State – Social and Health Services*, Decision 9551-A (PECB, 2008) (citing *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001)). If a question exists regarding the assignment of new work or the reassignment of existing work to another bargaining unit following a meaningful change in circumstances, the unit clarification process is the proper forum to resolve the long-term placement of that work. *Clallam County Fire District 3*, Decision 12587 (PECB, 2016).

Application of Standard

The employer's decision to reorganize its information technology employees by moving the at-issue DISC employees to the IT Department will result in a single line of supervision, some degree of integration of the work, and expanded opportunities for the DISCs. The consolidation constitutes a meaningful change in circumstances that will alter the community of interest between the DISCs and the Support Guild's bargaining unit. Accordingly, clarification of the bargaining units is necessary.

The employer's decision to reorganize the DISC positions sufficiently altered the community of interest warranting a revision of the existing bargaining units. The DISCs no longer share a community of interest with the Support Guild's bargaining unit. The DISC positions now share a community of interest with the IT Guild and would be appropriately included in that unit. The DISCs perform Information Technology duties that harmonize with the duties of the other information technology employees in the IT Guild's bargaining unit. The IT Guild's bargaining unit consists of staff who complete IT functions. All employees in the Information Technology Department are subject to the same working conditions and lines of supervision. The DISC II positions, which are technical in nature and now have greater access to IT tools and increased authorization like the other IT-related positions in the IT Guild bargaining unit. Sprinkles also plans on integrating the duties performed by the DISCs with other employees in the IT Department through cross training of duties. One of the at-issue DISCs, Miles, took a different information technology job within the IT Department. Conversely, the Support Guild consists of a number of employees who complete a wide variety of tasks and who are grouped into a bargaining unit

because they are employed by the Sheriff's Office, report to Sheriff's Office employees, and are in noncommissioned positions.

The change announced by this employer is similar to other instances where this agency reviewed the community of interest of bargaining units following reallocations or reorganization. In *University of Washington*, Decision 13888 (PSRA, 2024), the university's Cardiac Monitoring Technician (CMT) work was performed at three different hospitals. The CMTs at each location were in separate bargaining units represented by different bargaining representatives. The university announced that it intended to reorganize and consolidate the CMT work to a new facility at one of the hospitals and filed a petition to have all of the CMTs moved to the bargaining unit where the new facility was located. The consolidation of the CMTs into a single location resulted in a single line of supervision, some degree of integration of the work, training on all equipment used by the CMTs, and expanded opportunities for the CMTs. Accordingly, all of the CMTs were moved to the bargaining unit represented by the union where the new facility was located.

In contrast, in *Washington State Department of Natural Resources*, Decision 13891 (PSRA, 2024), the employer's reallocation of employees to positions not included in the existing bargaining unit's job class based unit description did not warrant removal to a residual bargaining unit. In that instance, the position continued to perform the same work at the same location with the same supervisory structure as before the reallocation.

The configuration of the IT Guild's and Support Guild's bargaining units have been crafted also supports a conclusion that the DISCs belong in the IT Guild's bargaining unit. When crafting bargaining units, this agency ensures that an employee or group of employees is not stranded in a unit too small to effectively exercise their right to collectively bargain. *Washington State University*, Decision 10115 (PSRA, 2008). Both bargaining units are configured vertically and include all employees in either the IT Department or Sheriff's Office. If the DISCs were kept in the Support Guild following the reorganization, they would be the only employees in the Sheriff's Office who are supervised by the IT Department while the IT Guild bargaining unit would contain two illogical exceptions. This would disrupt the existing pattern of representation. The IT

Department's leadership would also be limited as to how they utilize DISC employees and cross-train other IT Department employees due to work jurisdiction concerns.

The fact that the DISCs did not physically move work locations does not provide support for keeping the existing bargaining unit configurations. In *King County*, Decision 11828 (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. That kind of "paper" reorganization constituted a change in circumstances that warranted review of the bargaining unit's continued appropriateness despite the minimal impact felt by the at-issue employees and the at-issue employees were consolidated into a single information technology bargaining unit. *Id.* The facts of this case are almost identical, and the employer has changed the reporting structure and integrated the DISCs with the other employees in the IT Department without physically moving the employees' location.

CONCLUSION

The IT Guild's request for clarification is granted because the change to the DISC's reporting structure means the DISCs share a more appropriate community of interest with the IT Guild than the Support Guild. The Support Guild's bargaining unit will be clarified to no longer include the two DISC positions and the IT Guild's bargaining unit will be clarified to include the two DISC positions.

FINDINGS OF FACT

1. Clark County is a public employer within the meaning of RCW 41.56.030(13).
2. The Clark County Information Technology Guild (IT Guild) is bargaining representative within the meaning of RCW 41.56.030(2).

3. The Clark County Sheriff's Office Support Guild (Support Guild) is a bargaining representative within the meaning of RCW 41.56.030(2).
4. The IT Guild represents a bargaining unit that is currently defined as "All full-time and regular part-time employees in the Clark County Department of Information Technology and the Joint Office of Information Technology, excluding supervisors and confidential employees."
5. The Support Guild represents a bargaining unit of noncommissioned support positions and is currently defined as "All full-time and regular part-time non-commissioned employees of the Clark County Sheriff's Department, excluding elected officials, supervisors, confidential employees, commissioned law officers and correctional officers."
6. The Support Guild's bargaining unit includes two employees in the Department Information Systems Coordinator II (DISC) job class.
7. Employees in the DISC job class develop and manage a county work unit or department's use of specialized PC-resident computer systems. Employees in the DISC job class design or customize software based upon established standards to fit the needs of that department and oversee the use and operation of the system. The positions assist staff with the system and serve as liaison between department staff and the IT Department. The positions are also responsible for assisting departmental staff in understanding and working with county-wide systems provided through the IT Department.
8. In 2023, an incident occurred that compromised the employer's cybersecurity. As a result, the employer reviewed the DISC positions working at the Sheriff's Office and determined that those positions and one unrepresented Program Manager position should move to the IT Department and be dedicated back to the Sheriff's Office through a staffing operational agreement. These positions are managed by the IT Department, but the work performed by these positions is specific to the Sheriff's Office and Jail Services.

9. Following the decision to move the two DISC positions to the IT Department, the position held by Kiki Lam now reports to IT Manager Chris McCombs and the DISC position held by Ben Miles reports to IT Manager Jodie Toliver. At the time of the hearing, Miles had been promoted to a different IT position, also within the IT Department, and the DISC position was vacant. Miles's former work was being done by Lam and Monaghan.
10. Lam testified that his work has not appreciably changed since moving to the IT Department. Lam also testified that he now has increased authorization and access to resources he did not previously have when he was in the Sheriff's Office. Lam also participates in team meetings with other IT Department staff, in addition to his previous meetings with records staff in the Sheriff's Office and jail services staff in the Jail Services Department. McCombs performed Lam's most recent performance evaluation and Lam testified that he had not received a performance evaluation when he was in the Sheriff's Office. McCombs authorizes Lam's requests for leave and the Sheriff's Office is not consulted. Lam has not moved offices and continues to work in the Sheriff's Office.
11. When the Sheriff's Office managed the DISCs, if a DISC was on leave the other DISC or the program manager would cover their work duties. Other employees represented by the Support Guild staff did not provide coverage for the DISC positions. Sprinkle may ask other employees in the IT Department to cross train or familiarize themselves with the DISC's work. Sprinkle also indicated that he was not concerned about the appropriate bargaining unit of these positions.

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 6 through 11, the DISC employees described in finding of fact 5 share a community of interest with the bargaining unit represented by the IT Support Guild described in finding of fact 3.

ORDER

1. The employees in the DISC job class described in finding of fact 5 shall be added to the bargaining unit represented by the IT Support Guild described in finding of fact 3 without the need of an election.
2. The bargaining unit represented by the IT Support Guild shall continue to be described as:

All full-time and regular part-time employees in the Clark County Department of Information Technology and the Joint Office of Information Technology, excluding supervisors and confidential employees.

ISSUED at Olympia, Washington, this 11th day of July, 2024.

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 07/11/2024

DECISION 13905 - 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 137653-C-23

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