



Agenda Submittal

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Type: CSC-Document **Department:** Civil Service Commission

File #: CSC 19-0008 **Contact:** Marc Fox, 784-2552

Agenda date: 2/6/2019 **Final action:**

Title: Conduct a hearing and render a decision for a “community of interests” determination for a bargaining unit modification (Executive and Senior Management)

Governing body: Civil Service Commission

District:

Attachments: 1. A - October 29 2018.pdf, 2. B - November 2 2018.pdf, 3. C - December 2 2018.pdf, 4. D - December 20 2018.pdf, 5. E - January 7 2019.pdf

Date	Ver.	Action By	Action	Result
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HUMAN RESOURCES' RECOMMENDATION

The Director of Human Resources recommends that the Civil Service Commission finds that a “community of interests” does not exist for the requested bargaining unit modification requested by the Professional & Technical Engineers, Local 21, representing the County’s Unit 19 - Executive and Senior Management.

SUMMARY

On October 29, 2018, the Professional & Technical Engineers, Local 21, representing the County’s Unit 19 - Executive and Senior Management submitted a proposed bargaining unit modification to the Director of Human Resources. The Executive and Senior Management bargaining unit wishes to amend the composition of the existing bargaining unit by adding the classification of Compliance & Quality Assurance Analyst.

On November 2, 2018, the Director of Human Resources acknowledge receipt of the petition and the accompanying three (3) union membership cards. The Director of Human Resources stated he was evaluating the petition and asked that any additional information the union’s representative wished to provide which clarifies, defines, elaborates or otherwise explains why the proposed unit modification is appropriate and has a community of interest with the Executive and Senior Management bargaining unit should be received by November 2, 2018. The union’s representative did not submit additional information.

On December 2, 2018, the Director of Human Resources notified the union’s representative that the requested unit modification does not establish a community of interests with the Executive and Senior Management bargaining unit and, accordingly, the petition is denied.

On December 20, 2018, the bargaining unit appealed to the Civil Service Commission.

On January 7, 2019, the Director of Human Resources notified the union’s representative that the Commission would conduct a hearing on the matter on February 6, 2019. The letter also outlined the hearing process (described in the next paragraph)

On January 4, 2015, the Civil Service Commission established the following hearing process:

- Staff presentation

- Appellant (or representative) presentation, limited to 20 minutes
- Comments from the public or any interested parties, limited to 3 minutes (individual) or 5 minutes (organization)
- Appellant, limited to 10 minutes
- Staff making any additional comments
- The President of the Commission may extend additional time for presentations/comments
- Discussion by the Commission; decision by the Commission
- Commission vote on the issue of whether there is a sufficient community of interest between the classifications to be moved to a new bargaining unit

DISCUSSION

Submitted Petition

On October 29, 2018, the Professional & Technical Engineers, Local 21, representing the County's Unit 19 - Executive and Senior Management submitted a proposed bargaining unit modification to the Director of Human Resources. The request is to remove from Unit 30 - Confidential Employees to Unit 19 - Executive and Senior Management the classification of Compliance & Quality Assurance Analyst. The petition identified the following reasons for the unit modification:

- The classification [Compliance and Quality Assurance Analyst] is a professional-level classification. IFPTE Local 21 is a union of professionals in Solano County as well as throughout the Bay Area.
- The incumbents serve at the discretion of the Appointing Authority and are currently designed "at-will" (civil service exempt), which is in line with other classifications represented by IFPTE Local 21 in Solano County.
- The classification is designed as FLSA-exempt and the incumbents receive administrative leave in lieu of overtime pay, which is in line with other classifications represented by IFPTE Local 21 in Solano County.
- Incumbents to the Compliance and Quality Assurance Analyst classification work in close proximity to and in collaboration with other Local 21-represented classifications and employees in Solano County.
- The minimum qualifications for the classification are within the range typical of classifications represented by IFPTE Local 21 in Solano County. Specifically, the incumbents must have a minimum of a Bachelor's degree and experience in the field.
- The incumbents are required to attain and maintain special certifications necessary for carrying out official duties. This, too, is a common requirements of incumbents to Local 21-represented classifications.
- The classification's prescribed benefits are roughly in line with other classifications represented by IFPTE Local 21 in Solano County.

Community of Interest Checklist

The Public Employment Relations Board ("PERB") issued a checklist in 1987 to assist in the evaluation of a community of interests. To help prompt the thinking of whether a community of interests exists, the employer or union could consider:

A. Job Duties

1. Describe the duties of the employees at issue.
2. Describe the similarities in the types of work performed by the employees.

3. Do part-time employees perform job duties similar to those of full-time employees?
4. Are any employees performing the same kind of work as employees excluded from the proposed unit?
5. Do any employees require special equipment or uniforms in the performance of their duties?

B. Qualifications/Training/Skills

1. Describe the educational background, training or other qualifications (including licensing or certification) required.
2. Describe the skills required for the positions or classifications in the proposed unit.
3. Do certain jobs require particularized training in a specific area (e.g., plumbing, carpentry, etc.)? Do any of the jobs at issue require a formal apprenticeship program?

C. Work Location

1. Where do employees report to work? Describe the similarities/differences in the physical work environments.
2. Do any employees work at remote worksites?
3. Are there quarantined or security sections of some work locations?

D. Hiring/Supervision/Discipline

1. By what method are the employees hired? Do they have probationary periods?
2. Describe the supervisory structure of the employer. Do employees have common lines of supervision?
3. Do they have similar reporting relationships with higher authority?
4. Describe the system(s) for assignment of work for the employees.
5. Are the employees subject to similar personnel practices?
6. Are the employees subject to similar grievance and/or disciplinary procedures?

E. Integration/Interchange

1. Describe the inter-relationship of the employees' work functions. Are the work functions dependent upon each other, or is the work separate and unrelated? Is an employee in one job able to fill in for or replace an employee who is absent or late?
2. Describe the degree of daily contact among the employees.
3. Are the employees eligible for promotions/transfers to other positions with the employer? Are transfer, job training and upward mobility programs similar?
4. Do the employees have similar degrees of interaction with students?
5. Are there common areas where employees meet, such as lunch rooms, break rooms, etc.? Do these areas have limited access? Do employees share parking facilities?
6. Are skills learned in one job transferable to other jobs?

F. Wages and Hours

1. Describe the method(s) of compensation for employees. Are there major differences? Are they paid on a salary or hourly basis? What is the funding source for this compensation.
2. Describe the pay periods used. Weekly? Semi-monthly? Monthly?
3. Describe the rates of pay in the proposed unit. Is there an established salary schedule? Is there a system of automatic salary progression?
4. Is the compensation for part-time or substitute employees determined as a proportion of that received by regular full-time employees?
5. Describe the method(s) of overtime payment among the employees. Are there differences?
6. What are the established hours or shifts of employment? Are they similar to other employees?
7. Do part-time or substitute employees work the same hours as regular employees? Do they work at the same time of day?
8. Are employees employed on a 12-month or part-time basis? Describe the differences in work-year lengths.

9. Are employees subject to employment contracts? Similar contract lengths?
10. Do employees maintain a similar expectation of continued employment?
11. Do employees have similar availability of extra duty or overtime assignments?
12. Are employees similar in their eligibility for supplemental pay?

G. Fringe Benefits

1. Are employees covered by the same benefit plans (e.g., health insurance, sick leave, retirement plans, vacations, etc.)?
2. Do substitute or part-time employees receive the same fringe benefit coverage or the proportional equivalent?
3. Are employees covered by similar layoff provisions and/or seniority lists?
4. Are employees similar in their ability to accumulate leaves and other benefits?

Review of the Submitted Petition for Unit Modification

Presumably, Unit 19 wishes to represent both the Compliance & Quality Assurance Analyst and the entry-level Compliance and Quality Assurance Analyst (entry) . The following analysis is for both of these classifications. The union's representative was advised that the petition failed to include the entry-level classification and that the Director of Human Resources would need specific, detailed information as to why Unit 19 believes the entry-level and the journey-level classifications have different community of interests. No information was received from the union's representative and the Director of Human Resources' analysis was for both the Compliance & Quality Assurance Analyst and the Compliance & Quality Assurance Analyst (entry).

Professional and Technical Engineers, Local 21 represents the County's bargaining Unit 19 - Executive and Senior Management. Bargaining Unit 19 was established on December 12, 2012 and has been represented exclusively by Professional and Technical Engineers, Local 21 since that date.

In the union's initial petition for representation dated September 18, 2012 and in the union's amended petition dated December 3, 2012, the union deliberately excluded the Compliance Officer classification. As noted in the union's December 3, 2012 cover letter:

You will find that Local 21 modified the petition to include those vacant classifications that departments no longer utilize but are appropriately assigned to this proposed bargaining unit and **excluded those classifications that do not reflect the established criteria of the proposed bargaining unit.** [emphasis added]

Those positions excluded for the union's 2012 petition were department directors, assistant department directors (or those classifications which serve in a similar capacity), and positions involved in labor relations (i.e., confidential positions). One such classification was the Compliance Officer.

The County first established the Compliance & Quality Assurance Analyst classifications in 2014. On April 21, 2014, the Director of Human Resources wrote to all recognized employee organizations, which includes Unit 19, advising that he had made the following classification representation unit determinations:

- Compliance & Quality Assurance Manager to Unit 62 - unrepresented senior management
- Deputy Compliance & Quality Assurance Manager to Unit 62 - unrepresented senior management
- Compliance & Quality Assurance Analyst to Unit 30 - confidential employees
- Compliance & Quality Assurance Analyst (entry) to Unit 30 - confidential employees

Included in this April 21, 2014 letter was:

“It is my determination that these four new classifications share a community of interests with the existing Compliance Officer classification and other unrepresented employees. Their work, for example, includes conducting and/or coordinating investigations of alleged violations of the compliance-related laws and/or the Code of Conduct and makes recommendations for corrective actions. Other unrepresented employees have a similar role in the employer-employee relations arena.”

The union did not contest the placement of these four classifications into the above-identified bargaining units.

However, in late 2014, a unit modification petition was timely received asking that the Deputy Compliance & Quality Assurance Manager be placed into Unit 19 - Executive and Senior Management. Following a review by the Director of Human Resources, the unit modification petition proceeded and the classification was placed within this bargaining unit on April 12, 2015.

In 2014, like the earlier 2012 petition and the April 2014 notice, Unit 19 - Executive and Senior Management, specifically excluded from this late 2014 unit modification petition the classifications of Compliance & Quality Assurance Manager, Compliance & Quality Assurance Analyst, and Compliance & Quality Assurance Analyst (entry).

It is the Director of Human Resources that the Compliance & Quality Assurance Analyst and the Compliance & Quality Assurance Analyst (entry) do not share a community of interest with classifications represented in Unit 19 - Executive and Senior Management, based on the following:

Rationale from Unit 19: The classification [Compliance & Quality Assurance Analyst] is a professional-level classification. IFPTE Local 21 is a union of professionals in Solano County as well as throughout the Bay Area.

Director of Human Resources’ analysis:

The County’s Employer-Employee Relations Rules and Regulations (EERRR) defines “professional employees” as:

“Employees engaged in work requiring specialized knowledge and skills attained through completion of a prolonged course of specialized intellectual introduction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, or the various types of physical, chemical, and biological scientists.” (EERRR, Section 2, Definitions, item U.)

While IFPTE Local 21 may be a union which includes professionals, the union specifically represents Executive and Executive Management and does not exclusively represents “professionals.” As example:

- SEIU, Local 1021 represents Unit 7 (Regulatory, Technical and General Services) which includes, as examples, Agricultural Biologists/Weights & Measures Inspectors, Auditor-Appraisers, Civil Engineers, Librarians, and others.
- Union of American Physicians and Dentists represents Unit 11 (Psychiatrists, Physicians and Dentists); and
- Association of Mid-Management Professionals at Solano County represents Unit 16 (Mid-Management).

Said differently, IPFTE Local 21 represents a portion, but not exclusively, those job classifications

which may be viewed as professionals. The determining/defining factor, therefore, is not based on the professional status of its incumbents.

Rational from Unit 19: The classification is designated as FLSA-exempt and the incumbents receive administrative leave in lieu of overtime pay, which is in line with other classifications represented by IFPTE Local 21 in Solano County.

Director of Human Resources' analysis:

IFPTE Local 21 is partially incorrect. Individuals employed as Compliance & Quality Assurance Analyst (Entry) do not receive administrative leave but rather receive overtime or compensatory time off for additional worked time.

There are neither any entry-level positions within Unit 19 - Executive and Senior Management, nor are there any flex-promotion classifications.

Working beyond the 40 hour work week and not receiving overtime/compensatory time off is not exclusive to senior and executive management classifications. As example:

- attorneys (Teamsters, Local 150 - Unit 1 Attorneys) do not receive overtime or compensatory time off;
- information technology classifications (SEIU, Local 1021 - Unit 7 Regulatory, Technical and General Services) do not receive overtime or compensatory time off;
- doctors, dentists and psychiatrists (UAPD - Unit 11 Psychiatrists, Physicians and Dentists) do not receive overtime or compensatory time off;
- mid-management classifications (Association of Mid-Management Professionals at Solano County or AMMPS - Unit 16 Mid-Management) do not receive overtime or compensatory time off; and
- select safety classifications do not receive overtime or compensatory time off.

Rationale from Unit 19: Incumbents to the Compliance & Quality Assurance Analyst classification work in close proximity to and in collaboration with other Local 21-represented classifications and employees in Solano County.

Director of Human Resources' analysis:

Compliance & Quality Assurance Analysts develop and/or revise procedures and operational guidelines in conjunction with program staff, meet with employees, supervisors, managers, contractors, service providers, clients, etc. to identify strengths/weaknesses of the organization and customer satisfaction of services, provide technical assistance and support to supervisors and staff, and make contact with employees in other departments within the County and with other employees in other counties and in state and federal agencies regarding compliance review and quality management activities.

Similarly, classifications within a large number of other bargaining units also have an interface (collaboration) with employees, supervisors, managers, contractors, service providers, clients, etc. The mere working relationship of the Compliance and Quality Assurance Analysts with management employees is not unique and is not compelling for the reclassification of these two confidential classifications to management-level classifications (i.e., move them to Unit 19 - Executive and Senior Management).

Rationale from Unit 19: The minimum qualifications for the classification are within the range typical of classifications represented by IFPTE Local 21 in Solano County. Specifically, the incumbents must have a Bachelor's degree and experience in the field.

Director of Human Resources' analysis:

The journey-level Compliance & Quality Assurance Analyst classification requires a Bachelor's degree in accounting, business administration, finance, health administration, public administration, social work, or a closely related field plus two years of relevant work experience.

As examples, within SEIU Local 1021, Unit 7 - Professional, Technical & General Services:

- Accountant requires a bachelor's degree plus two years of professional accounting experience
- Accountant-Auditor requires a bachelor's degree plus two years of professional accounting or auditing experience
- Health Education Specialist requires a bachelor's degree plus one year of related experience
- Planner Associate requires a bachelor's degree plus two years of professional planning experience

As examples, within AMMPS, Unit 16 - Mid-Management:

- Project Manager requires a bachelor's degree plus three years of professional related experience
- Staff Analyst requires a bachelor's degree plus one year experience as a Staff Analyst (Entry)

No doubt, other examples of classifications outside of Unit 19 - Executive and Senior Management can be identified.

Further, these two compliance/quality assurance classifications can be further distinguished from classifications within Unit 19 - Executive and Senior Management, as Unit 19 classifications, typically, require more years' experience. For example:

- Administrative Services Manager requires a bachelor's degree plus five years of progressively responsible experience
- Airport Manager requires a bachelor's degree plus three years of progressively responsible experience
- Animal Care Manager requires a bachelor's degree plus four years of experience
- Capital Projects Manager requires a bachelor's degree plus five years of experience
- Central Services Manager requires an Associates degree plus four years of procurement experience

A continued review of the balance of the alphabetical listing of Unit 19-represented classifications would no doubt find other classifications where multiple years of required work experience is required.

Rational from Unit 19: The incumbents are required to attain and maintain special certifications necessary for

carrying out official duties. This, too, is a common requirements of incumbents to Local 21-represented classifications.

Director of Human Resources' analysis:

Within one year of appointment, an employee within either Compliance and Quality Assurance Analyst classifications is required to possess a Healthcare Compliance Certificate from the Health Care Compliance Certification Board.

Some classifications within Unit 19 - Executive and Senior Management, require the possession of a certificate; however, Unit 19 is not the exclusive bargaining unit that requires individual employees to maintain possession of a specific license or certification. As examples:

- attorneys (SEIU Local 1021, Unit 1) require the continued possession of a California State Bar Association license;
- appraisers (SEIU Local 1021, Unit 7) required the continued possession of a California State Board of Equalization Appraiser's certificate;
- Agricultural Biologist/Weights and Measures Inspectors (SEIU Local 1021, Unit 7) requires specific category licenses from the California Department of Food and Agriculture;
- Building Inspector II (SEIU Local 1021, Unit 7) requires possession of ICC Plumbing, Building Inspector and Mechanical Inspector certifications and the possession of an Electrical Inspector within two years of appointment;
- Civil Engineer (SEIU Local 1021, Unit 7) requires licensure as a Registered Civil Engineer issued by the California State Board of Registration of Professional Engineers).

No doubt, other examples of classifications outside of Unit 19 can be identified.

Rationale from Unit 19: The classification's prescribed benefits are roughly in line with other classifications represented by IFPTE Local 21 in Solano County.

Director of Human Resources' analysis:

Most benefits are universal across all County classifications (and all bargaining units).

Executive and Senior Management classifications receive longevity pay based on specific other California public sector experience and includes a 15-year longevity pay tier, receives a higher value life insurance policy, receives long-term disability insurance, begins vacation accrual at the 4.62 hours per pay period tier, and has no waiting period for the use of accrued vacation leave. These benefits are not received by the County's employees within confidential classifications.

Director of Human Resources' determination

The bargaining unit's rationale for the unit modification falls short. As demonstrated above,

- the requested classifications are not management-level classifications; yet Unit 19 is exclusively executive and senior management;
- exemptions from overtime exist within other bargaining units and is not exclusive to Unit 19 classifications;
- many classifications work in close proximity and collaboration with executive and senior management;

- the minimum qualifications of a bachelor's degree and some related work experience is not exclusive to executive and senior management;
- a cursory review of executive and senior management classifications shows a higher number of related work experience than that required of the required compliance/quality assurance classifications;
- special certifications are not unique to classifications within the County's executive and senior management classifications;
- not all executive and senior management classifications require a special certification; and
- most benefits are universal across all County classifications.

The Compliance & Quality Assurance Analyst and Compliance & Quality Assurance Analyst (entry) are confidential employees. Employees in these classifications, for example, include conducting and/or coordinating investigations of alleged violations of the compliance-related laws and/or the Code of Conduct and make recommendations for corrective actions. Such work has a direct bearing on, and relationship to, the employer-employee relations. Other unrepresented employees have a similar role in the employer-employee relations arena.

It is the Director of Human Resources' determination that the requested unit modification does not establish a community of interests which is distinct from the existing community of interests within the current Unit 30 - Confidential Employees and accordingly the petition is denied.

ALTERNATIVES

The Commission could grant the appeal and find that a community of interests exists sufficient for a unit modification; however, this alternative is not recommended as described above. In the event, however, that the Commission grants the appeal the Director of Human Resources will continue with the process outlined in the County's Employer-Employee Relations Rules and Regulations, Section 13, Modification of Representation Units, beginning with paragraph B.

OTHER AGENCY INVOLVEMENT

Not applicable.