

IN ARBITRATION PROCEEDINGS PURSUANT TO THE
MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES
AUGUST 17, 2010

UTILITIES MANAGEMENT]	
PROFESSIONALS ASSOCIATION OF]	
PALO ALTO,]	OPINION and DECISION
]	
]	of
Association,]	
]	
and]	
]	JOHN KAGEL
]	
CITY OF PALO ALTO,]	Arbitrator
]	
]	
Employer.]	April 13, 2011
]	
]	Palo Alto, California
Re: Petition for Establishment and]	
Certification of Association as Recognized]	
Employee Organization]	
CSMCS Case # ARB-10-0104]	

APPEARANCES:

For the Union: Alan C. Davis, Esq., Duane W. Reno, Esq., Davis & Reno,
San Francisco, CA

For the Employer: Todd C. Simonson, Esq., Alison L. Carniski, Esq.,
Liebert Cassidy Whitmore, San Francisco, CA

ISSUE:

The issue as stated by the Union is: Is the unit proposal of the Utilities
Management and Professional Association of Palo Alto an appropriate bargaining unit; if

not, what should be the remedy?

The issue as stated by the City is: Is the proposed UMPAPA unit an appropriate bargaining unit under the City of Palo Alto Employer and Employee Relations Rules 1205(a) and 1205 (g)?

MEMORANDUM OF AGREEMENT FOR ARBITRATION:

“...7. The Parties agree that the arbitrator will use the factors enumerated in the City of Palo Alto Employer/Employee Rules Sections 1205(a) and 1205(g) in determining the appropriateness of bargaining unit proposed by the [Association]....” (Jt. Ex. 5)

EMPLOYER /EMPLOYEE RELATIONS RULES:

“1205. Representation units.

(a) **Appropriateness of unit.** The appropriateness of a representation unit shall be governed by the following factors: That it is the broadest feasible grouping based upon internal and occupational community of interest; that the history of representation is used in the determination; that the unit does not contain classifications or individuals restricted or limited by this chapter; and that no City classification shall be in more than one representation unit....

(g) ...In resolving representation unit disputes, it is recommended that the State Mediation and Conciliation Service, or alternate agency, shall in each case determine the broadest feasible grouping based upon such factors as internal and occupational community of interest and the history of representation. No city classification shall be included in more than one representational unit....” (Jt. Ex. 10)

BACKGROUND:

“The utilities management, professional, and confidential group of employees is seeking establishment and certification as a

recognized employee organization in the City of Palo Alto, per Merit Rule 12 of the City of Palo Alto. The name of that requested organization will be The Utilities Management and Professional Association of Palo Alto (UMPAPA).

This utilities management, professional, and confidential group of employees is the broadest feasible grouping based upon type of business and occupational community of interest. It extends to all areas of utilities management including WGW [Water, Gas, Wastewater] Operations, Electric Operations, WGW Engineering, Electric Engineering, Resource Management, and Customer Service.

This group functions as a utilities business unit separate and distinct from other city business. It identifies energy and utility resources, provides and maintains the infrastructure to deliver the products, provides critical monitoring and control of the product, provides specialized customer service, and in so doing, creates a revenue stream that supports the unit's business model. The individual employees that make up UMPAPA are highly skilled professionals in the utility industry. The management and execution of the successful delivery of water, gas, wastewater, electric, and telecommunications products is very different than the normal City of Palo Alto government business of providing information, planning, permits, protection and recreational outlets. The business models we each use are just as diverse as PG&E's are in contrast to the city's their [sic] utilities serve.

For these reasons and others, as provided in Merit Rule 12 and in sections 3500-3510 of the Government Code of the State of California, The Utilities Management and Professional Association of Palo Alto formally petitions to be established and certified as a recognized employee organization...." (Jt. Ex. 1)

On December 9, 2009, the City rejected the petition

"...because (1) ...the unit proposed is not appropriate in that it is not the broadest feasible grouping and would result in one classification being in more than one unit. We suggest that you review the requirements of section 1205(a) in detail.

Pursuant to Merit System Rule 1205(f), you may file an amended petition within seven days of this notice...." (Jt. Ex. 3)

The proposed unit includes all unrepresented positions in the City's Utility Department except for the Director. (See Er. Ex. 3, attached hereto and incorporated herein) The City acknowledges, notwithstanding its 2009 letter, that none of the positions are represented by an employee organization. (Tr. 216)

POSITIONS OF THE PARTIES:

Position of the Association:

That there is no history of representation of employees in the Association's proposed bargaining unit; that managers and other employees in the Utilities Department have pay in amounts at least 15% more than employees of other departments in the same or similar job classifications; that the Utilities Department is different from other City departments in that it operates as a business, selling commodities to its customers within the City with most employees coming from private companies rather than other City departments; that no employee organization is currently seeking to represent a broader unit; that *Alameda County Assistant Public Defenders Association v. County of Alameda*, 33 Cal.App.3d 825 (1973), shows that the appropriateness of a proposed bargaining unit on the basis of factors very similar to those in Sections 1205 (a) and (g) should be consistent with National Labor Relations Act precedents which do not require the National Labor Relations Board to determine the most appropriate unit but instead to determine whether a proposed unit meets the criteria to be "appropriate"; that in this case, unlike that one, no employee organization is currently seeking to represent a broader unit that includes employees in the proposed bargaining unit; that because of that fact and

because an employee organization made an attempt to a representative of a City-wide unit of management employees in the past but was not successful, the Association only needs to show that the employees in the proposed bargaining unit have a community of interest among themselves in order to be "appropriate" as shown by the decisions of the NLRB; that the term "broadest feasible grouping" as used in the Palo Alto Municipal Code should be construed to mean the largest possible bargaining unit that permits employees to exercise their rights of self-organization and collective bargaining rather than the largest possible unit, period; that employees in the Association's proposed bargaining unit will be denied their rights of self-organization and collective bargaining unless the proposed departmental bargaining unit is certified; that the cases cited by the City are inapposite; that NLRB decisions define what a community of interest is in determining an appropriate bargaining unit and the proposed unit under such precedents would be appropriate; that the City already has two bargaining units of management employees defined by department, the police and fire management employee units, and the Utilities Department is different from other City departments in the same way as they are; that in the event the proposed bargaining unit is not an appropriate one because it is found to be underinclusive the arbitrator has the authority to make a determination that the Association's alternative proposed bargaining unit satisfies the Municipal Code in the same way that the National Labor Relations Board does to modify proposed units; that the City should be ordered to pay the arbitrator's fee.

Position of the City:

That the proposed unit is not the broadest feasible grouping of employees and would arbitrarily split job classifications into represented and unrepresented groups; that the Parties did not agree to go to arbitration over any issue other than the appropriateness of the Association's initial proposed unit; that if the Arbitrator determines he has authority to create a new bargaining unit, he should adopt the City's proposed grouping of classifications contained in the City's closing brief; that the proposed unit excludes a large group of classifications that clearly share a community of interest with classifications already part of the proposed unit; that the Association admitted that it did not have an objection to include managers and professionals in the Public Works Department without submitting a new recognition petition to reflect that change, showing that the proposed unit was too narrow; that factors in determining whether classifications share a community of interest include similarity in employment benefits, hours of work in terms of employment, lines of supervision, similarity in the type of work performed, the similarity in qualifications and skill of employees and frequency of contact among the employees and geographic proximity as well as the public employer's ability to bargain effectively with the proposed unit and the effect of the unit on the efficiency of the operation of the agency; that the Utilities Department works closely with the Public Works Department and holds itself out to the public as tightly integrated with Public Works for wastewater treatment, recycling, refuse and storm and surface water drainage which are technically in the Public Works Department; that the Municipal Code defines "utility" to include sewer, refuse and storm drain, services covered under the Public

Works Department, while the Utility Department's own rules and regulations include those concerning refuse and recycling storm and surface water drainage; that there is a wastewater collection enterprise fund that is in Utilities and a closely related wastewater treatment enterprise fund in the Public Works Department; that several Utilities publications include information about Public Works' services; that customers receive only one utilities bill which includes refuse and storm drain services provided by Public Works as well as services provided by Utilities; that some Public Works offices are located across the hall from Utilities' offices; that several managers have transferred back and forth between the Utilities Department and managerial positions in other departments, demonstrating that the skills required of those incumbents are very similar and mostly interchangeable; that employees also work frequently with non-utility managers on such matters as budget, purchasing, IT, legal, and equipment interchange and personnel with Public Works; that credit risk concerning commodity suppliers are overseen in the Administrative Services Department; that with respect to the Association's reliance on "enterprise funds" as the basis for determination of an appropriate unit, its petition excludes classifications paid exclusively by the Utilities Department who perform a majority of work for the Department, amounting to 16 to 17 employees who essentially work for it, working on utility projects and share common goals with the Department; that all City managers receive the same health care and pension benefits as well as the same supplemental benefits; that the proposed unit would include three incumbents whose job classifications exist in departments other than Utilities that would arbitrarily exclude those stationed in other departments, Senior

Business Analyst, Administrative Assistant, and Senior Administrator, so that by keeping classifications together the City can reasonably set the salaries for employees who perform the same task as each other rather than incur significant challenges for setting salaries; that the proposed unit would preclude those non-Utilities in split classifications from joining a separate representation unit anytime in the future because part of their classification will already be part of the Association's unit; that the argument that the proposed unit is necessary to bargain for higher compensation lacks evidentiary basis; that the Director of Utilities reports to the City Manager just like every other department while the City Council must approve all Utilities' rules and regulations; that both Utilities and Public Works compete for customers and fix emergencies at any time of the day; that there is no history of Utilities' line workers having a separate bargaining unit but have always been part of the general unit so that there is no need for a narrow bargaining unit of only Utility managers; that the arbitrator has no authority to deviate from the issue presented to him which is the initial petition of the Association, and to do so would violate the terms of the Parties' Memorandum of Agreement for Arbitration as well as the general authority of arbitrators under state law; that any consideration of issues beyond the original petition would unfairly prejudice the City because the Association introduced new issues at the end of the arbitration and left the City with no time to prepare; that the Memorandum of Agreement to Arbitrate prevails over the Employer/Employee Rules with respect to the arbitrator's authority in this case; that any determination by the arbitrator of the new unit will create an administrative nightmare and strain the relationship among City managers for any modified unit would lack proof of employees'

support as required by the Employer/Employee Rules; that if a modified unit is adopted, the City's proposed unit should be; that the cases cited by the Association are distinguishable from this case; that the City's proposed bargaining unit is not a wall-to-wall unit but recognizes similar education and skill requirements of similar jobs not confined to the Utilities Department; that the Parties are required to equally share the cost of the arbitration.

DISCUSSION:

Requirements of Employer/Employee Relations Rules:

Three factors are required for a bargaining unit to be considered "appropriate" under the Employer/Employee Relations Rules under Sections 1205 (a) and (g):

1. "The broadest feasible grouping based upon internal and occupational community of interest;"
2. "The history of representation;"
3. "No City classification shall be in more than one representation unit..." (Jt. Ex. 10)

History of Representation and Representation Unit:

As the City agrees, no classification in the proposed unit is represented in any other bargaining unit. There has been no representation by any bargaining unit of the proposed unit's positions. There are separate police and fire management bargaining units. (Tr. 27) Representation by a proposed City-wide manager bargaining unit was voted down in 2006. (Tr. 116-117) While there is an *ad hoc* body on which the Utilities

Department has one of twelve representatives which makes annual recommendations to the City Manager concerning management compensation, it is not the result of being in a recognized bargaining unit. (Tr. 59, 336, 377-378) Accordingly, history of representation is not a negative factor in the determination to be made here.

Broadest Feasible Unit:

Determining the broadest feasible unit that is appropriate for bargaining requires an examination of the internal and occupational communities of interest of the positions in the proposed unit. In *International Brotherhood of Electrical Workers v. Los Angeles County Metropolitan Transportation Authority*, 42 Cal.App.4th 861 (1996), authority relied upon by the City, in a case where the National Labor Relations Act was required to be applied, the court wrote:

“The evaluation of what is an appropriate unit involves consideration of whether the employees of a unit are united by community of interest. In evaluating community of interest, many factors are evaluated, including bargaining history; desires of the affected employees; nature of the employer's business; similarity in scale and manner of determining earnings; similarity in employment benefits, hours of work, and other terms and conditions of employment; similarity in the kind of work performed; similarity in the qualifications, skills, and training of the affected employees; frequency of contact or interchange among the employees; geographic proximity; continuity or integration of production processes; common supervision and determination of labor-relations policy; and relationship to the employer's administrative organization. In public sector employment, additional factors to be considered are the employer's authority to bargain effectively at the level of the unit and the effect of a unit on the efficient operation of the public service. (*Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara, supra*, 51 Cal. App. 3d 255, 260-261.) System-wide units are favored in public utilities.” (42 Cal.App.4th at 871)

National Labor Relations Act authority was appropriate to be utilized where a public entity employer/employee relations rule for determining appropriate bargaining units did not expressly refer to that legislation. (*Alameda County Assistant Public Defenders Association v. County of Alameda*, 33 Cal.App.3d 825 (1973)) Accordingly, to determine the application of the rules in this case, the factors set forth in *International Brotherhood of Electrical Workers case, supra*, must be described and weighed.

Bargaining History:

As noted, there is no bargaining history concerning the Utilities Department nor with respect to City management generally.

Desires of Affected Employees:

The petition for representation was signed by 31 of the 41 persons in the proposed bargaining unit. (Jt. Ex. 1)

Nature of Business:

The City web site describes its utility services:

“The CPAU history began over one hundred years ago, in 1896, when the water supply system was first installed. Two years later, the wastewater collection system came on line in 1898. In 1900, the municipal electric power system began operation, followed in 1917 by a natural gas distribution system. Palo Alto is the only city in California to own and operate six essential utility services including refuse and storm drain. In 1996, Palo Alto ventured into a new endeavor with the construction of its 31-mile dark fiber loop.

It was the forward thinking of two Stanford University professors, Charles ‘Daddy’ Marx and Charles Benjamin Wing, which was largely responsible for the emergence of the municipally owned utility service in Palo Alto. Marx and Wing argued that the City could provide utility service at rates significantly below those charged by private companies. One of the founding principles of

these early pioneers was that the utilities must show a financial return to the community. This has continued to be a priority. In the most recent fiscal year, the electric, gas, and water utilities provided millions in financial support to community services such as libraries, parks, police and fire protection. These contributions to the community do not occur in areas served by private power companies. This makes Palo Alto a unique place to live and work." (Jt. Ex. 11)

Refuse and storm drains are not services of the Utilities Department. Electric, gas, dark fiber and water are.

The City's Municipal Code provides:

"2.08.200 Department of utilities.

(a) The department of utilities shall be organized and administered under the direction of a director of utilities who shall be accountable to the city manager. The duties of the director of utilities shall be as follows:

(1) To plan, direct and coordinate the operations of the city's utilities department;

(2) To coordinate the forecasting of the city's long-range utility needs and develop financial plans to ensure that the city's utilities rate, reserve and revenue levels will be able to meet customer service, operating and financial requirements;

(3) To provide administrative support to the utilities advisory commission on matters relating to the department;

(4) To generate appropriate reports as may be required by county, state and federal agencies or by law;

(5) To operate a responsive customer service center, to manage customer service utilities billing, inquiries and complaints and to provide a fast and courteous response to each customer's request for utility service;

(6) To establish rates to offset operating costs of all city utility operations designated as utilities enterprise funds and to provide a fair and reasonable rate of return on the city's capital improvement investment in those utilities designated as utilities enterprise funds;

(7) To maintain a profitable market share in a competitive energy market environment by retaining existing water, electric and gas utilities customers and seeking new and efficient uses for gas, water, electricity and dark fiber;

(8) To provide technical or other efficiency services to enable residential, commercial and industrial utilities customers to reduce their operating costs, improve the quality of the environment and maintain a high level of customer satisfaction;

(9) To forecast and plan the acquisition and disposition of sufficient least-cost resource supplies to meet existing and future supply requirements in an environmentally acceptable manner;

(10) To negotiate for the purchase and sale of water, gas and electricity and contract with water, gas and electric power producers, suppliers and marketers for resource supply at the best available price or cost;

(11) To recommend capital construction and improvements of all utility systems, and to administer such programs when approved;

(12) To inspect all construction work done by or for the utilities and require compliance with all contracts made in connection therewith;

(13) To prepare or cause to be prepared all utility maps of the utilities, and to keep and to maintain such records as are necessary for the fulfillment of this function;

(14) To provide operations, maintenance, and construction necessary to ensure the safe, efficient and reliable delivery of electric, water, gas and wastewater collection services to all customers;

(15) To provide operations, maintenance, and construction necessary to ensure the proper operation of the city's traffic signal, street lighting and communication systems;

(16) To perform or cause to be performed all duties required by this code or other law of the director of utilities and the department of utilities; and

(17) To perform such other duties as may be required.

(b) For organizational purposes, the department of utilities shall consist of the following divisions: administration; customer

support services; resource management; engineering; and operations.” (Jt. Ex. 13)

The record showed that while the City earned revenue from storm drain assessments and refuse charges, water, gas and electricity provided the “millions” for community services. (See Jt. Ex. 13, p. 59) The activities and functions of the Department are a marked equivalent to the activities and functions of a public utility.

Unlike most other City services, water, gas and electric services provided to businesses and residents are billed for separately and are based on usage, as are refuse charges. As noted, substantial revenues are provided by what amount to profits returned to other community services by gas and electric revenues far in excess of other fees or revenues derived from other City activities, such as golf course fees or proprietary funds attributable to other services, the latter constrained by legal restrictions.

Similarity in Kind of Work Performed:

The closest activities to the kind of work performed by Utilities Department managers, according to the City, is in the Public Works Department. Some of the latter’s activities include overseeing construction or repair of city property, not involving that of the Utilities Department, such as streets, and responsibility for operation of the regional water quality control plant. (Jt. Ex. 12A)

There are differences between how the departments function. In Utilities the physical facilities are fully designed by its employees, requiring full knowledge of its systems because of the critical nature of its work. In Public Works, for the most part, its engineers mostly manage consultants who do engineering design. (Tr. 98, 157, 159)

While enterprise funds of a considerably lesser scale than those of electricity and gas are charged for the compensation of many Public Works Department employees, interaction between the managers of the two departments or between the Utilities Department and other Departments is not a major part of the work of the Department's managers. Such interaction can be with non-Utility Department City personnel who are concerned with Utility functions such as budgeting, IT, particularly on desktop computers, lawyers in Legal specializing in Utilities work, purchasing, fund transfers, and human resources. (Tr. 263-268) Administrative Services also has a Treasury Division in charge of City-wide investments, including holding Utilities' reserves and issuing its debt. (Tr. 289) There is also a Utility Risk Oversight Committee, including the directors of departments and a senior manager in the City Manager's Office, a "sort of a board of directors." (Tr. 291-293)

Examples of work outside the Utilities Department by personnel in the proposed unit interacting with other City departments are:

- Manager of Electric Operations, 20% of time. (Tr. 33, 48)
- Manager Utility Marketing Services, less than 10% of time. (Tr. 79)
- Senior Electric Project Engineer, less than 10% of time. (Tr. 95)
- Temporary assignment to supervise teams of engineers, less than 10% of time. (Tr. 96)
- Assistant Director Utilities – Resource Management, 15%. (Tr. 133)
- Senior Project Engineer, 20%. (Tr. 150)
- Supervising Project Engineer, "not very much." (Tr. 154)

- Senior Resource Planner, 10-15%, mostly with Legal. (Tr. 168)
- Supervisor – Electrical Systems, minimal interaction with Public Works, “not a whole lot” with other Departments. (Tr. 183)
- Supervisor Water Gas Wastewater, less than 10% Public Works, none with other departments. (Tr. 194-195)
- Senior Administrator, 10-15%, mostly HR, budgeting, IT, purchasing. (Tr. 204)
- Administrative Assistant, 10-15%. (Tr. 208)

Similarity in Qualifications, Skills and Training of Affected Employees, Similarity of Scale and Manner for Determining Earnings, Similarity in Employment Benefits, Hours of Work and Other Terms and Conditions of Employment:

The Association established that most of the proposed unit’s members were employed from outside companies or agencies because of their qualifications and training in utility operations. (*See, e.g., Un. Ex. 2*) By contrast, there has been minimal interchange of managers from other departments. Paul Dornell worked as Assistant Director for Utilities Operations, having worked in Public Works before. He returned to that department in 2008 as an Assistant Director. (Tr. 50) John Hospitaller went from a Utilities Lead, a non-management position, to Public Works as a Lead and then to a supervisor in the Utilities General Shop for two years before returning to Public Works. (Tr. 50-51) Javad Ghifari, the Water-Gas-Wastewater manager, had been Water Quality Manager in Public Works. (Tr. 51-52) A Utility Department non-management Project Manager, James Flanagan, became a Public Works’ Senior Project Manager in water

quality. (Tr. 113-114) Dave Yuan was a Senior Business Analyst in Administrative Services before his Utilities Department position of Senior Administrator. (Tr. 214-215)

The City, properly, points to the facts that there are common skills required of all managers in terms of how to manage personnel and manage work projects generally. (See e.g., Er. Ex. 7, p. 1) Composite job descriptions encompassing many management positions have been proposed but not been adopted. (Tr. 343, Er. Ex. 7) Three positions have the same classification title as positions in other departments. (Tr. 212, 340) An Association witness acknowledged that some Public Work Managers in operations have similar occupational interests as Association members. (Tr. 57, 71)

However, without the background to gain qualifications in utility work, those similar skills are inapplicable to be able to perform the duties required in the Utilities Department for most of the proposed unit. This conclusion is reflected in Utilities Department compensation for positions in the proposed unit that is fifteen percent higher than those in other departments (Tr. 303-304, 322), even though they all have the same health and pension benefits. (Tr. 306) A City witness could identify but one manager elsewhere paid more than non-Utility managers. (Tr. 376-377) Many in the proposed unit are charged with providing 24/7 services (Tr. 37) where no delay can be tolerated with respect to repairs. (Tr. 105-106, 150) Others in the City such as police and fire, which have their separate management units, and some Public Work managers, do so as well.

Geographic Proximity:

Some in the proposed unit work in the same facilities as other managers. (Tr. 48, Un. Ex. 1) But their geographic location is not relevant to the performance of their duties because of the presence of non-Utilities' managers.

Continuity or Integration of Production Processes:

As noted, many of the employees of the proposed unit have either relatively minimal or no interaction with the work of others. There are interactions with other departments such as Administrative Services, particularly on IT, purchasing and financial functions, Human Resources on staffing and Legal for legal services. And employees in those functions may have all or part of their services paid out of proprietary funds. However, as organized, the Utilities Department is responsible for its overall activities with the other departments providing support functions for it. Administrative Services managers (Tr. 300) provide a double check on commodities purchases as an independent financial fail safe (Tr. 274-275) and audits transactions. (Tr. 297-298) But that does not undercut the overall functions of the Department.

Common Supervision:

All in the proposed unit are ultimately supervised by the Utilities Department Director.

Determination of Labor Relations Policy:

Labor relations policy is not set by the Utilities Department.

Relationship to Employer's Administrative Organization:

That relationship is described above.

Employer's Authority to Bargain Effectively at Level of Unit:

While the City contends that there is no need for bargaining with the proposed unit, it has not shown that it could not do so effectively. It already bargains with six bargaining units that include the two already authorized management units. (Tr. 337) The City maintains that the proposed unit would preclude employees with similar classification titles from being in another unit. At the moment no other unit is being sought by others, even if the non-Utilities Department personnel with the same titles are paid the same as those in the Utilities Department.

Effect of Unit on Efficient Operation of Public Service:

The Municipal Code provides for appropriate bargaining units including those already recognized for police and fire managers. Accordingly, the existence of management units does not effect the efficient operation of public services. Bargaining with the unit can improve efficient operations depending on its outcome.

Conclusions as to Broadest Feasible Grouping; Internal Community of Interest:

The record established that the Utilities Department is a unique segment of the City's operations—one that is unique compared to all other municipalities in the state. (Tr. 31-32) Under the Employer/Employee Relations Rules an appropriate bargaining unit is the broadest feasible grouping based upon internal and occupational community of interest. The proposed unit, taking into account the tests for determining community of interest, is such a grouping. The Utilities Department is analogous to a public utility and under *International Brotherhood of Electrical Workers, supra*, a system-wide unit is

“favored.” That would be true for a management unit as proposed here for the Department.

That the Rules require a finding that the proposed unit represents the broadest feasible grouping is to prevent a balkanization of bargaining units. In essence, without expressly so stating, what the City’s overall position is is that to grant a management unit to this Department would lead to that result, for there then could be management units in each Department, or even subsets of them, such as a Junior Museum management unit or a Children’s Theater one.

But the Rules cannot be read to restrict any proposed unit to a wall-to-wall management unit but require instead that a unit is appropriate if it is the broadest feasible one with internal and occupational communities of interest. The City has already recognized management units in police and fire. No evidence was presented to show the basis for that recognition although, presumably, internal community of interest would not be difficult to show in those cases.

The foregoing establishes that there is an internal community of interest in the proposed unit. All positions have common supervision. They do not interact greatly with respect to other departments with the exception of positions which are outside the Utilities Department but support its functions, either on a dedicated basis such as Legal or on a routine basis such as purchasing, budgeting or financial oversight, or the attempt to coordinate street resurfacing. The proposed unit encompasses all of the unrepresented positions in the Department and three-quarters of the incumbents signed the representation petition.

Carve out of classifications: The City points out that there are occupants of three classifications in the proposed unit who are in positions outside of the Utilities Department such as eleven or twelve Administrative Assistants. There are few positions in these classifications in the proposed unit. While the record is unclear if those classifications also receive premium pay in the Department, as discussed below, to exclude them from the proposed unit would fracture the broadest feasible grouping based on an internal community of interest in violation of the Rules.

To the extent the City is concerned that to include these classifications in the proposed unit would preclude, under its Rules, their inclusion in any other bargaining unit, there is no current proposal to create any other bargaining unit that includes them.

Conclusions as to Broadest Feasible Grouping; Occupational Community of Interest:

The primary City defense to the petition is that the proposed unit cannot be considered as having an occupational community of interest to be the broadest feasible grouping as an appropriate bargaining unit as the Rules require. It puts forth several grounds for this conclusion.

Fungibility of personnel: It cites five instances where persons have gone into the Department from other departments, and, in some, gone back into other departments. However, the relative paucity of such instances underscores the occupational community of interest of the proposed unit. In many of the positions specific engineering or scientific training is a prerequisite to hiring. Similarly, for the most part, the employment pool of eligible employees is primarily from other utilities principally in the private sector. (See

Un. Ex. 2) Personnel in other City Departments, for the most part, could not step into the bulk of the positions in the Department and allow its functions to have continuity, even with reasonable periods of time for acclimatization as might occur with respect to other City positions.

Common titles and classifications: The City has sought to demonstrate in its Exhibit 7 that its analysis shows commonality with positions in the Department with many others in the City at various levels of supervision. Notwithstanding titles of jobs or their current or proposed classifications, that analysis does not affect the occupational community of interest for the proposed unit. The positions in the unit are paid higher than all but a single, and unrelated, management position bearing the same kind of title. The pay rates of the proposed unit distinguish its positions that emphasizes their uniqueness in the City. Outside, private sector market rates, rather than traditional comparable rates in public employment, drive the ability of the City to hire and retain qualified personnel in the proposed unit.

As the City acknowledges in its publications, it is the only municipality that has its own internal electrical, gas and water systems, and the functioning of those systems are the purpose of the Utilities Department. Notice can be taken that Palo Alto also may be unique in having a Children's Theater, Children's Library, Junior Museum, rural parklands, shuttle services and other programs that are not common in other public entities that are similar in size to the City. But evidence concerning management of those programs was not presented that private sector market-driven pay rates are required to staff the management of those programs.

Accordingly, within the City structure, the positions in the proposed unit are distinguishable from other positions that may have the same or comparable titles, establishing their occupational community of interest in this record.

Inconsistency of City position: In the end, the City has not shown that there is a broader feasible grouping sharing the required occupational community of interest. It alluded to some lesser paying Public Works jobs that it maintained should be considered but it has not proposed them as being combined with the proposed unit as meeting the test of an appropriate unit under the Rules. It pointed to other positions, which support Utilities Department functions where fees for such services are charged to the gas, electric and water proprietary funds. But those positions have their own communities of interest such as budgeting, legal or IT where Utilities Department support is but part of their overall functions. Alternatively, after losing \$20 million in the Enron debacle, the City, having employees independent of the Department check on the legitimacy of commodities purchases should not make such positions eligible to be in the same unit as the Department's employees who do the purchasing.

The City, in answer to an alternate proposal of the Association (discussed below), did make a proposal for what it considered an appropriate unit based on having the same supervisory and project management skills. As already noted, all managers must have such skills, but to be in an appropriate unit they must have both "internal" and "occupational" communities of interest. The City's proposal is hypothetical since there is no petition for such a unit under the Employer/Employee Rules. And, compared to the petition at hand, no showing of both required communities of interest was shown for the

reasons stated above. Finally, even though the City in its comparisons included Assistant Directors in its opposition to the proposed unit (Er. Exs. 7, 7A), it leaves that position out of what it considers an appropriate unit under the Rules without explanation as to how such a proposed unit would meet the requirement for internal community of interest in the broadest feasible unit. (*See* Brief p. 18, n.3)

Given the foregoing, on balance, the proposed unit represents the broadest feasible grouping based on internal and occupational communities of interest shown from the record in this case.

Alternate Unit Proposed by Association:

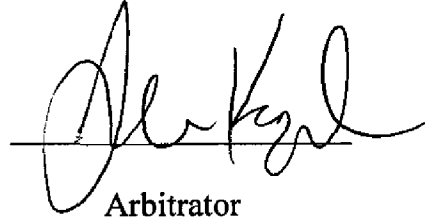
That the Association acknowledged that it would take in others in a bargaining unit as an alternate finding was just that; it sought a bargaining unit that represented Utilities Department positions as its petition requests. (Tr. 69-70) “We...are attempting to resolve this, this proposal we have.” (Tr. 116) There was no waiver of its principal contention that its initial proposed unit met the Employer/Employee Rules’ criteria.

Arbitrator Fees:

Association analysis that to be required to pay fees would chill the process of recognizing appropriate bargaining units lacks merit. Under the Rules the Association could have participated in a process with no cost. It chose to participate in an alternative of one requiring fees. The Parties are to split the fees and expenses of this proceeding. (Tr. 237)

DECISION:

1. The proposed UMPAPA unit is an appropriate bargaining unit under the City of Palo Alto Employer and Employee Relations Rules 1205(a) and 1205 (g).
2. Arbitration fees and expenses are to be split equally between the Parties.



Arbitrator

UTILITIES DEPARTMENT MANAGERS

FILES

Director of Utilities
Valerie Fong

Administrative Assistant
Marites Ward

Communications Manager
Mary Coady

Senior Administrator
David Yuan

Senior Business Analyst
Kevin Enderby

Assistant Director of Utilities –
Customer Support Services
Tom Auzenne

Manager Customer
Services and Meter
Reading
Anthony Enerio

Manager Utility
Marketing Services
Joyce Kinnear

Senior Resource
Planner
Raveen Maan

Assistant Director – Utilities
Operations
Dean Batchelor

Manager Utilities
Operations WGW
Javad Ghaffari

Supervisor Water
Gas Wastewater
Jorge Silva

Supervisor Water
Gas Wastewater
Bryan Hagins

Supervisor Water
Gas Wastewater
Todd Carlsen

Supervisor Water
Gas Wastewater
Frank Alvarado

Supervisor Water
Gas Wastewater
Jason Strickland

Supervisor Water
Transmission
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John Reinert

Manager Electric
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Russ Karniyama

Supervisor
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Electrical Systems
Greg Schulz

Supervisor
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Scott Williams

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Planner
Ipek Connolly

Senior Resource
Planner
Karta Dailey

Senior Resource
Planner
Tom Kabat

Senior Resource
Planner
Debra Lloyd

Senior Resource
Planner
Monica Padilla

Senior Resource
Planner
Nico Procos

Senior Resource
Planner
Shiva Swaminathan

Assistant Director of Utilities –
Engineering
Tomm Marshall

Engineering Manager –
Electric
Vacant

Senior Electric Project
Engineer
Jim Bujtor

Senior Electric Project
Engineer
Tom Finch

Senior Electric Project
Engineer
Tom Ting

Senior Electric Project
Engineer
Jim Thompson

Supervising Electric
Project Engineer
Gopal Jagannath

Engineering Manager
Water-Gas-Wastewater
Greg Scooby

Senior Project
Engineer
Romei Antonio

Senior Project
Engineer
Roland Ekstrand

Senior Project
Engineer
Aleksandr Pishchik

Senior Project
Engineer
Edward Wu

Supervising Project
Engineer
Silvia Santos