

In the Matter of a Unit Modification Arbitration
Involving:

**Engineering Technicians and Technical
Inspectors**

and

**Sacramento County Administrative
Professionals Association**

- and -

County of Sacramento

AWARD & OPINION

NB 3584

Arbitrator: Norman Brand, Esq.

Appearances:

For Engineering Technicians and Technical Inspectors
Goyette & Associates
By Dee Contreras

For Sacramento County Administrative Professionals Association
Goyette & Associates
By Rafael Ruano, Esq.

For County of Sacramento
John F. Whisenhut, County Counsel
By Krista C. Whitman, Assistant County Counsel

Date: October 3, 2014

Background

The Sacramento County Civil Service Commission abolished existing classes in the Planner and Environmental Analyst series and replaced them with a single Planner series. The following new classes were created: Planning Technician (formerly Planning Aide Level I/II and Environmental Technician); Assistant Planner (formerly Planner Level I/II and Assistant Environmental Analyst); Associate Planner (formerly Planner III and Senior Environmental Analyst); and, Principal Planner (formerly Principal Planner and Principal Environmental Analyst). The Principal Planner class was placed in Sacramento County Management Association (“SCMA”). The Associate Planner class was placed in Sacramento County Administrative Professionals Association (“SCAPA”). There were no objections to those placements. The Assistant Planner and Planning Technicians classes were placed in the SCAPA unit. The Engineering Technicians and Technical Inspectors (“ETTI”) objects to the placement of these two classifications in the SCAPA unit and asserts they belong in the ETTI unit. SCAPA asserts it did not seek the placement, but does not disagree with it.

Issue

What is the proper placement of the Assistant Planner and Planning Technician classes, in accordance with Sacramento County Code Section 2.79.080?

Relevant Portions of §2.79.080¹

- a. The following standards shall be applied in determining the appropriate unit:
 1. The unit shall include the broadest feasible group of employees who share a community of interest. Factors to be considered shall include the extent to which employees have similar working conditions, supervisions, educational requirements, and related occupations or job classifications and duties;
 4. Consideration may be given to factors such as the history of employee relations in the unit, among other employees of the County, and in similar public employment and other factors not inconsistent with this chapter;
 - d. Management, confidential and supervisory employees shall not be included in any unit which includes employees other than management, confidential or supervisory.

Discussion

Three types of facts are relevant to this unit determination: First, facts relating to the history of employee relations in the unit; Second, facts relating to the working conditions, supervision, educational requirements and related occupations or job classifications and duties; and, Third, facts relating to the County's placement of the new supervisory class of planner and the two planner classes it supervises into the same bargaining unit. Each will be considered.

First, the two new classes (Planning Technician and Assistant Planner) consist of four earlier classes with varying representation histories. The Planning Aide Level I/II, a classification with no incumbents, was formerly represented by UPE. That union did not choose to participate in this hearing to argue that the "history of employee relations" should be considered in placing the new Planning Technician class. Both the

¹ The parties argued that only certain portions of the Ordinance were applicable in determining the proper placement of these classifications.

Environmental Technician class and the Assistant Environmental Analyst class are unrepresented. There is no “history of employee relations” for either class, so that criterion is not relevant to the unit placement of either of the new classes. The former class of Planner (Level I/II) is represented by ETTI. It makes the following argument.

The former Planner (Level I/II) class was unrepresented until ETTI filed a timely petition to represent it in December 2013. The petition was denied because of the pending re-classification. Ultimately the matter went to arbitration. In an Award dated March 10, 2014, the arbitrator added that class to the ETTI unit, stating:

- At the hearing, the parties stipulated that the classification of Planner I and II should be added to the existing bargaining unit represented by the Union [ETTI]. In view of that stipulation, and based upon the finding of the arbitrator that such agreement is not contrary to the provisions of Ordinance Section 2.79.080 ... [the class is added to the ETTI unit.] (J-3, p. 3)

The County placed the Planner I and II classification in the ETTI unit, effective at the beginning of the fiscal year, July 1, 2014. (Tr. 144:23-145:11) After the reclassification the County decided to place the new Assistant Planner classification in the SCAPA bargaining unit, over the objection of ETTI.² The history of ETTI being asked to represent the Planner I and II, taken together with ETTI’s petition and the County’s stipulation to place them in the ETTI unit is significant. One of the two classes of employees who became part of the new Assistant Planner class created by the re-classification expressed a preference for representation by ETTI. The County ignored that preference when it placed the Assistant Planner classification in SCAPA.

² ETTI asserted the County agreed at that same meeting to place the new Planning Technician class in the ETTI unit. At the hearing the County representatives denied there was any agreement. (Tr. 15:9-12) The ETTI representative at the meeting remembered that there was such an agreement. (Tr. 200:17-201:13) In the absence of agreement at the hearing, this arbitration will decide the placement of the Planning Technician class.

Second, the County used the model of the Airport Planner series, which is included in the SCAPA unit, in determining where to place the Planning Technician class. It felt putting the series through which employees work their way up into the same bargaining unit made sense. (Tr. 123) That is, the unit contains related job classifications, albeit with more complex duties. In describing the commonalities between the Assistant Planner and the Airport Planner, the County notes each position requires a Bachelor's Degree. (Tr. 118) ETTI notes, however, that a degree is not required, since experience can be substituted for a formal degree. Although some of their work is concededly technical, Assistant Planners do what is described as primarily analytical work. (Tr. 78:9-10) In distinguishing the Assistant Planner class from the classes of building inspectors and code enforcement officers represented by ETTI the County focused on the latter jobs being more technical. (Tr. 126:9-25) ETTI notes, however, that similar analytical skills are needed to determine whether construction plans conform to the County codes and whether a project can receive an exemption or negative declaration under CEQA. It is uncontested the SCAPA unit contains related job classes with related, albeit more complex, duties. In sum, the County argument that the Planning Technician and Assistant Planner have a community of interests with other classes in the SCAPA unit is persuasive.

Third, the County assigned the newly established class of Assistant Planner and Planning Technician to the same bargaining unit as the Associate Planner class.³ The Ordinance forbids including supervisory employees "in any unit which includes employees other than ... supervisory." Associate Planners are defined as "the

³ Planner 3, one of the two previous classes embodied in the new Associate Planner class, was already in the SCAPA unit. (Tr. 175;11-13)

supervisory class in the Planner series.” The “Essential Duties” of the Associate Planner include:

- Assists with interviewing and selecting assigned personnel.
- Works with employees to correct deficiencies; recommends and/or implements discipline and termination procedures

The ability to effectively recommend hiring, discipline, or termination is the hallmark of supervisory employees.⁴ The evidence shows Associate planners are supervisory employees under the Ordinance.

The County makes two arguments: first, other units have both supervisory and non-supervisory employees; and, second, that only SCAPA (or some other unit that sought to represent the Associate Planner class) could complain about having supervisors put in the SCAPA unit. The first argument amounts to saying that since the County has previously violated the Ordinance it is entitled to do so again. That is not a convincing legal argument. The second argument – that rank and file employees cannot complain when they are placed in the same unit as their supervisors – misses the point of §2.79.080-d. One reason for not putting supervisors and those whom they supervise in the same unit is that their interests are distinctly different. On the one hand, the supervisors’ interests may not be represented in a unit that is made up mostly of rank and file employees. On the other hand, rank and file employees may be unwilling to vigorously promote their own interests against those of their supervisors – who rate their performance, discipline them, and can potentially recommend their

⁴ (11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. 29 USC §152

termination. Thus, violating the Ordinance can adversely affect both supervisors and the employees in the bargaining unit who they supervise. Consequently, putting supervisors and the employees they supervise into the same unit does not “contribute[s] to sound employee-employer relations” as required by §2.79.080-a.2.

Conclusion

The history of employee relations in the ETTI unit shows members of the Assistant Planner class expressed a preference to be in the ETTI unit. ETTI timely petitioned for those employees and the County stipulated to their placement in the ETTI unit during the re-classification. No other employees involved in the re-classification expressed an interest in being placed in any existing unit. Because the Planner I/II class was only briefly in the ETTI unit, its former presence in the unit is not significant. The fact employees were initially placed in the ETTI because of their expressed desire to be in that unit, is part of the “history of employee relations in the unit.” This “history” provides a modicum of support for the ETTI position Assistant Planners should be placed in their unit. The community of interest criterion argues for including the Assistant Planner and the Planning Technician in the SCAPA unit, since both groups have duties that are similar to those of other Planners, all of whom are in the SCAPA unit. The prohibition in §2.79.080-d on including supervisory employees in a unit that includes other than supervisory employees is a bar to the County’s proposed placement of the newly created Planning Technician and Assistant Planner classes. The Associate Planners are not the only class potentially adversely affected if the County puts the supervisory and non-supervisory classes in the same unit. Because the two

new classes of Planning Technicians and Assistant Planners are adversely affected by being placed in the same unit as their supervisors, ETTI has the right to argue the County should not be permitted to violate the Ordinance. Putting the supervisory Associate Planners and non-supervisory Planning Technicians and Assistant Planners in the same unit does violate the Ordinance. Consequently, this tribunal finds that to avoid violating the Ordinance the classes of Planning Technician and Assistant Planner must be placed in the ETTI unit.

In light of the findings of fact and conclusions of law, this tribunal makes the following:

Award

In accordance with Sacramento County Code Section 2.79.080, and to avoid violating §2.79.080-d, the Assistant Planner and Planning Technician classes must be assigned to the ETTI bargaining unit.

**San Francisco, California
October 3, 2014**

Norman Brand