

ISSUES

The issues to be decided by the Executive Director in these cases are:

1. Is the SPTA an employee organization qualified for certification as an exclusive bargaining representative under Chapter 41.80 RCW, so as to have legal standing to file and pursue these cases?
2. Is either or both the "mixed classes" bargaining unit proposed by the SPTA in Case 19320-E-05-3048 (limited to five employees in fiscal analyst, civil engineer, mechanical engineer, project manager, and caretaker classifications) or the "facilities maintenance" bargaining unit proposed by the SPTA in Case 19321-E-05-3049 (limited to eight employees in the general repairer classification) appropriately severed from the existing bargaining unit?

On the basis of the evidence and arguments presented, the Executive Director rules that the SPTA has legal standing to pursue these petitions, but that the bargaining units it proposed do not meet the requirements for severance under the applicable statute and rules, and under the applicable case precedents. The petitions are dismissed.

ISSUE 1 - STATUS AS AN EMPLOYEE ORGANIZATION

During the preliminary processing of these cases, the WFSE declined to stipulate that the SPTA is an organization qualified for certification under the statute. The SPTA is already certified as exclusive bargaining representative of one bargaining unit of state employees, and continued to advance these petitions.

Legal Principles Applicable to Standing Issue

The requirements for certification as an exclusive bargaining representative are minimal. RCW 41.80.005(7) defines "employee organization" broadly, as: "any organization, union, or association in which employees participate and that exists for the purpose, in whole or in part, of collective bargaining with employers." The similar definition in Chapter 41.56 RCW was applied to validate the status of an independent union in *Southwest Washington Health District*, Decision 1304 (PECB, 1981).

Analysis of Standing Issue

The WFSE acknowledges that the SPTA has founding documents which establish it as an organization separate and apart from its members, and that it exists for the purpose of collective bargaining. The facts that it is of very small size, of recent origin, and unaffiliated, do not disqualify it from seeking to represent state employees under Chapter 41.80 RCW. The Executive Director takes notice of the Commission's docket records, which confirm that the SPTA is already the exclusive bargaining representative for two other bargaining units of state employees.

Conclusion on Standing Issue

The SPTA is an employee organization within the meaning of RCW 41.80.005(7), and thus has legal standing to seek certification for additional bargaining units.

ISSUE 2 - PROPRIETY OF PROPOSED SEVERANCES

The SPTA seeks severance of two small bargaining units in one branch of the employer's table of organization. The WFSE continues to be a viable organization representing the employees involved in a larger historical bargaining unit, and it opposes the proposed severances.

Legal Principles Applicable to Severance Issue

Existence of an "appropriate" bargaining unit is a condition precedent to status as an "exclusive bargaining representative" under RCW 41.80.005(9), so the Commission only determines representation questions under RCW 41.80.080 after a finding or stipulation that the unit involved is appropriate. Resolving the unit determination issue is thus necessary to any further proceedings in these cases.

The determination of appropriate bargaining units under the Personnel System Reform Act of 2002 (PSRA) is a function delegated by the Legislature to the Public Employment Relations Commission:

RCW 41.80.070 BARGAINING UNITS -- CERTIFICATION.

(1) *A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, unless the unit does not meet the requirements of (a) . . . of this subsection. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modifications of existing units, the commission shall consider: The duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. However, a unit is not appropriate if it includes:*

(a) Both supervisors and nonsupervisory employees. A unit that includes only supervisors may be considered appropriate if a majority of the supervisory employees indicates by vote that they desire to be included in such a unit; or

(2) The exclusive bargaining representatives certified to represent the bargaining units existing on June 13, 2002, shall continue as the exclusive bargaining representative without the necessity of an election.

(emphasis added). Those criteria, taken together, are used to assess the existence of a "community of interests" among employees

for the purposes of collective bargaining with their employer. Bargaining units can be "employer-wide" or "agency-wide (encompassing all eligible employees of an entity), but can also be "vertical" (encompassing all employees in a branch of the employer's table of organization), or "horizontal" (grouping employees by their occupation). The Commission is not limited to finding the most appropriate unit configuration, so the fact that other groupings could also be appropriate (or even more appropriate) does not require rejection of a proposed unit that is itself appropriate. *City of Centralia*, Decision 3495-A (PECB, 1990).

Among the statutory unit determination criteria, the "history of bargaining" takes on particular significance in cases such as this, where one organization seeks to obtain separate representation for some of the employees historically included in a larger bargaining unit. Applying determination criteria in RCW 41.56.060 that are similar to the PSRA, the Commission has embraced the approach used by the National Labor Relations Board in "severance" situations:

The decision in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966) contains the definitive statement of existing NLRB policy on the adjudication of severance disputes. The Board there observed:

We shall, . . . broaden our inquiry to permit evaluation of all considerations relevant to an informed decision in this area. The following areas of inquiry are illustrative of those we deem relevant:

1. Whether or not the proposed unit consists of a *distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis*, or of employees constituting a *functionally distinct department, working in trades or occupations for which a tradition of separate representation exists*.

2. *The history of collective bargaining of the employees sought and at the plant involved, and*

at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.

3. The extent to which the employees in the proposed unit have *established and maintained their separate identity* during the period of inclusion in a broader unit, and the extent of their *participation or lack of participation in the establishment and maintenance of the existing pattern of representation* and the prior opportunities, if any, afforded them to obtain separate representation.

4. The history and *pattern of collective bargaining in the industry* involved.

5. The *degree of integration of the employer's production processes*, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.

6. The qualifications of the union seeking to "carve out" a separate unit, including that *union's experience in representing employees like those involved* in the severance action.

. . . We emphasize the foregoing to demonstrate our intention to free ourselves from the restrictive effect of rigid and inflexible rules in making our unit determinations. Our determinations will be made only after a weighing of all relevant factors on a case-by-case basis, and we will apply the same principles and standards to all industries.

This Commission subscribes to the point of view expressed by the NLRB in *Mallinckrodt* The Commission specifically notes:

1. [The employees at issue in that case] do not meet the well-established criteria for classification as skilled journeymen craftsmen.
2. A severance [in that case] would not be productive of stable labor relations

3. There is no history giving the petitioned-for employees [in that case] an identity separate from others in the existing bargaining unit.
4. "All of the employees of the employer" . . . constitute an integrated support operation essential to the overall discharge by the [employer in that case] of its primary . . . function, and therefore are more appropriately dealt with as a unit.

Yelm School District, Decision 704-A (PECB, 1980) (emphasis added) (citations and footnotes omitted). Those criteria have now been applied in numerous severance cases for more than 25 years. While severances are not absolutely precluded, parties proposing severances inherently bear a heavy burden to overcome the history of bargaining in the existing bargaining unit.

Analysis of Severance Issue

The Washington State Patrol is organized into six bureaus, at least some of which are further divided into divisions that may be subdivided into sections. These cases arise in the Technical Services Bureau, which provides support functions underlying the employer's law enforcement functions. Twelve of the 13 employees involved in these cases have common supervision within a Facilities Management Section of a Property Management Division.

Skilled craft and separate department labels are inapposite to the bargaining units proposed in these cases:

- Case 19320-E-05-3048 concerns employees working in five separate civil service classifications (civil engineer 3, mechanical engineer 2, construction project manager, caretaker, and fiscal analyst), who are divided between Tumwater and Burlington locations. The civil engineer, mechanical engineer, and project manager positions each require a bachelor's degree, but only the civil engineer position

requires licensure as a professional engineer. Contradicting any suggestion of a "vertical" community of interest among them, the fiscal analyst is in a different branch of the employer's table of organization than the other employees in this group, and has no regular contact with the project manager and the two engineers, even though they work in the same Tumwater facility. The caretaker is grouped on the agency organization chart with the general repairers who are the subject of the other of these cases, and performs general cleaning and maintenance functions that do not require any special training or apprenticeship, but the day-to-day supervision and performance evaluations for that employee are by a sergeant at the Burlington detachment. The only work-related contact between the caretaker and the fiscal analyst concerns supply requests.

- Case 19321-E-05-3049 concerns eight employees in a "General Repairer" classification, who perform maintenance work on the employer-owned structures and facilities. These employees are assigned (one each) to eight of the nine geographic districts operated by the employer agency. Beyond having a job title that inherently contradicts their categorization as members of a particular craft or trade, the evidence indicates they work at a sub-journeyman level on mixed tasks that include painting, plumbing, carpentry, janitorial work, fixing machinery, buying supplies, and delivering materials. The job requires no special education or experience, other than a jack-of-all-trades proficiency. These employees are recruited from a variety of backgrounds, with some coming up through the employer's system by promotion from caretaker, while others come into the system with experience acquired in the private sector or in the military. The general repairers do not have regular work-related contact or interaction with one another.

Even though the employer groups them together in the facilities maintenance branch of its organization chart,¹ their day-to-day supervision and performance evaluations are by sergeants or lieutenants in the respective districts where they are assigned. Their assigned duties vary according to needs in their respective districts, and their daily tasks differ widely so that these employees do not perform their tasks on a routine or repetitive basis.

Severances of units built exclusively on extent of organization have been rejected in cases dating back to at least *Bremerton School District*, Decision 527 (PECB, 1978) (involving a unit of building maintenance personnel who fell short of qualifying as traditional "crafts" personnel).

The history of bargaining precludes severance in these cases, where the employees at issue in these cases have been (and continue to be) represented by the WFSE in a nonsupervisory bargaining unit that encompasses nearly 400 employees. The Washington State Patrol is a relatively small employer agency,² yet its workforce is fragmented among the largest number of existing bargaining units to be found among all state general government agencies: In addition to bargaining units of nonsupervisory and supervisory law enforcement personnel organized under Chapter 41.56 RCW,³ at least five

¹ In addition to proposing the caretaker in the other unit, characterization of this unit as "horizontal" in nature is precluded by the fact that a general repairer assigned to the fire protection bureau is not at issue in either of these petitions.

² Two of 14 bargaining units at the Department of Social and Health Services each include more than 7,000 employees, where the total workforce of the Washington State Patrol is estimated at less than 3,000 employees.

³ Washington State Patrol troopers have bargaining and interest arbitration rights under RCW 41.56.473 and .475.

separate employee organizations represent classified employees of this agency in 18 bargaining units under the PSRA.⁴ Some of those existing PSRA units are "vertical" in nature (e.g., encompassing all nonsupervisory employees at the Crime Lab), while others are "horizontal" in nature (e.g., limited to discrete levels of supervisors at Communications).

A separate identity has not been preserved for the employees at issue in these cases. There was no persuasive evidence showing that, prior to this petition, the general repairers considered themselves (or were considered by other employees or managers) as having a separate identity within the agency-wide bargaining unit. RCW 41.80.070(1) preserved the propriety of bargaining units that were organized under prior law, and RCW 41.80.070(2) eliminated the need for re-certification of exclusive bargaining representatives

⁴ The organizations and the units they represent are:

(1) The WFSE represents six units: (i) nonsupervisory mixed classes; (ii) nonsupervisory service workers at Academy; (iii) nonsupervisory at Crime Laboratories; (iv) supervisors at Crime Laboratories; (v) nonsupervisory at Fire Protection Training; and (vi) supervisors at Fire Protection Training.

(2) The Washington Public Employees Association represents seven units: (i) nonsupervisory at Technical Services; (ii) supervisors at Technical Services; (iii) supervisors at Investigative Services; (iv) nonsupervisory at State Fire Marshal; (v) supervisors at Communications; (vi) Commercial Vehicle Enforcement 3; and (vii) nonsupervisory at Technology Fleet Support.

(3) International Federation of Professional and Technical Engineers, Local 17, represents two units: (i) nonsupervisory at Vehicle Enforcement/Inspection; and (ii) nonsupervisory at Communications.

(4) Another independent organization represents supervisory communications officers.

(5) The petitioner in this case already represents two units: (i) nonsupervisory mixed classes; and (ii) supervisors at Facilities Management.

certified under the prior law. Even if it were to be assumed that all 13 employees would now support the SPTA if the Commission were to hold elections in these cases, *Bremerton School District*, Decision 527, pointed out that extent of organization is not binding in the unit determination process.

The history in the industry weighs against creating small units of state employees. Nothing in the record indicates that a tradition of separate representation exists for general repairers in any industry. As pointed out in *Eastern Washington University*, Decision 9047 (PSRA, 2005), the statutory encouragement of unit mergers in RCW 41.80.070 can be presumed to reflect legislative concern about the large number of historical bargaining units that were carried over when the PSRA was enacted. The specific "avoidance of fragmentation" language in RCW 41.80.070 contradicts carving out small units that are similar to one another. If the units sought in these cases were to be created, the agency would have its employees performing support functions divided among at least five bargaining units represented by multiple organizations.

The SPTA has shown no particular expertise with representing the types of employees involved here. This *Mallinckrodt* inquiry is understood to recognize the histories and expertise of traditional crafts unions that kept their focus on the representation of employees in a particular trade or craft throughout a region or across the nation. The SPTA only represents other employees of this employer agency, so it does not satisfy this inquiry.

Conclusion on Severance

The bargaining units proposed in these cases are not appropriate for severance, because their creation would unduly fragment the workforce of the employer agency and would create a potential for

work jurisdiction conflicts that would be detrimental to effective labor-management relations.

FINDINGS OF FACT

1. The Washington State Patrol is a general government agency of the State of Washington, which is an employer within the meaning of RCW 41.80.005(8).
2. The Washington State Patrol Trades Association (SPTA) is an organization created and operated by employees for the purpose of collective bargaining under Chapter 41.80 RCW.
3. The Washington Federation of State Employees (WFSE), an employee organization within the meaning of RCW 41.80.005(7), is the exclusive bargaining representative of a bargaining unit that includes nonsupervisory State of Washington employees working within in various classifications within the Technical Services Bureau of the Washington State Patrol.
4. The five employees in the bargaining unit proposed in Case 19320-E-05-3048 are currently in five separate classifications and are in two separate branches of the employer's table of organization, so that they do not constitute a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department.
5. The eight employees in the bargaining unit proposed in Case 19321-E-05-3049 constitute some, but not all, of the persons employed by the Washington State Patrol in the "general repairers" classification, and they perform sub-journey-level work on a variety of custodial and maintenance tasks, so that they do not constitute a distinct and homogeneous group of

skilled journeymen craftsmen or a functionally distinct department.

6. Classified employees of the Washington State Patrol are currently represented for the purposes of collective bargaining by five different employee organizations in a total of 18 bargaining units, so that further fragmentation of the employer's workforce would not be productive of stability in labor-management relations.
7. The employees at issue in these proceedings have not maintained a separate identity while included in the existing bargaining unit represented by the WFSE.
8. There is no evidence of a history of separate representation for the types of employees involved in these cases, either within state general government agencies or elsewhere.
9. The employees involved in these proceedings work in support of the overall law enforcement functions of the employer agency.
10. The SPTA is of recent origin, and has demonstrated no history of representing employees in the classifications involved in these proceedings.
11. The WFSE continues to be a viable organization, and continues to represent the employees involved in these cases as part of the historical bargaining unit.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-25 WAC.

2. Based upon paragraphs 4 and 6 through 11 of the foregoing findings of fact, the bargaining unit limited to five employees proposed in Case 19320-E-05-3048 is neither an appropriate unit for severance under established precedents nor an appropriate unit for the purposes of collective bargaining under RCW 41.80.070.
3. Based upon paragraphs 5 through 11 of the foregoing findings of fact, the bargaining unit limited to eight employees in the general repairers classification proposed in Case 19321-E-05-3049 is neither an appropriate unit for severance under established precedents nor an appropriate unit for the purposes of collective bargaining under RCW 41.80.070.

ORDER

Case 19320-E-05-3048; Decision 9212 - PSRA: The petition for investigation of a question concerning representation is DISMISSED.

Case 19321-E-05-3049; Decision 9213 - PSRA: The petition for investigation of a question concerning representation is DISMISSED.

Issued at Olympia, Washington, on the 19th day of January, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.