

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON FEDERATION OF)
STATE EMPLOYEES) CASE 20349-E-06-3145
)
Involving certain employees of:) DECISION 9613-A - PSRA
)
WASHINGTON STATE UNIVERSITY) DECISION OF COMMISSION
)
)
_____)

Younglove Lyman & Coker, P.L.L.C., by Edward E. Younglove, III, Attorney at Law, for the union.

Rob McKenna, Attorney General, by Patricia Thompson, Assistant Attorney General, for the employer.

This case comes before the Commission on a timely appeal filed by Washington State University (employer) seeking review and reversal of the Finding of Facts, Conclusions of Law, and Order issued by Executive Director Cathleen Callahan.¹ The Washington Federation of State Employees (union) supports the Executive Director's decision.

ISSUE PRESENTED

The only issue before this Commission is whether the Executive Director correctly concluded that the petitioned-for unit of non-supervisory dining services employees is appropriate.²

¹ Washington State University, Decision 9613 (PSRA, 2007).

² The Executive Director rejected the employer assertion that two employees should be excluded from the petitioned-for unit as supervisors. The employer did not challenge those findings on appeal.

Based upon the record before us, we affirm the Executive Director's Findings of Fact and Conclusions of Law that the petitioned-for bargaining unit is appropriate, and remand the case for further proceedings consistent with her Order.

ANALYSIS

The Appropriateness of the Petitioned-for Unit

This Commission has authority to determine appropriate bargaining units for purposes of collective bargaining. In structuring bargaining units, the Commission is guided by RCW 41.80.070, which outlines the factors to be considered when making unit determinations for employees covered by Chapter 41.80 RCW. Commission precedents decided under Chapter 41.56 RCW are applicable to decisions rendered under Chapter 41.80 RCW, unless the latter statute specifically directs otherwise. See *State - Natural Resources*, Decision 8458-B (PSRA, 2005).

The Commission's goal is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993). The criteria outlined in RCW 41.80.070 are applied collectively to discern the existence of a "community of interest" among the employees of a particular employer. *Benton County*, Decision 7651-A (PECB, 2001).

Unit determinations are made on a case-by-case basis, and the starting point for any unit determination analysis is the configuration sought by the petitioning organization. *King County*, Decision 5910-A (PECB, 1997). The statute does not require determination of the "most" appropriate unit; it is only necessary that a petitioned-for unit be an appropriate unit. *City of Winslow*, Decision 3520-A (PECB, 1990).

Previous Commission decisions have commented upon the fact that the Legislature did not prioritize the unit determination criteria set forth in RCW 41.56.060, and that all statutory factors need be considered in every case. *Community Transit*, Decision 8734-A (PECB, 2005). Similarly, there is no indication that the Legislature intended any one of the seven criteria found within RCW 41.80.070 to dominate the others.

Application of Standard

The union petitioned for a bargaining unit comprised of all the nonsupervisory employees in the dining services operation. The Executive Director found the unit appropriate. On appeal, the employer argues that the Executive Director failed to properly apply several of the RCW 41.80.070 factors, including the duties, skills, and working conditions of the employees, the history of bargaining, the extent of organization, and the avoidance of excessive fragmentation. The employer claims that, after careful consideration of all of those factors, the proposed bargaining unit composed of only the dining services employees should be found inappropriate.

Duties, Skills, and Working Conditions

The Executive Director applied the correct legal standard and cited appropriate Commission precedent regarding the analysis of the duties, skills, and working conditions of employees. The employer argues that the narrow scope of the petitioned-for bargaining unit examined in the context of the employer's overall operation makes this bargaining unit inappropriate. We disagree.

Bargaining units are often structured as "employer-wide" (encompassing all eligible employees of the employer), as "vertical" (encompassing all employees in a department or branch of the employer's table of organization), or as "horizontal" (encompassing

all employees in some occupational grouping). See *Spokane County*, Decision 7866 (PECB, 2002). Here, the petitioned-for bargaining unit is a vertical unit comprising one segment of the employer's operation, dining services. Although the petitioned-for unit comprises several different job classifications, including administrative assistants, lead cooks, and truck drivers, all of these positions operate to further the employer's goal of providing dining services to students. The Executive Director did not err in finding the petitioned-for employees share a community of interest that would be appropriate for bargaining.

History of Bargaining

Generally, the history of the bargaining unit need only be considered where there is a history of representation. The employer spends considerable time arguing that, historically, the dining services employees were part of a larger bargaining unit that was disclaimed by the union in 2005.³ Essentially, the employer argues that because these employees were part of a larger historical bargaining unit, that history should be considered, or at least examined.

We disagree with the employer that the Executive Director committed reversible error by assigning little weight to the history of bargaining. First, although the petitioned-for employees were once part of a larger bargaining unit, that bargaining relationship, as well as several others, ceased in 2005 when the union disclaimed that unit. Those disclaimers, as well as several successful decertification efforts, left the bulk of the employer's operation

³ The dining services employees previously were in a bargaining unit designated as "BU2". This agency did not create or determine the appropriateness of that unit, and was required to accept it as appropriate under the Personnel System Reform Act of 2002.

unrepresented.⁴ Second, history of bargaining is primarily examined in the unit clarification context, and has not been treated as a compelling factor when examining a newly organized bargaining unit.

Finally, the history of bargaining is not binding upon this Commission where the bargaining unit was not established by this Commission. *Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d 435 (1984). The Higher Education Personnel Board, and not this Commission, certified the preexisting bargaining unit that once comprised the petitioned-for employees. Any bargaining history that pre-existed Chapter 41.80 RCW is irrelevant to this proceeding.

Extent of Organization

The employer argues that if this Commission finds the petitioned-for bargaining unit appropriate, it could lead to a proliferation of bargaining units that would lead to conflicts between the varied interests of the units. The Executive Director not only found the petitioned-for unit appropriate, but also concluded that the record did not support the employer's concerns that labor-management relations would "unravel" if the unit was approved.

⁴ Following the 2005 window period, only eight bargaining units remained at the employer's Pullman campus. See *Washington State University*, Decision 9163 (PSRA, 2005) (supervisory service employees); *Washington State University*, Decision 8570 (PSRA, 2004) (nonsupervisory library administrative assistants); *Washington State University*, Decision 8434 (PSRA, 2004) (supervisory); *Washington State University*, Decision 7833 (PSRA, 2003) (nonsupervisory employees at the Intercollegiate Center for Nursing); RU-469 (nonsupervisory police officers); RU-367 (supervisory library staff); RBU-25 (nonsupervisory nurses); RU-438 (career fire fighters).

We agree with the Executive Director's conclusion, and note that the creation of vertically structured bargaining units such as the one involved here establish clear boundaries regarding the unit's work jurisdiction.⁵ The potential for other vertical units does not make this bargaining unit inappropriate.

Avoidance of Excessive Fragmentation

Finally, the employer argues that the Executive Director failed to independently consider avoidance of fragmentation as a criteria for unit determination. The employer once again asserts that the petitioned-for bargaining unit would excessively fragment the employer's workforce and lead to a proliferation of bargaining units that would have divergent interests, and harm the employer's operation. Once again, we disagree with the employer's claims.

With respect to the employer's claim that the Executive Director failed to *independently* consider avoidance of excessive fragmentation, RCW 41.80.070 does not dictate the manner in which we analyze the statutory criteria, it only states that what this "commission shall consider." The fact that the Executive Director analyzed avoidance of excessive fragmentation in conjunction with extent of organization does not make her decision any less correct.

Finally, nothing in this record supports the employer's claims that permitting the petitioned-for bargaining unit to stand will create a divergence of interests within the employer's workforce and that employees may find themselves at cross-purposes with each other at the bargaining table. At best, this argument is speculative, and we will not consider the speculations of an employer when ruling

⁵ This does not imply that horizontal bargaining units do not clearly define work jurisdiction. If the employer's operation is organized in a purely horizontal structure, work jurisdiction is also readily apparent.

upon unit determinations or employee eligibility. See *State - Natural Resources*, Decision 8458-B.

NOW, THEREFORE, it is


ORDERED

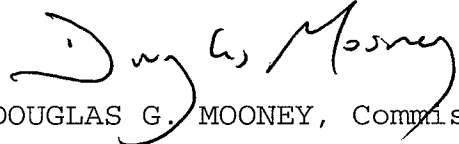
The Findings of Fact, Conclusions of Law, and Order issued by Executive Director Cathleen Callahan are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, the 13th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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PAMELA G. BRADBURN, Commissioner


DOUGLAS G. MOONEY, Commissioner

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CASE NUMBER: 20349-E-06-03145 FILED: 04/21/2006 FILED BY: PARTY 2
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