

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
OFFICE & PROFESSIONAL EMPLOYEES)	CASE 15416-C-00-993
INTERNATIONAL UNION, LOCAL 23)	
)	
For clarification of an existing)	DECISION 7342 - PECB
bargaining unit of employees of:)	
)	
THURSTON COUNTY)	ORDER OF DISMISSAL
)	
)	

The petition for clarification of bargaining unit in the above-referenced matter was filed with the Public Employment Relations Commission by Office & Professional Employees International Union, Local 23 (union) on October 2, 2000. The union represents a bargaining unit of detention specialists and detention supervisors. The petition sought to exclude the detention supervisors from the existing unit and to form a separate unit for these individuals, due to change of circumstances arising from a change in work location and a restructuring of the department.

On November 30, 2000, the employer filed a response to the petition in which it asserted that the change in work location actually occurred in 1998, that the parties discussed the operational changes during negotiations in 1999, and that the parties reached agreement on the issues resulting in the current contract.

The petition was reviewed under WAC 391-35-020.¹ A deficiency notice was issued on December 12, 2000, indicating that it appeared that the petition was untimely under WAC 391-35-020. The deficiency notice stated that an examination of the collective

¹ At this stage of the proceedings, the question at hand is whether the petition states a claim for relief available through unit clarification proceedings before the Public Employment Relations Commission.

bargaining agreement that the union filed with its petition confirms that the parties have an agreement that was signed in June, 1999, and which is to remain in effect until December 31, 2001.

The deficiency notice indicated that unit clarification proceedings are controlled by Chapter 391-35 WAC, which includes (emphasis added):

WAC 391-35-020 Petition--Time for filing. (1)

Disputes concerning status as a "confidential employee" may be filed at any time.

(2) *Where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit filed by a party to the collective bargaining agreement will be considered timely only if:*

(a) *The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective bargaining agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or*

(b) *The petitioner can demonstrate that, although it signed the current collective bargaining agreement covering the position or class at issue in the unit clarification proceedings:*

(i) *It put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure; and*

(ii) *It filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.*

(3) Disputes concerning the allocation of employees or positions between two or more bargaining units may be filed at any time.

The deficiency notice stated that if the changes to the employer's organizational structure had already occurred before the parties' current contract was signed, the petition appeared to be untimely under WAC 391-35-020. See *City of Pasco*, Decision 2657 (PECB, 1987) and *City of Pasco*, Decision 2294 (PECB, 1986).

The deficiency notice raised an additional issue, indicating that even if the petition was timely, the most that could be accom-

plished in the unit clarification proceeding would be to remove the disputed detention supervisors from the historical bargaining unit. If they would then be properly accreted to some existing bargaining unit of supervisors, the organization representing that bargaining unit would have to pursue the matter in a separate proceeding. The creation of a separate bargaining unit limited to the detention supervisors would have to be accomplished by means of a representation petition filed and processed under Chapter 391-25 WAC.

The deficiency notice advised the union that an amended petition could be filed and served within 21 days following such notice, and that any materials filed as an amended petition would be reviewed under WAC 391-35-020 to determine if they stated a cause of action. The deficiency notice further advised the union that in the absence of a timely amendment stating a cause of action, the petition would be dismissed. Nothing further has been received from the union.

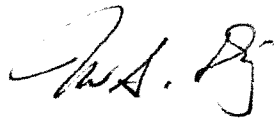
NOW THEREFORE, it is

ORDERED

The petition for clarification of bargaining unit in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 27th day of March, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.