

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON FEDERATION OF STATE	)	
EMPLOYEES	)	CASE 18019-C-03-1116
	)	
For clarification of an existing	)	DECISION 8408 - PSRA
bargaining unit of employees of:	)	
	)	
WASHINGTON STATE - FISH AND	)	ORDER CLOSING CASE
WILDLIFE	)	
	)	
	)	

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*Gladys Burbank*, Director of Activities, for the union.

*Cynthia Lerch*, Labor Relations Manager, for the employer.

On November 25, 2003, the Washington Federation of State Employees (union) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under WAC 391-35-026(1), seeking division of a bargaining unit of Department of Fish and Wildlife employees represented by the union.<sup>1</sup> Hearing Officer Starr H. Knutson conducted an investigation conference on January 5, 2004, by telephone conference call. On February 3, 2004, the employer and union jointly filed a letter withdrawing the petition.

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<sup>1</sup> The union simultaneously requested that the bargaining unit be "perfected" under WAC 391-35-026(2). The above-captioned case was limited to the "dividing" question under WAC 391-35-026(1).

The Executive Director accepts the stipulation tendered by the parties in their joint letter, and issues this order closing the case.

### BACKGROUND

The employer is a state agency which provides research, care and protection for the fish and wildlife of the state of Washington. The union has historically represented certain employees working in fish hatcheries operated by the employer.

The Personnel System Reform Act of 2002 (PSRA) was signed into law in 2002, with various effective dates. A new collective bargaining system for state civil service employees is codified as Chapter 41.80 RCW, of which one section that took effect on June 13, 2002, is pertinent here:

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 all 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 modification 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 non-supervisory employees.*

. . . .

(emphasis added). The Commission adopted a rule to implement that statute during the transition period which will exist until the duty to bargain under the new system goes into effect on July 1, 2004, as follows:

WAC 391-35-026 SPECIAL PROVISION--STATE CIVIL SERVICE EMPLOYEES. In addition to the circumstances described in WAC 391-35-020, bargaining units of state civil service employees may be modified under this section until RCW 41.80.050 and 41.80.080 take effect on July 1, 2004.

(1) *Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "divided" into separate units of supervisors and nonsupervisory employees under this section.*

(a) A petition to have an existing unit divided may be filed by the exclusive bargaining representative, by the employer, or by those parties jointly.

(b) The separation of bargaining units shall be implemented on or before July 1, 2004.

(emphasis added). As a result of their discussions, these parties have now entered into a stipulation that, under the employer's current table of organization, the historical bargaining unit does NOT include any employees who meet the definition of "supervisor" under RCW 41.80.005(13).

#### ANALYSIS

The determination and modification of appropriate bargaining units of state civil service employees is now a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.06.340; 41.80.070. In countless representation and unit clarification cases over the past 28+ years, the Commission has accepted stipulations of parties that employees are or are not supervisors.

In light of the parties' stipulation that the historical bargaining unit does not commingle supervisors and non-supervisory employees, there is no present claim or controversy as to whether the bargaining unit historically known as "Hatcheries Bargaining Unit 2" is inappropriate under RCW 41.80.070. While the parties' stipulation is not binding on the Commission or potential third parties, no further proceedings are necessary in this case.

NOW, THEREFORE, it is

ORDERED

The proceedings on the petition for clarification of an existing bargaining unit filed in the above-captioned matter are CLOSED.

ISSUED at Olympia, Washington, on this 17<sup>th</sup> day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director