

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON PUBLIC EMPLOYEES)
ASSOCIATION, LOCAL 365 UFCW) CASE 16829-C-02-1060
)
For clarification of an existing) DECISION 8410 - PSRA
bargaining unit of employees of:)
)
WASHINGTON STATE - FISH AND) ORDER CLARIFYING
WILDLIFE) BARGAINING UNIT
)
)
)

Mark S. Lyon, General Counsel, and *Herb Harris*, Organizer, for the union.

Cynthia Lerch, Labor Relations Manager, *Penny Cusick*, Personnel Manager, and *Janetta Sheehan*, Assistant Attorney General, for the employer.

On October 24, 2002, the Washington Public Employees Association (WPEA) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, seeking to have a bargaining unit of employees of the Department of Fish and Wildlife (employer) modified under WAC 391-35-020. The convoluted procedural history of this case is more fully described below. On January 22, 2004, the WPEA amended its petition to request that the historical bargaining unit be "perfected" under WAC 391-35-026, and the parties entered into stipulations on a number of issues that had been raised in this proceeding or related proceedings.

The Executive Director accepts the information and stipulations presented by the parties during the investigation conference and, acting under WAC 391-35-026(2), modifies the historical bargaining

unit to accrete the employees in certain classifications to the bargaining unit historically represented by the union.

BACKGROUND AND PROCEDURAL HISTORY

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 scientific and technical employees working in that organization. The bargaining unit was created in 1981, and was last modified in 2001, when it became known as "Biology Bargaining Unit 1".¹

Potentially Applicable Rules -

Part of the delay in the processing of this case has resulted from debate about which of two Commission rules is applicable.

WAC 391-35-020 is a general rule under which the Commission will receive, consider, and act upon petitions for modifications of bargaining units based on changed circumstances. In this case, the WPEA initially claimed that changed circumstances resulted in a situation where certain positions could only be accreted to the bargaining unit it represents, and could not stand alone as a separate unit or be accreted to any other bargaining unit.

WAC 391-35-026 is a special rule under which the Commission will receive, consider, and act upon petitions for modifications of bargaining units of state civil service employees in light of (and during a transition period predating the full effectiveness of) the Personnel System Reform Act of 2002 (PSRA), which was passed with various effective dates. A new collective bargaining system

¹ Washington Personnel Resources Board case RU-500.

for state civil service employees is codified in 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) and (b) 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 special rule adopted by the Commission to implement that statutory provision provides 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.

(2) *Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "perfected" under this section.*

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

(b) *All of the unit determination criteria set forth in RCW 41.80.070 shall be applicable to proceedings under this section. The history of bargaining in a unit configuration that is fragmentary and/or was based on narrower considerations shall not preclude creation of a "perfected" bargaining unit as to which a community of interests is demonstrated with regard to:*

(i) *The duties, skills and working conditions of all positions or classifications to be included in the "perfected" bargaining unit; and*

(ii) *The extent of organization and avoidance of unnecessary fragmentation shall be implemented to avoid stranding of other positions or classifications in units so small as to prejudice their statutory bargaining rights; and*

(iii) *The required separation of supervisors and nonsupervisory employees is implemented based on the delegations of authority then in existence; and*

(iv) *Two or more existing bargaining units can be merged through the procedure set forth in this section; and*

(v) *The exclusive bargaining representative demonstrates that it has majority support among any employees to be accreted to the bargaining unit(s) being "perfected."*

(emphasis added). As detailed below, the WPEA has now changed directions to proceed under WAC 391-35-026.

The Processing of This Case -

Before this case was assigned to a Hearing Officer, the Commission staff and the union exchanged several rounds of correspondence on the procedures available. Hearing Officer Martha M. Nicoloff then convened a hearing on May 8, 2003, where the parties framed issues regarding the supervisory status of several employees and the propriety of the existing bargaining unit under RCW 41.80.070. The hearing was recessed and scheduled to reconvene on July 10, 2003.

In a letter sent to the parties before the hearing reconvened, the Hearing Officer pointed out several potential problems which could preclude clarifying the bargaining unit under WAC 391-35-020. A meeting was set for June 18, 2003, and the parties discussed those issues on that date.

On July 8, 2003, the union filed a petition to divide the historic bargaining unit under WAC 391-35-026,² as well as a motion to consolidate the proceedings on its two petitions. The reconvening of the hearing was postponed, and the parties undertook to meet informally to discuss the division petition.

On September 26, 2003, the Washington Association of Professional Biologists (WAPB) filed a unit clarification petition under WAC 391-35-026,³ seeking to perfect a separate bargaining unit of professional employees that it represents.⁴ The "perfecting" petitions filed by the WPEA and WAPB appeared, on their face, to overlap as to some employees.

On January 14, 2004, the Hearing Officer convened a meeting with representatives of the employer, the WPEA and the WAPB. An effort was made to sort out the issues between the three unit clarification proceedings and the two bargaining units involved. At the conclusion of that meeting, the unions and the employer indicated they had resolved, to their satisfaction, that no overlap existed between the "perfecting" petitions filed by WPEA and WAPB.

² Case 17664-C-03-1094.

³ Case 17872-C-03-1110.

⁴ An additional outcome of the proceedings before the Washington Personnel Resources Board in its case RU-500 (see footnote 1, above) was the creation of a "Biology Bargaining Unit 2" represented by the WAPB.

After January 14, 2004, the employer and WPEA had further discussions with respect to whether any positions in the historic bargaining unit or any of the petitioned-for employees were supervisors within the meaning of RCW 41.80.005(13).

On January 22, 2004, the Hearing Officer conducted an investigation conference, by telephone conference call, concerning both of the unit clarification petitions filed by the WPEA. At that time, the employer and the WPEA entered into a number of stipulations concerning the issues raised in those proceedings, and the WPEA modified its position to request that this case be processed under WAC 391-35-026.

By a separate order, the Executive Director has accepted the parties' stipulation that the historical bargaining unit did not include any employees who were supervisors within the meaning of RCW 41.80.005(13). The proceedings initiated by the petition to "divide" filed in July 2003 were thus closed.

The WPEA initially sought to "clarify" the existing bargaining unit by accretion of employees in the "Environmental Specialist 4" and "Environmental Specialist 5" classifications in the employer's Technical Applications Program (TAPPS). By the stipulations now before the Executive Director, the parties seek to have the bargaining unit of non-supervisory scientific and technical employees "perfected" under WAC 391-35-026(2).

DISCUSSION

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.

The parties have submitted information and stipulations which satisfy the requirements of WAC 391-35-026(2), and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the action requested by the parties. In this case, the accretion of nine employees to a bargaining unit encompassing more than 135 employees particularly addresses the "fragmentation" component of the statutory unit determination criteria, and the union has demonstrated majority support among the affected employees.⁵

⁵ Normal Commission practice is to avoid the use of specific job titles in the descriptions of bargaining units, and to strongly prefer to use generic terms designed to ensure, insofar as possible, that the nature of the work performed by the employees within the bargaining unit is clear. The use of generic terms has the added benefit of avoiding the need to revisit and revise bargaining unit descriptions just because job titles are changed or new job titles are added within the same occupational type. In this case, the bargaining unit predates the merger of two state agencies that had some similar generic functions, and the unit has historically been described by a list of job titles and programs or branches of the employer's table of organization. While the historical unit description does not comport with the normal Commission practice, the parties encountered great difficulty in their attempt to re-describe the bargaining unit in generic (or more generic) terms. The Executive Director deems it appropriate to deviate from normal Commission practice in this particular case, due to: (1) the history of the agency involved; (2) the histories of this and related bargaining units; and (3) the language in RCW 41.80.070 providing that units in existence on June 13, 2002 remain appropriate. This does not preclude revisiting the propriety of this unit in the future, based on changes of circumstances that have occurred or may occur after June 13, 2002.

FINDINGS OF FACT

1. The Department of Fish and Wildlife is a general government agency of the state of Washington within the meaning of RCW 41.80.005(1).
2. Washington Public Employees Association, Local 365 UFCW, is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents the bargaining unit described by the Washington Personnel Resources Board on August 17, 2001, in its case RU-500, as Biology Bargaining Unit 1. That unit included employees in the job classes of Environmental Specialist 1, 2, and 3; Fish and Wildlife Biologist 1, 2, 3, and 4; Fish Biometrician; Fish Research Scientist 1 and 2; Research Analyst 1, 2, and 3; and Scientific Technician 1, 2, 3, and 4, and excluded all employees in the Wildlife Program; in the Fish Program Science Division (Inland Fish Investigations); Fish Program Fish Management Division (Marine Resource Unit, Inland Fish Management Section); Fish Program Regions (Fish and Wildlife Biologists); Habitat Program Environmental Services Division; Habitat Program Major Projects Division; and Habitat Program Regions.
4. The parties have stipulated that the employees in the "Environmental Specialist 4" and "Environmental Specialist 5" classifications in the employer's TAPPS program have duties, skills and working conditions similar to, and a community of interest with, employees in the non-supervisory bargaining unit described in paragraph 3 of these findings of fact, and the union has demonstrated that it has majority support among the petitioned-for employees, in accordance with WAC 391-25-026(2)(b)(v).

5. No other facts have been discovered or brought to the attention of the Executive Director which call into question the propriety of the proposed accretion or the demonstration of support described in these findings of fact.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and WAC 391-35-026.
2. The accretion of the employees described in paragraph 4 of the foregoing findings of fact will perfect the bargaining unit of non-supervisory employees as an appropriate unit for the purposes of collective bargaining under RCW 41.80.070.

ORDER

1. The bargaining unit of non-supervisory scientific and technical employees is modified to read:

All non-supervisory permanent civil service employees of the Department of Fish and Wildlife, as follows: including all permanent employees in the job classes of Environmental Specialist 1, 2, and 3, and including Environmental Specialist 4 and 5 in the Technical Applications Program (TAPPS); Fish and Wildlife Biologist 1, 2, 3, and 4; Fish Biometrician; Fish Research Scientist 1 and 2; Research Analyst 1, 2, and 3; and Scientific Technician 1, 2, 3, and 4, excluding all temporary, seasonal career or permanent employees in the Wildlife Program; in the Fish Program Science Division (Inland Fish Investigations); Fish Program Fish Management Division (Marine Resource Unit, Inland Fish Management Section); Fish Program Regions (Fish and Wildlife Biologists); Habitat Program Environmental Services Division; Habitat Program Major Projects Division; and Habitat Program Regions, as well as confidential employees,

internal auditors, supervisors, non-supervisory Washington Management Service employees (on and after July 1, 2004), and employees included in any other bargaining unit.

2. The "Environmental Specialist 4" and "Environmental Specialist 5" classifications in the TAPPS program are now included in that bargaining unit.

ISSUED at Olympia, Washington, on this 20th day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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