

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON FEDERATION OF STATE)
EMPLOYEES) CASE 18088-C-03-1128
)
and) DECISION 8364 - PSRA
)
WASHINGTON STATE - TRANSPORTATION)
)
For clarification of an existing) ORDER CLARIFYING
bargaining unit.) BARGAINING UNIT
)
)
_____)

Gladys Burbank, Director of Activities, for the union.

Kermit Wooden, Human Resources Director, for the employer.

On December 17, 2003, the Washington Federation of State Employees (union) and the Washington State Department of Transportation (employer) jointly filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission under WAC 391-35-026, seeking division of an existing bargaining unit represented by the union. An investigation conference was conducted on December 30, 2003, by Hearing Officer Starr H. Knutson.

The Executive Director accepts the stipulations and information presented by the parties during the investigation conference and, acting under WAC 391-35-026(1), divides the historical bargaining unit into two separate bargaining units of state civil service employees conforming to RCW 41.80.070(1)(a), as follows: (1) a

bargaining unit of non-supervisory employees; and (2) a bargaining unit of supervisors.

BACKGROUND

The employer is a state agency which operates and improves the transportation services of the state. The union has historically represented employees performing highway maintenance functions for the agency.

The bargaining unit has reputedly existed since 1968,¹ and a union shop has been in effect in that unit since 1974.² The unit has existed in its present form since 2002.³ The unit has historically included both supervisors and non-supervisory employees.

The Personnel System Reform Act of 2002 (PSRA) was passed by the Legislature and signed into law in 2002, with various effective dates. A new collective bargaining system 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

¹ The materials transferred by the Department of Personnel to the Commission under RCW 41.80.902 do not appear to include the file for the proceeding in which the union was certified as exclusive bargaining representative.

² Department of Personnel case US-11. Under the State Civil Service Law, Chapter 41.06 RCW, union security was implemented or discontinued only by vote of the bargaining unit employees under RCW 41.06.150.

³ Department of Personnel case RU-609.

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.

(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.) By the stipulation now before the Executive Director, the parties seek to have the historical unit "divided" under WAC 391-35-026(1).

DISCUSSION

Applicable Legal Standards

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 past cases where parties have stipulated to divide bargaining units to conform with statutory changes, the Commission has accepted such stipulations and dispensed with a full hearing process. *Benton County*, Decision 2221 (PECB, 1985) and

Cowlitz County, Decision 5008 (PECB, 1995) [dividing historical department-wide units in sheriff's departments after the law enforcement officers became eligible for interest arbitration]; *King County*, Decision 6668 (PECB, 1999) [dividing historical units to reflect the eligibility of some of the employees (those working in public transit operations) for interest arbitration].

The processing of this case is greatly simplified by the parties' agreement that the historical bargaining unit configuration created under different statutory provisions than now exist must be divided to conform to the current statute.

FINDINGS OF FACT

1. The Department of Transportation is a general government agency of the state of Washington within the meaning of RCW 41.80.005(1).
2. The Washington Federation of State Employees, is an employee organization within the meaning of RCW 41.80.005(7).
3. The Washington Federation of State Employees represents the historical bargaining unit described by the Washington Personnel Resources Board on June 12, 2002, in RU-606. That unit historically included all permanent classified employees in specific listed classifications.
4. The employer and union have stipulated that the historical bargaining unit configuration is not appropriate under RCW 41.80.070, and that the historical bargaining unit should be divided unit into separate units of supervisors and non-supervisory employees.

5. The employer and the union have stipulated to the respective eligibility lists for the separate units of supervisors and non-supervisory employees.
6. No other facts have been discovered or brought to the attention of the Executive Director which call into question the propriety of the stipulations described in paragraphs 3 and 4 of 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 bargaining unit historically known as the "Highway-Maintenance Unit" is inappropriate under RCW 41.80.070, by reason of its inclusion of a mix of supervisors and non-supervisory employees.
3. The stipulations of the parties to divide the historical bargaining unit will implement the requirements of RCW 41.80.070(1)(a).

ORDER

The bargaining unit shall be divided into two bargaining units described as follows:

1. All non-supervisory civil service employees of the Department of Transportation performing the functions of highway maintenance, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), employees in other bargaining units and

employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.

2. All supervisory civil service employees of the Department of Transportation performing the functions of highway maintenance, excluding confidential employees, internal auditors, non-supervisory employees, Washington Management Service employees (on and after July 1, 2004), employees in other bargaining units and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.

ISSUED at Olympia, Washington, on this 22nd day of January, 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.