

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES)	CASE 18020-C-03-1117
)	
For clarification of an existing)	DECISION 8384 - PSRA
bargaining unit of employees of:)	
)	
WASHINGTON STATE - HEALTH)	ORDER CLARIFYING
)	BARGAINING UNIT
)	

Gladys Burbank, Director of Activities, for the union.

Robert Detamore, Labor Relations Manager, for the employer.

On November 25, 2003, the Washington Federation of State Employees (WFSE) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under WAC 391-35-026, concerning certain employees of the Department of Health (employer). The WFSE sought to perfect an existing bargaining unit it represents by accretion of employees formerly included in another bargaining unit. An investigation conference was conducted on January 12, 2004, by Hearing Officer Starr H. Knutson.

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 existing bargaining unit to include employees left without representation when another historical bargaining unit was disclaimed by the different organization which had been the exclusive bargaining representative of that unit.

BACKGROUND

The employer is a state agency which functions to protect and improve the health of the residents of Washington State. The union already represents some employees of this employer.

The history of bargaining units within this employer's workforce is summarized as follows:

1. In 1977, International Federation of Professional and Technical Engineers, Local 17, was certified as exclusive bargaining representative of a "health sciences" bargaining unit.¹ That unit was last modified in August 29, 1991.²
2. In February 2003, the WFSE was certified as exclusive bargaining representative of a bargaining unit of non-supervisory employees that was agency-wide except for the employees then included in the "health sciences" bargaining unit.³
3. In October 2003, Local 17 disclaimed the "health sciences" bargaining unit.

The Personnel System Reform Act of 2002 (PSRA) was passed 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 Department of Personnel case RE-23.

² Department of Personnel case RU-279.

³ *State - Health*, Decision 7980 (PSRA, 2003).

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. . . .*

(emphasis added). The Commission adopted a rule to implement that statutory provision 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.

. . .
(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 WFSE seeks to have the bargaining unit of non-supervisory 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) in this case:

- It would have been entirely appropriate to include the "health sciences" employees in that existing bargaining unit if the separate unit had never existed, or if it had been disclaimed by its exclusive bargaining representative prior to or during the proceedings on the petition filed by the WFSE.
- The accretion of about 120 employees to a bargaining unit encompassing more than 750 employees addresses the "fragmentation" component of the statutory unit determination criteria.

- The WFSE has demonstrated majority support among the affected employees.

Nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the accretion requested in this case.

FINDINGS OF FACT

1. The Department of Health 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 (WFSE), an employee organization within the meaning of RCW 41.80.005(7).
3. Under a certification issued by the Commission in February 2003, the WFSE is the exclusive bargaining representative of all non-supervisory employees of the Department of Health, excluding certain health sciences employees.
4. Health sciences employees were excluded from the bargaining unit described in paragraph 3 of these findings of fact at the time of its creation, because of their inclusion in a bargaining unit represented by another organization.
5. The history of bargaining in the separate bargaining unit of "health sciences" employees was truncated in October 2003, when the organization which was the exclusive bargaining representative of that separate bargaining unit disclaimed that unit.

6. The parties have stipulated that the non-supervisory employees formerly included in the separate "health sciences" bargaining unit 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.
7. Accretion of the employees formerly included in the "health sciences" bargaining unit into the bargaining unit described in paragraph 3 of these findings of fact will address the extent of organization and the avoidance of fragmentation.
8. The WFSE has demonstrated that it has majority support among the petitioned-for employees, in accordance with WAC 391-25-026(2)(b)(v).
9. 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 3 of the foregoing findings of fact will perfect the existing bargaining unit to create an agency-wide 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 employees already represented by the union is modified to read:

All non-supervisory civil service employees of the Washington State Department of Health, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees.

2. The employees formerly included in the "health sciences" bargaining unit are included in that bargaining unit.

ISSUED at Olympia, Washington, on this 2nd 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.