

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
WASHINGTON FEDERATION OF STATE )  
EMPLOYEES ) CASE 18104-C-03-1131  
 )  
For clarification of an existing ) DECISION 8385 - PSRA  
bargaining unit of employees of: )  
 )  
WASHINGTON STATE - COMMUNITY, ) ORDER CLARIFYING  
TRADE AND ECONOMIC DEVELOPMENT ) BARGAINING UNIT  
 )  
 )  
\_\_\_\_\_ )

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

*Jan Marie Ferrell*, Assistant Director, Human Resources,  
for the employer.

On December 23, 2003, the Washington Federation of State Employees (union) and the Washington State Department of Community, Trade and Economic Development (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 January 21, 2004, 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 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 that has an unusual organizational history: Two separate agencies that formerly existed (one with a focus on trade and the other with a focus on community development), were merged by statutory changes; the Governor later appointed separate directors for the trade and community development functions; that ad hoc arrangement was not accepted by the Legislature; and further reorganization of the statutory department is currently underway.

The existing bargaining unit was created in 1994,<sup>1</sup> and has existed in its present form since 1995.<sup>2</sup> The union initially represented only employees working within the former community development agency, and that bargaining unit is now limited to program developers working in one branch of the employer's table of organization. Even after the merger of departments, employees in other divisions/units of the employer have been historically excluded from that unit. The existing bargaining unit has, however, historically included both supervisors and non-supervisory employees in the program class series working in community development.

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 in Chapter 41.80 RCW, of which one section that took effect on June 13, 2002, is pertinent here:

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<sup>1</sup> Department of Personnel case RC-112.

<sup>2</sup> Department of Personnel case RU-382.

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

DISCUSSIONApplicable 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 Community, Trade and Economic Development 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 bargaining unit described by the Washington Personnel Resources Board on September 1, 1995, in Case RU-382, as limited to employees in the program class series working in community development. The scope of that bargaining unit remained essentially unchanged, notwithstanding merger of the agency in which the employees originally worked with another agency and subsequent reorganizations within the current agency, and includes a mix of supervisors and non-supervisory employees.
4. The employer and the union have stipulated in this proceeding that the historical bargaining unit configuration is not appropriate under RCW 41.80.070, and that the historical bargaining unit should be divided 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 "Community Program Developer Bargaining 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 Community, Trade and Economic Development who function as program developers in the following divisions/units: (1) Community Services Division; (2) Housing Services Division; (3) Local Government Division; and (4) WorkFirst unit, 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 Community, Trade and Economic Development who function as and/or supervise program developers in the following divisions/units: (1) Community Services Division; (2) Housing Services Division; (3) Local Government Division; and (4) WorkFirst unit, 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 2<sup>nd</sup> 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.