

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON FEDERATION OF STATE)
EMPLOYEES) CASE 18118-C-03-1133
)
For clarification of an existing) DECISION 8403 - 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 Department of Community, Trade and Economic Development (employer) jointly filed a petition with the Public Employment Relations Commission under WAC 391-35-026, seeking clarification of an existing bargaining unit by accretion of employees in the employer's Growth Management operation. An investigation conference was conducted on January 21, 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 historical bargaining unit to include the employees in the named classifications to the bargaining unit historically represented by the union.

BACKGROUND

The employer is a state agency which assists in the building and sustaining of strong social, environmental and economic foundations for the residents of Washington State. The union represents a bargaining unit of employees of this employer.

The existing bargaining unit was created in 1994,¹ and has existed in its present form since 1995.² The union initially represented only employees working within a predecessor 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 not been included in that unit.

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 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

¹ Department of Personnel case RC-112.

² Department of Personnel case RU-382.

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.

. . .

The Commission adopted a special rule, WAC 391-35-026, 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. Implementing one part of that special rule, the historical "Community Program Developer" bargaining unit was previously divided into separate units of supervisors and non-supervisory employees.³

The portion of WAC 391-35-026 that is applicable to this proceeding is 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*

³ State - CTED, Decision 8385 (PSRA, 2004) issued on February 2, 2004.

"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."

By the stipulation now before the Executive Director, the parties seek to have the bargaining unit of non-supervisory community program development employees "perfected" under WAC 391-35-026(2).

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.

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 about 15 employees to a bargaining unit encompassing approximately 100 employees particularly

addresses the "fragmentation" component of the statutory unit determination criteria. The union has demonstrated majority support among the affected employees.

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, an employee organization within the meaning of RCW 41.80.005(7), is the exclusive bargaining representative of non-supervisory employees performing the functions of program development.
3. The parties have stipulated that the employees in the Growth Management section have duties, skills and working conditions similar to, and a community of interest with, employees in the non-supervisory bargaining unit described in paragraph 2 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).
4. 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 bargaining unit of non-supervisory program development 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 engaged in community program development is modified to read:

All non-supervisory civil service employees of the Department of Community, Trade and Economic Development working to develop community programs, excluding 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 employees developing community programs in the Growth Management section are included in that bargaining unit.

ISSUED at Olympia, Washington, on this 17th 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.