

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
SERVICE EMPLOYEES INTERNATIONAL )  
UNION, DISTRICT 1199NW ) CASE 18318-C-04-1177  
 )  
For clarification of an existing ) DECISION 8507 - PSRA  
bargaining unit of employees of: )  
 ) ORDER CLARIFYING  
WASHINGTON STATE - SOCIAL AND ) BARGAINING UNIT  
HEALTH SERVICES )  
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*Kim Ramsey*, Internal Organizer Public Sector, and *Rick Polintan*, Organizer, for the union.

*Rose Mattison*, Labor Relations Manager, for the employer.

On March 17, 2004, Service Employees International Union, District 1199NW (union) and the Washington State Department of Social and Health Services (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 March 24, 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 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 provides various social and health services for the residents of Washington State. Since 1988, the union has represented registered nurses working in the institutions operated by the employer.<sup>1</sup> The unit has existed in its present form since 1992, and 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 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).

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<sup>1</sup> Department of Personnel case RC-90. The bargaining unit had existed since 1975, and had previously been represented by the Washington State Nurses Association. Department of Personnel case RD-25.

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.

. . . .

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

## ANALYSIS

### 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 Social and Health Services is a general government agency of the state of Washington within the meaning of RCW 41.80.005(1).
2. Service Employees International Union, District 1199NW, is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents the historical bargaining unit described by the Washington Personnel Resources Board on May 21, 1992, in Case RU-323. That unit historically included all classified registered nurses except Registered Nurse 4, Nursing Care Consultant Supervisors, and Nursing Consultant Advisors.
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 parties have stipulated to the 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 4 and 5 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 "Nurses 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 registered nurse employees of the Department of Social and Health Services, excluding supervisors, the classifications of Registered Nurse 4 and Nursing Consultant Advisor, confidential employees, internal auditors, 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 registered nurse employees of the Department of Social and Health Services, excluding non-supervisory employees, the classifications of Registered Nurse 4 and Nursing Care Consultant Advisor, confidential employees, internal auditors, 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 12<sup>th</sup> day of April, 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.