

State - School for the Blind, Decision 8438 (PSRA, 2004)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
WASHINGTON FEDERATION OF STATE )  
EMPLOYEES ) CASE 18174-C-04-1163  
 )  
For clarification of an existing ) DECISION 8438 - PSRA  
bargaining unit of employees of: )  
 ) ORDER CLARIFYING  
WASHINGTON STATE - SCHOOL FOR THE ) BARGAINING UNIT  
BLIND )  
\_\_\_\_\_ )

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

*Cheri Willhide*, Human Resources Manager, for the employer.

On January 22, 2004, the Washington Federation of State Employees (union) 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 at the Washington State School for the Blind (employer) represented by the union. Investigation conferences were conducted on February 12 and February 19, 2004, by Hearing Officer Starr H. Knutson. During the conferences the parties tendered stipulations on the issues in this case. The Executive Director accepts the parties' stipulations and, issues this order closing the case.

BACKGROUND

The employer is a state agency which provides residential education for blind children in Washington State. The union has historically

represented all classified employees of the employer excluding teachers. The bargaining unit was created in 1988,<sup>1</sup> and has existed in its present form since 1996.<sup>2</sup> That 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 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:

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<sup>1</sup> Department of Personnel case RU-261.

<sup>2</sup> Department of Personnel case RU-419.

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). As a result of their discussions, these parties now stipulate that the historical bargaining unit includes ONLY one employee who meets the definition of "supervisor" under RCW 41.80.005(13) and that no other supervisors work at the school.

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 countless representation and unit clarification cases over the past 28+ years, the Commission has accepted the stipulations of parties that employees are or are not supervisors.

The Commission has long held that a bargaining unit of one employee is inappropriate. Under the current facts, where the employer has

only one supervisory position, the only possibility for that employee to exercise his/her right to representation is to continue inclusion in the historical unit where their position has been included for 15+ years. Should an additional supervisory position be created at the School for the Blind at any time in the future, that change of circumstances would render the historical unit inappropriate, and would warrant exclusion of the supervisory positions from the historical unit in proceedings under Chapter 391-35 WAC at that time.

In light of the parties' stipulation that the historical bargaining unit includes only one supervisor in a unit otherwise including only non-supervisory employees, and that no other supervisor positions currently exist, there is no present claim or controversy as to whether the bargaining unit known as "Agencywide Bargaining Unit" is inappropriate under RCW 41.80.070. While the parties' stipulation is not binding on the Commission or potential third parties, no further proceedings are necessary in this case.

NOW, THEREFORE, it is

ORDERED

The proceedings on the petition for clarification of an existing bargaining unit filed in the above-captioned matter are CLOSED.

ISSUED at Olympia, Washington, on this 23<sup>rd</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.