

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
WASHINGTON FEDERATION OF STATE )  
EMPLOYEES ) CASE 18144-C-04-1138  
 )  
For clarification of an existing ) DECISION 8442 - PSRA  
bargaining unit of employees of: )  
 )  
WASHINGTON STATE - MILITARY ) ORDER CLOSING CASE  
 )  
 )  
\_\_\_\_\_ )

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

No appearance was entered on behalf of the employer.

On January 16, 2004, the Washington Federation of State Employees (union) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under WAC 391-35-026(1), seeking division of a bargaining unit of Military Department employees currently represented by the union. Prior to the conduct of an investigation conference, the union filed a letter on February 17, 2004, in which it requested withdrawal of the petition. The Executive Director accepts the union's request and issues this order closing the case.

BACKGROUND

The employer is a state general government agency that both oversees the Washington National Guard and administers state emergency management services. The union has historically

represented certain employees working in the employer's emergency management division.

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 as 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 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). Although it filed the petition to initiate this proceeding under WAC 391-35-026, the union now states that there are no supervisory employees in the bargaining unit.

#### 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. In countless representation and unit clarification cases over the past 28+ years, the Commission has both: (a) accepted stipulations of parties that employees are or are not supervisors; and (b) terminated proceedings where a party withdraws its claim of supervisory status.

In light of the request for withdrawal by the moving party, there is no present claim or controversy as to whether the bargaining unit historically known as the "Emergency Management" bargaining unit is inappropriate under RCW 41.80.070. While the union's opinion on the supervisor question is not binding on the Commission, the employer, or any 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 24<sup>th</sup> day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director