

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
PUBLIC SCHOOL EMPLOYEES OF)
WASHINGTON) CASE 18566-C-04-1191
)
For clarification of an existing) DECISION 8634 - PSRA
bargaining unit of employees of:)
) ORDER CLARIFYING
WESTERN WASHINGTON UNIVERSITY) BARGAINING UNIT
)
)
_____)

Eric T. Nordlof, Attorney at Law, for the union.

Christine O. Gregoire, Attorney General of Washington, by
Wendy Bohlke, Senior Counsel; *Val M. Berry*, Human
Resources Director; Summit Law Group, by *Rodney B.*
Yunker, for the employer.

On May 26, 2004, Public School Employees of Washington (PSE) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under WAC 391-35-026, seeking division of a unit at Western Washington University (employer). Hearing Officer Starr H. Knutson conducted an investigation conference on June 22, 2004.

The Executive Director accepts the stipulations and information presented by the parties 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 institution of higher education. The union represents civil service employees of the employer in a bargaining unit (historically known as "Bargaining Unit D") which was created by the former Higher Education Personnel Board (HEPB) in 1974.¹

In 1977, the HEPB divided the bargaining unit it had created in 1974 into two units (thereafter known as "Bargaining Unit D" and "Bargaining Unit E"),² and another organization was certified as exclusive bargaining representative of Bargaining Unit E. PSE has represented Bargaining Unit D since 2000.³

As presently constituted, the unit represented by PSE includes a mix of: (a) civil service employees who supervise other civil service employees; and (b) civil service employees who supervise student workers excluded from the coverage of the State Civil Service Law, Chapter 41.06 RCW. The titles include: "Accounting Supervisor" at two levels, "Administrative Services Manager" at two levels, "Administrative Assistant" at two levels who supervise,

¹ HEPB case HRU-35. Classes titled "Computer Operations Manager", "Office Supervisor 2", "Purchasing Manager B", "Campus Security Lieutenant", "Maintenance Supervisor" at two levels, "Custodial Supervisor" at two levels, "Custodial Service Manager A", and "Grounds Supervisor" at two levels were included at that time.

² HEPB case RM-53. The HEPB transferred the classes titled "Campus Police Lieutenant", "Campus Police Sergeant", "Custodial Services Manager B", "Custodial Supervisor 2", "Grounds Supervisor 1", "Maintenance Supervisor" at two levels, "Carpenter Supervisor", "Electrician Supervisor", "Painter Supervisor", "Plumber-Pipefitter-Steamfitter Supervisor", "Chief Engineer", and "Assistant Chief Engineer" to Bargaining Unit E.

³ Department of Personnel case RC-158.

"Bookstore Manager Assistant", "Cashier Supervisor", "Central Services Supervisor 1", "Curriculum Advisor", "Data Entry Supervisor", "Fiscal Technician Supervisor", "Grant and Contract Supervisor", "Information Tech System Specialist 4", "Library Specialist Supervisor" at two levels, "Office Support Supervisor" at two levels, "Parking Supervisor", "Photolithographer Supervisor", "Printer-Lithograph Supervisor", "Program Manager" at two levels, "Program Support Supervisor" at two levels, "Research Technologist Supervisor", "Scientific Instruct Tech Supervisor", "Secretary Supervisor", "Speech Path/Audio Clinic Supervisor", and "Sports Equipment Manager 2".

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:

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. . . .

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. A large body of historical material concerning bargaining units of state civil service employees has been transferred to the Commission by the Department of Personnel. See RCW 41.80.901.

RCW 41.80.005(13) now defines a "supervisor" as an individual who exercises authority over "employees" and RCW 41.80.005(6) defines

"employee" as an individual covered by the State Civil Service Law, Chapter 41.06 RCW. Neither those definitions nor RCW 41.80.070 existed when the HEPB created the unit of supervisors labeled "D" in 1974, or when it divided classes along occupational lines into the units labeled "D" and "E" in 1977, and review of the historical materials suggests that the HEPB made no distinction based on civil service coverage of those supervised.

Chapter 41.06 RCW generally excludes students from its coverage,⁴ so that exercising authority over students is not an activity within the definition of "supervisor" in RCW 41.80.005(13). 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. 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 employees working in public transit operations for interest arbitration).

Commission practice avoids the use of specific job titles in bargaining unit descriptions, and strongly prefers the use of generic terms to ensure, insofar as possible, that the nature of the work performed by the employees within the bargaining unit is clear. In this case, the HEPB shifted individuals overseeing generic operations and maintenance functions to the unit labeled

⁴ 41.06.070(1)(1).

"E" when it confined the unit labeled "D" to individuals overseeing generic office-clerical and administrative support functions, and the later terms are used in re-describing the divided unit.

FINDINGS OF FACT

1. Western Washington University is an institution of higher education of the state of Washington within the meaning of RCW 41.80.005(10).
2. Public School Employees of Washington (PSE) is an employee organization within the meaning of RCW 41.80.005(7).
3. PSE represents a bargaining unit of civil service employees which, as modified by the Higher Education Personnel Board on April 14, 1977, includes a mix of individuals who supervise other civil service employees and individuals who oversee student workers excluded from civil service.
4. The employer and PSE 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 conforming to the definition of "supervisor" in RCW 41.80.005.
5. The employer and the union have stipulated to the respective eligibility lists for the separate units.
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. Because student workers who are excluded from the coverage of the State Civil Service Law, Chapter 41.06 RCW, are not "employees" within the meaning of RCW 41.80.005(6), the exercise of authority over such student workers does not qualify as supervisory authority under RCW 41.80.005(13) or provide basis for inclusion in a unit of supervisors under RCW 41.80.070(1).
3. The bargaining unit historically known as "Bargaining Unit D" is inappropriate under RCW 41.80.070(1), by reason of its inclusion of a mix of non-supervisory employees and supervisors within the meaning of RCW 41.80.005(13).
4. 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. Non-supervisory civil service employees of Western Washington University who oversee student workers performing office-clerical and administrative support functions, excluding confidential employees, internal auditors, supervisors, employees in other bargaining units, and employees histori-

cally excluded by orders of the Washington Personnel Resources Board or its predecessors.

2. Supervisory civil service employees of Western Washington University who supervise civil service employees performing office-clerical and administrative support functions, excluding confidential employees, internal auditors, non-supervisory employees, employees in other bargaining units, and employees historically excluded by orders of the Washington Personnel Resources Board or its predecessors.

ISSUED at Olympia, Washington, on this 29th day of June, 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.