

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
WASHINGTON FEDERATION OF STATE )  
EMPLOYEES ) CASE 18018-C-03-1115  
 )  
For clarification of an existing ) DECISION 8640 - PSRA  
bargaining unit of employees of: )  
 )  
WASHINGTON STATE - FISH & WILDLIFE ) ORDER CLARIFYING  
 ) BARGAINING UNIT  
 )  
\_\_\_\_\_ )

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

*Cynthia Lerch*, Labor Relations Manager, for the employer.

On November 25, 2003, 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, concerning certain employees of the Washington Department of Fish & Wildlife (employer). The union sought to accrete in the Fish and Wildlife Health Specialist classification who work at one of the employer's fish hatcheries. Hearing Officer Starr H. Knutson held an investigation conference on January 4, 2004, at which the parties discussed stipulations. The parties asked for a delay to negotiate related issues, and did not confirm their stipulations until June 30, 2004.

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 classification to the bargaining unit historically represented by the union.

BACKGROUND

The employer is a general government state agency. The union represents several bargaining units of employees of this employer. The bargaining unit proposed for perfection has existed without change since it was created in 1996.<sup>1</sup> It was historically labeled "Hatcheries Bargaining Unit 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) 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 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. . . .

The parties stipulated in a separate "division" proceeding commenced under WAC 391-35-026 that the historical "Hatcheries Bargaining Unit 2" did not include a mix of supervisors and non-supervisory employees.<sup>2</sup>

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<sup>1</sup> Department of Personnel case RU-432.

<sup>2</sup> *State - Fish and Wildlife*, Decision 8408 (PSRA, 2004).

The Commission adopted a rule 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, 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 "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."*

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

### DISCUSSION

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 7 employees to a bargaining unit encompassing more than 120 employees addresses the anti-fragmentation component of the statutory unit determination criteria, and the union has demonstrated majority support among the affected employees.

### FINDINGS OF FACT

1. The Washington Department of Fish & Wildlife 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 certain non-supervisory employees working at fish hatcheries operated by the employer.

3. The parties have stipulated that the employees in the "Fish & Wildlife Health Specialist" classification 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 employees as an appropriate unit for the purposes of collective bargaining under RCW 41.80.070.

#### ORDER

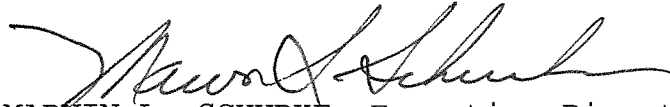
1. The bargaining unit of non-supervisory employees engaged in fish hatcheries functions is modified to read:

All non-supervisory civil service employees of the Washington Department of Fish & Wildlife working at the Fish Hatcheries, excluding confidential employees, internal auditors, supervisors, and employees included in any other bargaining unit.

2. The "Fish & Wildlife Health Specialist" classification is included in that bargaining unit.

ISSUED at Olympia, Washington, on this 30<sup>th</sup> 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.