

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON PUBLIC EMPLOYEES)
ASSOCIATION, UFCW LOCAL 365) CASE 20262-C-06-1263
)
For clarification of an existing) DECISION 9640 - PSRA
bargaining unit of employees of:)
) ORDER CLARIFYING
STATE - MILITARY) BARGAINING UNIT
_____)

Schwerin Campbell Barnard, by *Lawrence R. Schwerin*,
Attorney at Law, and *Herb Harris*, Organizer, for the
union.

Diane Lutz, Negotiator, State Labor Relations Office, and
Leeanna Strehlow, Personnel Officer, Military Department,
for the employer.

On March 9, 2006, the Washington Public Employees Association, UFCW
Local 365 (WPEA) filed a unit clarification petition involving
certain employees of the State of Washington (employer) working at
the Military Department. The petition seeks modification of an
existing bargaining unit, following implementation of new classifi-
cations by the state Department of Personnel under the State Civil
Service Law, Chapter 41.06 RCW. On February 21, 2007, the WPEA
filed an amended petition.

The WPEA petition was consolidated for hearing with a representa-
tion petition by the Washington State Federation of State Employees
(WFSE) filed on November 15, 2006, see Case 20759-E-06-3200. The
WFSE petition seeks certification for a new bargaining unit of
employees of the Military Department. A hearing on the consoli-

dated cases was held on February 21, 2007, before Hearing Officer Sally B. Carpenter.

ISSUE

What is an appropriate bargaining unit description for the WPEA unit of Military Department employees?

The Executive Director accepts the unit description offered by the WPEA in its amended petition to describe the WPEA unit.

APPLICABLE LEGAL PRINCIPLES

The determination and modification of appropriate bargaining units under Chapter 41.80 RCW, State Collective Bargaining, is a function delegated by the Legislature to the Commission, RCW 41.80.070. The unit determination criteria set forth by the Legislature are:

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 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 modifications 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 bargaining unit involved in this case pre-existed the June 13, 2002, date referenced in RCW 41.80.070(1).

The statutory factors listed in RCW 41.80.070(1) are applicable in modifying the WPEA Military Department bargaining unit. No one factor is controlling, the factors apply in varying degrees, and all factors need not arise in each and every case. *Benton County, Decision 7651 (PECB, 2002), aff'd, Decision 7651-A (PECB, 2003).*

The Personnel System Reform Act of 2002 delegated restructuring of the state's classification system to the State Department of Personnel and/or Washington Personnel Resources Board in RCW 41.06.139. WAC 357-10-010 provides the following framework for implementation of the statute:

WAC 357-10-010 CLASSIFICATION PLAN -- FRAMEWORK AND GENERAL DIRECTION.

(1) Beginning January 1, 2005, the director must implement a comprehensive classification plan that includes allocation and reallocation of positions. The plan must support state government's efforts to deliver effective and efficient services to the citizens of the state. To achieve this goal, the classification plan, and any modifications to it, shall be designed in accordance with the following goals for the state:

(a) The plan shall be modern, simple, and streamlined, with the number of job classifications and administrative processes kept to a reasonable minimum[.]

The "modern, simple and streamlined" plan called for in WAC 357-10-010 was implemented by the Department of Personnel. The plan decreased the number of job classes by broadening the general description of each classification.

City of Tacoma, Decision 8982 (PECB, 2005), discusses the lack of voting opportunity in an accretion:

Accretion of employees to an existing bargaining unit is accomplished without a vote of the employees, and so is an exception to the usual right of employees to have a

voice and vote on whether they will be represented by a union. . . . An accretion is particularly appropriate in circumstances where an individual would otherwise be isolated (stranded) without representation or the ability to exercise the collective bargaining rights conferred by the statute.

(footnote omitted). The reasoning in *City of Tacoma* is underlined by the following provision in Chapter 391-35 WAC:

WAC 391-35-020 TIME FOR FILING PETITION -- LIMITATIONS ON RESULTS OF PROCEEDINGS.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

. . . .
(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

FACTUAL BACKGROUND

There has been a WPEA "Trades" bargaining unit in the Military Department since 1981. The 1981 original unit was described as an "all employees" unit, with a list of exclusions which were supervisory, professional, clerical and administrative.

In March 1987, the Washington State Personnel Board certified the bargaining unit in Decision RU 249. The 1987 certification reversed the descriptive methodology, listing only the job classifications which were included in the unit. The Board approved a unit description as follows:

Included: All Trades employees in the classes listed below:

Plant Mechanic
Electrician
Carpenter
Painter

Stationary Engineer 1, 2, 3
Trades Helper
General Repairer
Caretaker
Gardener 1, 2
Electronics Technician
Warehouse Worker 1, 2
Construction and Maintenance Supervisor
Security Guard 1, 2
Custodian
Plant Mechanic Supervisor
Excluded: All other employees.

There has been no modification of the unit description since 1987. Almost 20 years later, the WPEA filed this unit clarification petition.

The WPEA's petition was accompanied by an explanatory letter stating in part, "With the implementation of the new Occupational Classification plan from the Department of Personnel there have been some changes to the job classification to some of our bargaining unit employees." The Commission's Executive Director, by letter dated September 19, 2006, rejected a stipulation between the WPEA and the employer because the unit description requested by the WPEA was impermissibly narrow in its continued exclusion of locksmith and HVAC positions, and in its limitation to permanent employees.

The WPEA's amended petition seeks certification of a bargaining unit described as:

All trades, maintenance, custodial and security employees of the Washington Military department governed by RCW 41.06 and 41.80 in the Joint Services Division, the Army Division and the Air National Guard Division, excluding all supervisors, managers, professional, office, clerical and administrative employees, confidential employees, and Emergency Management Division employees.

As described by the parties, there have been many Military Department organizational changes since 1987. Divisions have been frequently reorganized and renamed, reporting relationships have shifted, job titles have changed, and the like. Over the years the parties have often cooperatively included employees in the bargaining unit with the same or similar work duties.

Thus, the job classes and titles in the existing WPEA unit are "trades" employees, but with many permutations. The essence of the WPEA unit is that it includes all "blue-collar" trades and technicians. In contrast, the essence of the new unit sought by the WFSE is an office-worker, "white-collar" unit.

The employer, the WPEA and the WFSE, agreed at the hearing to these facts:

There are four divisions in the Military Department:
Joint Services
Army
Air National Guard
Emergency Management Services

The Emergency Management Services Division is not at issue in this case. The WFSE has a wall-to-wall bargaining unit in that Division.

All Military Department divisions have a mix of state employees and federal employees. The federal employees frequently perform the same work as state employees, but are not under the jurisdiction of the Commission, and are not sought by either the WPEA or the WFSE.

The WFSE proposed unit includes about 20 professional, administrative, office and clerical employees in the Army Division.

The existing WPEA unit consists of trades employees in three divisions: Joint Services, Army and Air National Guard. There are about 100 employees in the unit.

The WPEA proposed bargaining unit description would accrete nine positions,¹ two of which are currently vacant, into the existing unit. The effect would be to formalize the representation of employees who have been treated as WPEA members by the parties in their 20-year cooperative history since the 1987 certification.

Except for the employer's exceptions discussed below regarding electronics security technician positions and HVAC positions, the bargaining unit description proposed by the WPEA is accepted by the employer.

Part-time employees are included in the bargaining unit by operation of WAC 391-35-356.

The existing WPEA bargaining unit is a horizontal unit of all employees working in what WPEA counsel described as "a blue collar trades unit". The unit extends across all three divisions which have that kind of work.

ANALYSIS

ISSUE ONE:

HVAC and Locksmith Positions - Proposed Accretion

WPEA's amended petition would accrete four HVAC positions in the Army Division and one in the Air National Guard Division. Three of the positions are filled, two are vacant.

WPEA's amended petition would also accrete two locksmith positions to the unit. Both locksmith positions are in the same pay range, but one is called locksmith supervisor. The parties agree that the

¹ Those positions include two locksmiths, five HVAC technicians, and two electronics security technicians.

locksmith supervisor position is a lead worker, and not a supervisor under RCW 41.80.005(13).

The employer does not stipulate to inclusion of the HVAC and locksmith positions in the unit for two reasons: (1) the incumbent employees have not had an opportunity to vote for or against union representation, and (2) the positions have not historically been in the unit.

RCW 41.80.070(1) prescribes the elements which must be considered by the Commission in determining an appropriate bargaining unit:

A. Duties, Skills and Working Conditions

Four of the HVAC positions and both locksmith positions work in the Army Division, within the Division's Capital Facilities and Maintenance Office (CFMO). The fifth HVAC position is in the Air National Guard Division. Although the positions are physically dispersed, they are centrally managed from the CFMO office, reporting up the chain of command to the Facility Operations and Maintenance Manager.

The four Army HVAC positions are located in four facilities: Camp Murray, Centralia, Everett, and Yakima. Each position works in a shop with maintenance mechanics and grounds keepers. All employees in the shop other than HVAC employees are part of the existing WPEA unit. There are no other employees in this part of the organization chart who could form a union with the HVAC positions. The same facts apply to the HVAC position in the Air National Guard Division; that HVAC position works in a shop with WPEA unit members.

The two locksmith positions work throughout the state, going from facility to facility. Under the employer's organization chart, the positions report directly to the CFMO manager. The manager prioritizes work assignments for the locksmith positions.

The duties and skills required for the HVAC and locksmith positions includes a hands-on technical ability to work with tools and physical things. This parallels the skills and duties of other employees in the WPEA trades unit. A generic and organizational description of the unit includes this type of work.

B. History of Collective Bargaining, Extent of Organization among Employees, Desires of Employees, and Avoidance of Excessive Fragmentation

The employer states that the HVAC and locksmith positions are not now, nor should they be, included in the bargaining unit because they were not listed in the job classes of the 1987 RU certification.²

The WPEA points out that the positions did not exist at the time of the 1987 certification. The duties, skills, and working conditions of the positions are closely similar to those in the unit. Fragmentation and stranding of the HVAC technicians and locksmiths would result if the positions are excluded from the WPEA unit.

Under Commission precedents, accretion is accomplished without a vote of the employees; and so is an exception to the employees'

² The record is silent on why these classes were excluded by the employer, while other classes which were similar to historic WPEA work were included in the bargaining unit when the position's title was changed or the work was created, or was moved on the organization chart.

right to have a voice and vote. The reason for this is that failure to include the positions in an existing unit would create either a tiny separate bargaining unit or the inability of employees to exercise their statutory collective bargaining rights.

CONCLUSION - HVAC and Locksmith Positions

Based on the similarity between these positions' duties, skills and working conditions, and on their placement in reporting relationships in the organization, these positions should be accreted to the WPEA bargaining unit.

ISSUE TWO:

Electronics Technician Security Positions - Proposed Accretion

Applying the RCW 41.80.070(1) elements to the electronics technician security positions, the facts indicate as follows:

There are two electronics technicians. They both work in the Army Division, Security Subdivision, in the same chain of command as the security guards.³ Security guards are in the WPEA trades bargaining unit. The electronics technicians are currently included in the unit, and apparently have always been so, by agreement of the parties. The technicians' primary duties include closed circuit TV surveillance, and work with intrusion detection equipment.

The employer now raises a concern that it may not be able in the future to distinguish the computer work of the electronics

³ The chain of command for electronics technicians goes up first to an "IT Specialist 3", and then up to the Security Manager who supervises all guards.

technician positions from the work jurisdiction of the white-collar unit sought by WFSE. No testimony was offered as to any current facts which make it difficult to delineate WPEA jurisdiction from WFSE jurisdiction.

CONCLUSION - Electronics Technician Security Positions

Based on the duties, skills, and working conditions of the electronics technician positions, their history of inclusion by the parties in the bargaining unit, and the absence of facts showing a current work jurisdiction issue, the positions should remain in the WPEA bargaining unit.

FINDINGS OF FACT

1. The Washington State Military Department (employer) is a general government agency of the State of Washington within the meaning of RCW 41.80.005(1).
2. The Washington Public Employees Association (WPEA) is an employee organization within the meaning of RCW 41.80.005(7).
3. The employer and WPEA have had a collective bargaining relationship concerning a separate bargaining unit of nonsupervisory trades employees working in the agency since 1981. The bargaining unit description was last modified in March 1987, by the Washington State Personnel Board as Decision RU 249.
4. The employer changed classification titles for employees in the bargaining unit under RCW 41.06.139 and WAC 357-10-010, without changing the duties, skills, or working conditions of the employees.

5. On March 9, 2006, the WPEA filed a unit clarification petition concerning its trades bargaining unit.
6. The WPEA filed an amended petition on February 21, 2007, seeking certification of the following bargaining unit:

All trades, maintenance, custodial and security employees of the Washington State Military Department governed by RCW 41.06 and 41.80 in the Joint Services Division, the Army Division and the Air National Guard Division, excluding all supervisors, managers, professional, office, clerical and administrative employees, confidential employees, and Emergency Management Division employees.

7. The amended petition would accrete HVAC and locksmith positions to the trades unit, and it would clarify the continued inclusion of electronic technician security positions in the unit.
8. The HVAC and locksmith positions have a community of interest with other positions in the existing WPEA bargaining unit and failure to accrete them to the unit would lead to stranding or fragmentation of the employees in those positions.
9. The electronics technician security positions have historically been included in the WPEA trades unit and share a community of interest with other positions in the unit.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-35 WAC.

2. The HVAC and locksmith positions described in Finding of Fact 8 are accreted to the WPEA bargaining unit.
3. The electronics technician security positions described in Finding of Fact 9 are accreted to the WPEA bargaining unit.

NOW, THEREFORE, it is

ORDERED

The Washington Public Employees Association shall continue to have status as the exclusive bargaining representative under RCW 41.80.005(9) of the trades bargaining unit described as follows:

All trades, maintenance, custodial and security employees of the Washington State Military Department governed by RCW 41.06 and 41.80 in the Joint Services Division, the Army Division and the Air National Guard Division, excluding all supervisors, managers, professional, office, clerical and administrative employees, confidential employees, and Emergency Management Division employees.

ISSUED at Olympia, Washington, this 17th day of April, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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BY: /s/ MAJEL C. BOUDIA

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