STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925	)	CASE 20014-C-05-1251
	)	
For clarification of an existing bargaining unit of employees of:	)	DECISION 9474 - PSRA
	)	ORDER CLARIFYING
UNIVERSITY OF WASHINGTON	)	BARGAINING UNIT
	)	

Douglas, Drachler & McKee, by *Martha Barron*, Attorney At Law, for the union.

Attorney General Rob McKenna, by *Paul Olsen*, Assistant Attorney General, for the employer.

Service Employees International Union, Local 925 (union) filed a unit clarification petition with the Commission on January 20, 2006, seeking to have two employees of the University of Washington (employer) included in a bargaining unit represented by the union following their reclassification. The union and employer filed written stipulations on September 28, 2006, and waived their right to a hearing.

ISSUE

The sole issue before the Executive Director in this case is: Should the parties' stipulation to accrete the employees in question to the existing bargaining unit be accepted? The Executive Director finds the stipulations submitted by the parties satisfy the requirements set forth in WAC 391-35-020, and modifies the bargaining unit to include the employees involved.

APPLICABLE LEGAL PRINCIPLES

These parties have a bargaining relationship under the Personnel System Reform Act of 2002, Chapter 41.80 RCW (PSRA). The determination and modification of appropriate bargaining units under the PSRA is a function delegated by the Legislature to the Commission. RCW 41.80.070. The criteria for such determinations include: "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 statute also requires a separation of supervisors from nonsupervisory employees.

State law gives state civil service employees a right to voice and vote on their representation, if any, for the purposes of collective bargaining under the PSRA. Rather than by individual actions, those rights are generally effected by majority vote of the employees in an appropriate bargaining unit under RCW 41.80.080. Long-established Commission and judicial precedent also limit the rights of labor and management in regard to unit modifications:

> Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed. However, both accretions and exclusions can be accomplished through unit clarification in appropriate circumstances. If, as contended by the employer and found by the authorized agent, the agreed unit is found by intervening decisions of the Commission or the Courts to be inappropriate, it may be clarified at any time. This rule is consistent with the NLRB policies on the subject.

City of Richland, Decision 279-A (PECB, 1978), *aff'd,* 29 Wn. App. 599 (1981), *review denied,* 96 Wn.2d 1004 (1981). The limited

circumstances where accretions are appropriate were further explained in *Kitsap Transit Authority*, Decision 3104 (PECB, 1989).

The policies enunciated in *Richland*, *Kitsap Transit*, and numerous other Commission precedents were subsequently codified in the Commission's rules, as follows:

> 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:
>
> (a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; or
>
> (b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.
>
> (5) Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:
>
> (a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.
>
> (b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.
>
> (c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

The law does not require determination of the most appropriate bargaining unit. *City of Winslow*, Decision 3520-A (PECB, 1990). Employees who are left out of a bargaining unit at one point in time cannot be deprived of their statutory voting rights at a later point in time.

ANALYSIS

The union represents a bargaining unit which is often referred to as the Healthcare Professional/Laboratory Technical bargaining unit. When the union was certified as exclusive bargaining representative of that unit in 2004, it encompassed about 780 employees performing a variety of health care and laboratory technical work. The "cytogenetic technologist" classification was included in the bargaining unit, but there were no employees in a "cytogenetic technologist specialist" classification.

After the union was certified as exclusive bargaining representative, the employer reclassified two employees from the "technologist" classification to the "specialist" classification. Later, another employee was promoted from "technologist" to "specialist". The parties stipulate that the employer removed the reclassified employees and the promoted employee from the bargaining unit without notifying the union.

The stipulations submitted by the employer and union in this case clearly eliminate any concern that the reclassification and/or promotion invoked the statutorily-required separation of supervisors, by including the following:

> 1. The specialist position is a *non-exempt, non-supervisory position* in a job series which includes technologists and cytogenetic technologist trainee (trainees).
>
> . . . .
>
> 4. The three employees who occupy the position of cytogenetic technologist specialist do not have the authority to hire, fire, or discipline employees.

(emphasis added). The Executive Director can thus proceed with application of the community of interest criteria.

While the parties' agreement on the unit placement of the employees involved is not binding on the Commission, under *City of Richland*, Decision 279-A, they have provided facts supporting the result which they would have the Commission reach in this case:

> 1. The specialist position is . . . *in a job series* which includes technologists and cytogenetic technologist trainee (trainees).
>
> 2. The specialists *work alongside trainees and technologists* in the Anatomic Pathology Department at the University of Washington Medical Center. *All three classifications are under the supervision* of the Manager of Program Operations.
>
> 3. The technologist and trainee positions are within the Healthcare Professional/Laboratory Technical bargaining unit represented by the union.
>
> . . . .
>
> 5. Current bargaining unit members and the job classification at issue *share many of the same duties and skills* including providing instruction and training to new laboratory staff and students. In fact, the employees who have been reclassified or promoted to specialist *still perform the duties of the technologist*.
>
> 6. The specialist and technologist classifications *require a Bachelor's Degree and certification* as a clinical laboratory specialist in cytogenetics by the National Certification agency for Medical Laboratory Personnel.

(emphasis added). Rather than being a stranded class that is entitled to voice and vote on the selection of their exclusive bargaining representative, under *City of Auburn*, Decision 4880-A (PECB, 1995), the employees in the added "specialist" class are affected by changed circumstances.

The union's petition in this case came within a reasonable time after the creation of the new classification and/or the change of circumstances to invoke WAC 391-35-020(4), particularly in light of

the stipulated lack of contemporaneous notice by the employer to the union. Moreover, the parties' stipulations support a conclusion that continued exclusion of the "specialist" class from the Nonsupervisory Healthcare Professional/Laboratory Technical bargaining unit would constitute an inappropriate fragmentation contravening RCW 41.80.070.

CONCLUSION

The Commission can dispense with the hearing process called for in the statutory provisions delegating unit determination authority, when parties submit stipulations that do not contravene the applicable statutes or rules. *Benton County*, Decision 2221 (PECB, 1985). In the present case, the parties have filed stipulations to repair an exclusion that should never have occurred. The agreed accretion will avoid unnecessary fragmentation of the workforce, and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the accretions they seek. The parties' stipulations are thus incorporated into the findings of fact set forth below.

FINDINGS OF FACT

1. The University of Washington is a state institution of higher education within the meaning of RCW 41.80.005(10).

2. Service Employees International Union, Local 925, is an employee organization within the meaning of RCW 41.80.005(7).

3. Under a certification issued in 2004, the union is the exclusive bargaining representative of an appropriate bargaining unit of nonsupervisory healthcare and laboratory technical employees of the University of Washington. While

employees in the "cytogenetic technologist" and "cytogenetic technologist trainee" classifications were included in that bargaining unit, there were no employees in a "cytogenetic technologist specialist" classification when the union was certified.

4. Subsequent to the certification of the union as described in paragraph 3 of these findings of fact, the employer reclassified two bargaining unit employees and promoted a third bargaining unit employee into the "cytogenetic technologies specialist" classification and removed those persons from the bargaining unit, all without notice to the union.

5. The "cytogenetic technologist specialist" classification does not have supervisory duties or responsibilities.

6. The employees in the "cytogenetic technologist specialist" classification have duties, skills, and working conditions similar to those of the "cytogenetic technologist" and "cytogenetic technologist trainee" classifications.

7. In light of the absence of timely notice to it from the employer, the union filed the petition in this matter within a reasonable time after the reclassifications and/or promotion of employees to the "cytogenetic technologist specialist" classification.

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 employees in the "cytogenetic technologist specialist" classification share a community of interest with employees in the bargaining unit described in Finding of Fact 3, and their exclusion from that bargaining unit would constitute unnecessary fragmentation, so that their accretion to the bargaining unit is warranted under RCW 41.80.070.

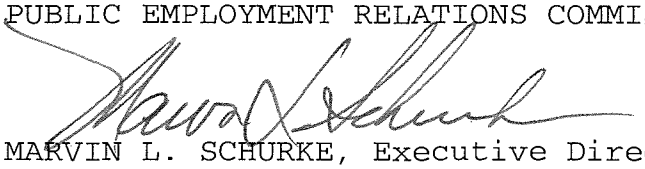
NOW, THEREFORE, it is

ORDERED

The bargaining unit of nonsupervisory healthcare and laboratory technical employees represented by Service Employees International Union, Local 925, at the University of Washington is hereby clarified to include the "cytogenetic maintenance specialist" job classification.

ISSUED at Olympia, Washington, on the 31st of October, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, 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.