

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MASON COUNTY,)	
)	
Complainant,)	CASE 21085-C-07-1307
)	
vs.)	DECISION 9914 - PECB
)	
TEAMSTERS LOCAL 252,)	ORDER GRANTING
)	MOTION TO DISMISS
Respondent.)	
)	
)	

Gary R. Johnston, President, for the union.

Gregory D. Hering, Human Resources Director, for the employer.

Mason County (employer) filed a unit clarification petition on May 23, 2007 seeking to have the position of Fire Marshal classified as a supervisor and excluded from the bargaining unit represented by Teamsters Local 252 (union). The union is the exclusive representative of a bargaining unit representing a variety of positions in several county departments including the positions of Fire Marshal and Fire Warden. Hearing Officer Guy Otilio Coss held a pre-hearing telephone conference on August 3, 2007 with the union's representative, Gary Johnston, and the employer's representative, Gregory Hering. During that conference, the union raised the issue of whether the employer's petition was timely under WAC 391-35-020. The parties stipulated that the petition did not meet the requirements of timeliness under WAC 391-35-020(1) or (2)(a). However, the employer argued that there was a substantial change of circumstance that made the petition timely under WAC 391-35-020(2)(b). The union disagreed and requested time to file a motion to dismiss the employer's petition. The union filed its

motion to dismiss on August 3, 2007, and the employer responded on August 20, 2007.

ISSUE PRESENTED

Was the employer's unit clarification petition filed in compliance with the timeliness of petition standards of WAC 391-35-020?

The Executive Director finds that the employer's unit clarification petition is untimely on two grounds: 1) There were no "substantial changed circumstances during the term of the agreement" as required under WAC 391-35-020(2)(b), and 2) the employer did not adhere to the requirement set forth in WAC 391-35-010(2)(a) by notifying the union during bargaining that it intended to dispute the inclusion of the Fire Marshal position in the bargaining unit.

The law is well settled in this area. To succeed in a unit clarification case, the filing party must comply with the requirements of WAC 391-35-020. This rule represents a codification of Commission precedent set forth in *Toppenish School District*, Decision 1143-A (PECB, 1981). In *Toppenish*, the employer sought removal of alleged supervisory positions from the bargaining unit after negotiating contracts including those petitions. While the Commission is mindful that mid-term modifications in a bargaining unit may be needed under some circumstances, the Commission's *Toppenish* decision invoked a two step "discuss and file" process. The Commission continues to espouse that test and favors the need for parties to communicate with each other at the bargaining table, respect their contractual arrangements, and avoid the destabilizing effects that result when one party attempts to obtain a unit clarification ruling that upsets bargaining unit agreements. See *Yakima School District*, Decision 9020-A (PECB, 2007).

There is no dispute regarding the facts in this case. The parties' current collective bargaining agreement, signed on February 20, 2007, is effective from January 1, 2007, to December 31, 2008. During negotiations, the parties agreed to include two formerly unrepresented Fire Warden positions in the bargaining unit. The Fire Marshal was already included in the bargaining unit.

The employer asserts that the "substantial changed circumstance during the terms of the agreement," exists because of the "unintended effect" of retaining a supervisor (Fire Marshal) in the same unit as the two Fire Warden positions he allegedly supervises. The employer does not claim that the roles or duties of the Fire Marshall or Fire Wardens have changed.

The union disagrees with the employer and asserts that the change occurred during negotiations prior to the signing of the current collective bargaining agreement, and not during the term of the agreement because all three positions were in the bargaining unit from the effective date of the agreement.

In conclusion, the employer's petition is not timely under WAC 391-35-020(2)(a) or (b). The employer did not dispute the inclusion of the Fire Marshal in the bargaining unit during negotiations, did not file the instant petition prior to the date the collective bargaining was signed, and did not assert that any changes occurred since the collective bargaining agreement became effective. Accordingly, the petition is dismissed.

FINDINGS OF FACT

1. Mason County is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters Local 252, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit representing a variety of positions in several county departments including the positions of Fire Marshal and Fire Warden.
3. Mason County and Teamsters Local 252 signed a collective bargaining agreement on February 20, 2007, covering the period of January 1, 2007, to December 31, 2008.
4. During negotiations for the 2007-2008 collective bargaining agreement, the parties agreed to include two formerly unrepresented Fire Warden positions in the bargaining unit.
5. The position of Fire Marshal was included in the parties' previous collective bargaining agreement and continued to be included in the parties' 2007-2008 collective bargaining agreements.
6. The duties of the Fire Marshal or Fire Wardens have not changed since the signing of the parties' current collective bargaining agreement.
7. During the negotiations for the parties' current agreement, Mason County did not notify Teamsters Local 252 that it intended to dispute the continued inclusion of the Fire Marshal position in the bargaining unit identified in Finding of Fact 2 based on a supervisory exclusion.
8. Mason County filed a unit clarification petition on May 23, 2007, seeking to have the position of Fire Marshal classified as a supervisor and excluded from the bargaining unit identified in Finding of Fact 2.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. Mason County's May 23, 2007 unit clarification petition was not timely under WAC 391-35-020(2)(a), because it did not put the union on notice during negotiations that it would contest the inclusion of the Fire Marshal position through a unit clarification proceeding, and it did not file such petition prior to signing the current collective bargaining agreement.
3. Mason County's May 23, 2007 unit clarification petition was not timely under WAC 391-35-020(2)(b), because there was no substantial change of circumstances during the term of the current agreement which would warrant a modification of the bargaining unit by exclusion of the Fire Marshal position.

ORDER

Based upon the foregoing and the record as a whole, the motion to dismiss the unit clarification petition filed by the employer in the above-entitled matter is GRANTED.

ISSUED at Olympia, Washington, this 29th day of November, 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.