

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
STATE - CORRECTIONS	)	CASE 21314-C-07-1317
	)	
For clarification of an existing	)	DECISION 9921 - PSRA
bargaining unit represented by:	)	
	)	
TEAMSTERS, LOCAL 117	)	ORDER OF DISMISSAL
_____	)	

On October 22, 2007, the Washington State Department of Corrections (employer) filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. The petition concerns employees represented by Teamsters, Local 117 (union). The petition was reviewed under WAC 391-35-020, and a deficiency notice issued on October 24, 2007, indicated that the petition was defective. The employer was given a period of 21 days in which to file and serve an amended petition, or face dismissal of the case.

The employer has not filed an amended petition. The petition is dismissed.

DISCUSSION

The deficiency notice pointed out the petition's defects. Unit clarification proceedings are controlled by Chapter 391-35 WAC. Within that chapter, WAC 391-35-020 reads as follows:

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

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes concerning positions which have been newly created by an employer.

(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.

(c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.

(d) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.

(e) Disputes under WAC 391-35-320 concerning status as a confidential employee.

(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

(b) Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.

#### LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.

(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.

WAC 391-35-020(2)(a) and (b) apply to the present petition. Under these provisions of the rule, the petition is untimely because:

- the petition concerns the status of supervisors;
- the parties are not currently in negotiations over a successor collective bargaining agreement; and
- the existence of a valid current collective bargaining agreement bars the processing of this petition, because the petitioner has failed to demonstrate substantial changed circumstances which warrant a modification of the bargaining unit.

Changes in job titles do not constitute substantial changes in circumstances. The determination of whether an individual possesses sufficient supervisory authority to be excluded from a rank-and-file bargaining unit is made on the basis of the actual duties and authority exercised by that individual. Such determina-

tions are not made on the basis of titles. *Morton General Hospital*, Decision 3521-B (PECB, 1991); *King County*, Decision 9824 (PECB, 2007).

The present case concerns whether employees now designated as supervisors should be designated as non-supervisory and included in a rank-and-file bargaining unit. However, the principle adopted by the Commission in *Morton General Hospital*, *King County*, and numerous other Commission decisions, holds that changes in job titles do not necessarily equate to changes in job duties. In cases involving supervisors, only evidence supporting actual changes in job duties would support a claim of substantial changes in circumstances.

Under the current circumstances, only a petition filed under WAC 391-35-020(2)(a) would satisfy the timeliness requirements of the rule.

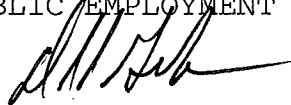
NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit filed in Case 21314-C-1317 is DISMISSED as procedurally defective.

ISSUED at Olympia, Washington, this 5<sup>th</sup> day of December, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.