

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
NORTHPORT EDUCATION ASSOCIATION)	CASE 22346-C-09-1399
)	
For clarification of an existing)	DECISION 10387 - EDUC
bargaining unit of employees of:)	
)	
NORTHPORT SCHOOL DISTRICT)	ORDER OF DISMISSAL
_____)	

On March 20, 2009, the Northport Education Association (union) filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. The petition concerns certificated employees of the Northport School District (employer). The petition was reviewed under WAC 391-35-020, and a deficiency notice issued on March 26, 2009, indicated that the petition was defective. The union was given a period of 21 days in which to file and serve an amended petition, or face dismissal of the case.

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

DISCUSSION

The deficiency notice pointed out the 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.

(6) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

The union seeks to accrete 2.2 positions to an existing 18 member bargaining unit. Under WAC 391-35-020(4), employees may be added to existing bargaining units only if a petition is filed within a reasonable time after a change of circumstances, or the existing bargaining unit is the only appropriate unit for the employees or positions. The petition does not allege a change of circumstances, does not provide a date for any change, and does not assert that the existing bargaining unit is the only appropriate unit for the Consultants.

Under WAC 391-35-020(5), a unit clarification petition will not be processed if the petition is not filed within a reasonable time after a position's creation, a certification or agreement excluded the employees or position, and the petition is not filed within a reasonable time after a change of circumstances.¹ The petition does not relate the history of the Consultant position, including whether the position is newly created and when it was created.

Accretions are an exception to the norm and will not be ordered where there is no change of circumstances, or where the petition seeks only to close an historical loophole. If the Consultant position was created some time ago and excluded from the bargaining unit through inadvertence or agreement of the parties, a unit clarification petition is not applicable and will not be processed. In the absence of a timely filed unit clarification petition, a question concerning representation may exist under Chapter 391-25 WAC. See *City of Vancouver*, Decision 9469 (PECB, 2006).

¹ WAC 391-55-020(5)(c) does not apply, since the 2.2 positions at issue would not affect the majority status of the union.

NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit filed in Case 22346-C-09-1399 is DISMISSED as procedurally defective.

ISSUED at Olympia, Washington, this 1st day of May, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "D. I. Gedrose", with a long horizontal flourish extending to the right.

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.