

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
UNIVERSITY OF WASHINGTON)	CASE 22087-C-08-1389
)	
For clarification of an existing)	DECISION 10263 - PSRA
bargaining unit represented by:)	
)	
WASHINGTON FEDERATION OF STATE)	ORDER OF DISMISSAL
EMPLOYEES)	
_____)	

On November 3, 2008, the University of Washington (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 the Washington Federation of State Employees (union). The petition was reviewed under WAC 391-35-020, and a deficiency notice issued on November 14, 2008, indicated that the petition was untimely and thus 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 filed an amended petition on December 5, 2008. The amended petition did not cure the timeliness defect and is dismissed.

DISCUSSION

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.

.

(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.

This case concerns employees who are currently members of a bargaining unit represented by the Washington Federation of State Employees (WFSE). The issue presented in the unit clarification petition is whether those employees should be included in a bargaining unit represented by Service Employees International Union, Local 925 (SEIU). The employer's position is that the petition sets forth a change of circumstances whereby the employees should be reclassified from Specimen Processing Technicians (SPT), who are currently represented by WFSE, to Clinical Laboratory Technicians (CLT), who are currently represented by SEIU. The employer states that with the change in circumstances the affected employees have a community of interest within the SEIU bargaining unit.

The facts presented by the employer show that sometime in 2003 its Compensation Office approved a reclassification of the SPT series to the CLT series. SEIU began representing the CLT employees in

June 2004. This change of circumstances could have precipitated a unit clarification proceeding in the summer of 2004. In April 2007, the Compensation Office again found that the SPT series warranted reclassification to the CLT series. WAC 391-35-020(4) and (5) define timely petitions as those filed "within a reasonable time period after a change of circumstances." The employer filed the present petition on November 3, 2008, nearly 53 months after what arguably was the initial change of circumstances in June 2004, and over 18 months after the second reclassification. Even when giving the employer the benefit of the doubt and calculating time from April 2007, the petition was not filed within a reasonable period and is untimely. This case appears to involve a question of representation under Chapter 391-25 WAC, not a unit clarification action under Chapter 391-35 WAC.

The Amended Petition

The amended petition does not add facts that alter the untimeliness of the original petition. The letter from Mr. Pisano to Ms. Naiad of September 4, 2008, and the letter from the employees' attorney to Mr. Pisano of October 13, 2008, are not sufficient to produce a timely petition. The employer was aware of a change of circumstances in April 2007 regarding compensation for the SPT classification and should have filed a petition at that time or soon thereafter.

It is central to the Commission's mission to resolve labor issues between employers and unions and protect the collective bargaining rights of employees. Here, that mission does not entail processing an untimely unit clarification petition. As stated in the deficiency notice, this case appears to involve a question concerning representation under Chapter 391-25 WAC, and the

Commission will process a valid petition filed under the aforementioned rule.

In the alternative, the Commission is prepared to offer mediation to the employer and WFSE over the wages, hours, and working conditions of the SPT employees and will provide a mediator promptly upon request of one or both of the parties.


NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit filed in Case 22087-C-08-1389 is DISMISSED as untimely.

ISSUED at Olympia, Washington, this 31st day of December, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read 'D. I. Gedrose', is written over the printed name.

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.