

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON FEDERATION OF STATE	)	
EMPLOYEES	)	CASE 17708-C-03-1100
	)	
and	)	DECISION 8195 - PSRA
	)	
OFFICE OF THE SECRETARY OF STATE	)	
	)	
For clarification of an existing	)	ORDER CLARIFYING
bargaining unit.	)	BARGAINING UNIT
	)	
_____	)	

*Gladys Burbank*, Director of Activities, for the union.

*Toni Murray*, Human Resources Manager, for the employer.

On July 24, 2003, the Washington Federation of State Employees (union) and the Washington Office Secretary of State (employer) jointly filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission under WAC 391-35-026, seeking division of an existing bargaining unit represented by the union. An investigation conference was conducted on August 28, 2003, by Hearing Officer Starr H. Knutson.

The Executive Director accepts the stipulations and information presented by the parties during the investigation conference and, acting under WAC 391-35-026(1), divides the historical bargaining unit into two separate bargaining units of state civil service employees conforming to RCW 41.80.070(1)(a), as follows: (1) a bargaining unit of non-supervisory employees; and (2) a bargaining unit of supervisors.

BACKGROUND

The employer is a state agency headed by an elected official who serves as the state's chief elections officer, chief corporations officer, and chief archivist. The union has historically represented all employees working in the Archives and Records Management Division.

The bargaining unit was created in 1980,<sup>1</sup> when the archiving function was part of the Department of General Administration. The legislature transferred the archives operation to the Office of the Secretary of State in 1983. The bargaining unit has existed in its present form since 1998. That unit has historically included both supervisors and non-supervisory employees, but managers have been excluded from that unit.

The Personnel System Reform Act of 2002 (PSRA) was passed by the legislature and signed into law in 2002, with various effective dates. A new collective bargaining system for state civil service employees is codified in Chapter 41.80 RCW, of which one section that took effect on June 13, 2002, is pertinent here:

## RCW 41.80.070 BARGAINING UNITS - CERTIFICATION.

(1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, *unless the unit does not meet all the requirements of (a) . . . of this subsection.* The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modification of existing units, the commission shall consider: the duties, skills and working conditions of the employees; the history of collective bargaining; the extent of organization among the employ-

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<sup>1</sup> Department of Personnel case RU-164.

ees; the desires of the employees; and the avoidance of excessive fragmentation. *However, a unit is not appropriate if it includes:*

(a) *Both supervisors and non-supervisory employees.*

. . .

(emphasis added). The Commission thus adopted a rule to implement that statute during the transition period which will exist until the duty to bargain under the new system goes into effect on July 1, 2004, as follows:

WAC 391-35-026 SPECIAL PROVISION--STATE CIVIL SERVICE EMPLOYEES. In addition to the circumstances described in WAC 391-35-020, bargaining units of state civil service employees may be modified under this section until RCW 41.80.050 and 41.80.080 take effect on July 1, 2004.

(1) *Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "divided" into separate units of supervisors and nonsupervisory employees under this section.*

(a) A petition to have an existing unit divided may be filed by the exclusive bargaining representative, by the employer, or by those parties jointly.

(b) The separation of bargaining units shall be implemented on or before July 1, 2004.

(2) *Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "perfected" under this section.*

(a) A petition to have an existing bargaining unit perfected may be filed by the exclusive bargaining representative, or by the employer and exclusive bargaining representative jointly.

(b) All of the unit determination criteria set forth in RCW 41.80.070 shall be applicable to proceedings under this section. The history of bargaining in a unit configuration that is fragmentary and/or was based on narrower considerations shall not preclude creation of a "perfected" bargaining unit as to which a community of interests is demonstrated with regard to:

(i) The duties, skills and working conditions of all positions or classifications to be included in the "perfected" bargaining unit; and

(ii) The extent of organization and avoidance of unnecessary fragmentation shall be implemented to avoid

stranding of other positions or classifications in units so small as to prejudice their statutory bargaining rights; and

(iii) The required separation of supervisors and nonsupervisory employees is implemented based on the delegations of authority then in existence; and

(iv) Two or more existing bargaining units can be merged through the procedure set forth in this section; and

(v) The exclusive bargaining representative demonstrates that it has majority support among any employees to be accreted to the bargaining unit(s) being "perfected."

By the stipulation now before the Executive Director, the parties seek to have the historical unit "divided" under WAC 391-35-026(1).

## DISCUSSION

### Applicable Legal Standards

The determination and modification of appropriate bargaining units of state civil service employees is now a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.06.340; 41.80.070. In past cases where parties have stipulated to divide bargaining units to conform with statutory changes, the Commission has accepted such stipulations and dispensed with a full hearing process. *Benton County*, Decision 2221 (PECB, 1985) and *Cowlitz County*, Decision 5008 (PECB, 1995) [dividing historical department-wide units in sheriff's departments after the law enforcement officers became eligible for interest arbitration]; *King County*, Decision 6668 (PECB, 1999) [dividing historical units to reflect the eligibility of some of the employees (those working in public transit operations) for interest arbitration].

The processing of this case is greatly simplified by the parties' agreement that the historical bargaining unit configuration created under different statutory provisions than now exist must be divided to conform to the current statute.

#### FINDINGS OF FACT

1. The Office of the Secretary of State is a general government agency of the state of Washington within the meaning of RCW 41.80.005(1).
2. The Washington Federation of State Employees is an employee organization within the meaning of RCW 41.80.005(7).
3. The Washington Federation of State Employees is the exclusive representative of a bargaining unit described by the Washington Personnel Resources Board on June 11, 1998, in RU-515. That unit historically included all classified employees except confidential and managerial employees.
4. The employer and the union have stipulated that the historical bargaining unit configuration is not appropriate under RCW 41.80.070, and that the historical bargaining unit should be divided unit into separate units of supervisors and non-supervisory employees.
5. With the exception of framing an issue concerning the status of one "digital archives manager" position, the employer and the union have stipulated to the respective eligibility lists for the separate units of supervisors and non-supervisory employees.

6. No other facts have been discovered or brought to the attention of the Executive Director which call into question the propriety of the stipulations described in paragraphs 3 and 4 of these findings of fact.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and WAC 391-35-026.
2. The bargaining unit historically known as the "Archives and Records Management Bargaining Unit" is inappropriate under RCW 41.80.070, by reason of its inclusion of a mix of supervisors and non-supervisory employees.
3. The stipulations of the parties to divide the historical bargaining unit will implement the requirements of RCW 41.80.070(1)(a).

ORDER

The bargaining unit shall be divided into two bargaining units described as follows:

1. All non-supervisory civil service employees of the Archives and Records Division of the Office of the Secretary of State, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.

2. All supervisory civil service employees of the Archives and Records Division of the Office of the Secretary of State, excluding confidential employees, internal auditors, non-supervisory employees, Washington Management Service employees (on and after July 1, 2004), and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.
3. The case will remain open for resolution of the issue concerning the status of the "digital archives manager" position.

ISSUED at Olympia, Washington, on the 11<sup>th</sup> day of September, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and 2 of this order will be the final order of the agency on the issues addressed therein unless a notice of appeal is filed with the Commission under WAC 391-35-210.