

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
WASHINGTON ASSOCIATION OF ) CASE 18658-C-04-1200  
PROFESSIONAL BIOLOGISTS )  
 ) DECISION 8685 - PSRA  
For clarification of an existing )  
bargaining unit of employees of: )  
 )  
WASHINGTON STATE - FISH & WILDLIFE ) ORDER OF DISMISSAL  
 )  
\_\_\_\_\_ )

This case comes before the Commission directly, in the absence of an operative delegation of authority to the agency staff. The petition is dismissed.

BACKGROUND

The Washington Association of Professional Biologists (union) is the exclusive bargaining representative of certain civil service employees of the State of Washington. On June 29, 2004, the union filed a unit clarification petition under WAC 391-35-026, seeking to "perfect" the bargaining unit it represents at the Washington State Department of Fish & Wildlife.

The union sought to invoke a special rule which was adopted by the Commission in 2002, 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."

(emphasis added). That special rule permitted filling in loopholes and smoothing out jagged edges of bargaining units that had been created under the State Civil Service Law, Chapter 41.06 RCW, during the transition from limited-scope bargaining within civil service to full-scope bargaining under the Personnel System Reform Act of 2002 (PSRA) and Chapter 41.80 RCW.

By its terms, that special rule was to operate only until PSRA sections cited in the special rule took effect on July 1, 2004. Those sections provide as follows:

RCW 41.80.050 RIGHTS OF EMPLOYEES. Except as may be specifically limited by this chapter, *employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter.*

RCW 41.80.080 REPRESENTATION -- ELECTIONS -- RULES.

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. *The commission shall adopt rules that provide for at least the following:*

- (a) Secret balloting;
- (b) Consulting with employee organizations;
- (c) Access to lists of employees, job classification, work locations, and home mailing addresses;
- (d) Absentee voting;
- (e) *Procedures for the greatest possible participation in voting;*
- (f) Campaigning on the employer's property during working hours; and
- (g) Election observers.

(2) (a) *If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit as provided in RCW 41.80.010(2)(a). However, if a master collective bargaining agreement is in effect for the exclusive bargaining representative, it shall apply to the bargaining unit for which the certification has been issued. Nothing in this section requires the parties to engage in new negotiations during the term of that agreement.*

. . . . .

(3) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

(a) Fewer than twelve months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract.

(emphasis added). Beyond those specific sections establishing the right of employees to a voice and vote on their representation, the need to "perfect" units created under the previous system is reduced or eliminated by other PSRA provisions: RCW 41.80.010 requires unions representing state general government employees to bargain one master contract covering all of the employees they represent; RCW 41.80.070 encourages merger of bargaining units to form appropriate units that reduce fragmentation.

To "perfect" a bargaining unit under WAC 391-35-026, the Commission staff needed to at least: (1) docket a case; (2) provide notice (normally by mail) to the party other than the petitioner; (3) schedule a pre-hearing conference with sufficient notice to all parties; (4) conduct the pre-hearing conference, and prepare a statement of results if stipulations were obtained; (5) issue the statement of results (normally by mail) and wait for expiration of the time for objections to it; (6) conduct a cards-to-list comparison to verify that the union had majority support among the employees to be added to the bargaining agreement by stipulation of the parties; and (7) prepare and issue a formal order modifying the bargaining unit. The petition in this case was filed too late to be acted upon before the close of business on June 30, 2004, and WAC 391-35-026 became inoperative on July 1, 2004.

There is no prejudice to the union. It is free to file and process a unit clarification petition under WAC 391-35-020 if it claims a change of circumstances, or a representation petition under Chapter 391-25 WAC. If it is certified as exclusive bargaining representative of the employees involved, the additional unit would be automatically assimilated into its negotiations for a master contract under RCW 41.80.010. If appropriate, it could thereafter petition for a merger of bargaining units under RCW 41.80.070 and WAC 391-25-426.

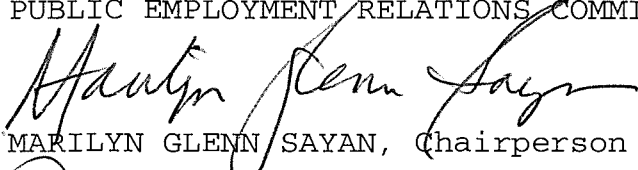
NOW, THEREFORE, it is

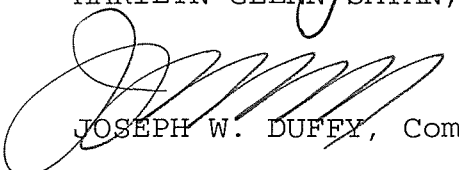
ORDERED

The petition for clarification of an existing bargaining unit filed in the above-captioned matter is DISMISSED.

Issued at Olympia, Washington, the 1st day of September, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
JOSEPH W. DUFFY, Commissioner

  
PAMELA G. BRADBURN, Commissioner