

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON FEDERATION OF STATE)
EMPLOYEES) CASE 18161-C-04-1154
)
For clarification of an existing) DECISION 8437 - PSRA
bargaining unit of employees of:)
) INTERIM ORDER CLARIFYING
WASHINGTON STATE - LABOR &) BARGAINING UNIT
INDUSTRIES)
)
_____)

Gladys Burbank, Director of Activities, for the union.

Starleen Parsons, Personnel Program Manager, and *David Stewart*, Assistant Director Office of Human Resources, for the employer.

On January 20, 2004, the Washington Federation of State Employees (union) 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 at the Washington State Department of Labor & Industries (employer) represented by the union. An investigation conference was conducted on February 5, 2004, 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 which provides workers compensation insurance to employees in Washington State. The union has historically represented all employees of the employer excluding employees in other bargaining units.

The bargaining unit was created in 1972,¹ and has existed in its present form since 1980.² That unit has historically included both supervisors and non-supervisory employees.

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 employees; 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.*

. . .

¹ Department of Personnel case RU-54.

² Department of Personnel case RU-165.

(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.

. . . .

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

ANALYSIS

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. This case will remain open for processing until the issue of the number of "confidential" employees to be excluded from the supervisor bargaining unit is resolved.

FINDINGS OF FACT

1. The Washington State Department of Labor & Industries 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 represents the historical bargaining unit described by the Washington Personnel Resources Board on December 15, 1980, in RU-165. That unit historically included all classified employees except employees in other bargaining units.

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 into separate units of supervisors and non-supervisory employees.
5. The employer and the union have stipulated to the eligibility list for the separate unit of non-supervisory employees.
6. The employer and the union do not agree on the eligibility list of supervisors. There are approximately 48 disputed positions.
7. 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 "Agencywide 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

1. The bargaining unit shall be divided into two bargaining units described as follows:
 - A. All non-supervisory civil service employees of the Washington State Department of Labor & Industries excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), employees in other bargaining units and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.
 - B. All supervisory civil service employees of the Washington State Department of Labor & Industries excluding confidential employees, internal auditors, non-supervisors, Washington Management Service employees (on and after July 1, 2004) employees in other bargaining units and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.

2. The case is remanded for further proceedings on the remaining eligibility issues.

ISSUED at Olympia, Washington, on this 23rd day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency on the issue addressed unless a notice of appeal is filed with the Commission under WAC 391-35-210.