

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON FEDERATION OF)	
STATE EMPLOYEES)	CASE 18661-C-04-1202
)	
For clarification of an existing)	DECISION 8687-B - PSRA
bargaining unit of employees of:)	
)	
WASHINGTON STATE - SOCIAL AND)	ORDER CLARIFYING
HEALTH SERVICES)	BARGAINING UNIT
_____)	

Parr Younglove Lyman and Coker, by *Edward Earl Younglove III*, Attorney at Law, for the union.

Steve McLain, State Labor Relations Director, by *Joe Olson*, Labor Negotiator, for the employer.

On June 30, 2004, the Washington Federation of State Employees (union), filed a petition with the Commission under WAC 391-35-026, seeking accretion of certain unrepresented employees of the state of Washington (employer) working in the Background Check Central Unit of the Department of Social and Health Services (agency) to an existing bargaining unit of approximately 7800 nonsupervisory civil service employees for which the union was the exclusive bargaining representative. Hearing Officer Dianne E. Ramerman conducted a pre-hearing conference on August 31, 2005,¹ during which the parties presented stipulations and other information concerning the

¹ In the meantime, the Commission had dismissed this case as untimely in *State - Social and Health Services*, Decision 8687 (PSRA, 2004), then vacated its dismissal in *State - Social and Health Services*, Decision 8687-A (PSRA, 2004).

proposed accretion, but framed an issue concerning whether WAC 391-35-026 continued to be applicable.² A hearing was scheduled for December 9, 2005, and Hearing Officer Ramerman was prepared to take evidence at that time, but the parties resolved the procedural issue prior to the opening of the hearing. The parties stipulated for the record that WAC 391-26-026 is properly applied in this case.

ISSUE

The sole issue before the Executive Director is: Should the parties' stipulations to accrete certain employees into the existing bargaining unit be accepted?

The Executive Director accepts the stipulations and information presented by the parties and, acting under WAC 391-35-026(2), modifies the existing bargaining unit to include the petitioned-for positions.

APPLICABLE LEGAL PRINCIPLES

The Personnel System Reform Act of 2002 (PSRA) created a new collective bargaining system for state civil service employees 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

² In Decision 8687-A, the Commission did not rule on whether WAC 391-35-026 could be applied after July 1, 2004, for cases filed before that date, and stated that the parties were entitled to argue or stipulate to any such issues in the reinstated proceedings.

appropriate unit, unless the unit does not meet the requirements of (a) and (b) 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.*

(emphasis added). The Commission adopted WAC 391-35-026 to implement that statutory provision during the transition period that existed until the duty to bargain under the new system went 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.

. . . .
(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

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

Thus, the determination and modification of appropriate bargaining units of state civil service employees has been delegated by the Legislature to the Commission since 2002. RCW 41.80.070.

ANALYSIS

The parties have submitted information and stipulations that satisfy the requirements of WAC 391-35-026(2), and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the accretion requested by the union. The accretion of the nonsupervisory classified (civil service) employees in the Background Check Central Unit into a bargaining unit already encompassing other nonsupervisory employees performing economic and social services functions particularly addresses the "avoidance of . . . fragmentation" component of the statutory unit determination criteria enunciated in RCW 41.80.070. The stipulations and information supplied by the parties are thus incorporated into the findings of fact set forth below.

FINDINGS OF FACT

1. The Department of Social and Health Services, a general government agency of the state of Washington within the

meaning of RCW 41.80.005(1), operates a "Background Check Central Unit" within its overall operations relating to economic and social services.

2. The Washington Federation of State Employees is an employee organization within the meaning of RCW 41.80.005(7).
3. The union has been, and remains, the exclusive bargaining representative of a bargaining unit encompassing nonsupervisory civil service employees of the agency. That bargaining unit consists of approximately 7800 employees, and was in existence as of June 13, 2002. The parties stipulated that the bargaining unit was established by the Washington Personnel Resources Board, and that *State - Social and Health Services*, Decision 8446 (PSRA, 2004), was the last decision dealing with that bargaining unit.
4. The nonsupervisory employees in the Background Check Central Unit have historically been excluded from the bargaining unit described in paragraph 3 of these findings of fact, and were unrepresented at the outset of this proceeding.
5. The union has petitioned to accrete the nonsupervisory civil service employees in the Background Check Central Unit into the bargaining unit described in paragraph 3 of these findings of fact, and the parties have stipulated that no other cases have been filed presenting conflicting claims concerning those employees.
6. The parties have stipulated that the union had standing to initiate this proceeding, and that the Commission has jurisdiction in this matter.

7. The parties have stipulated that no "change of circumstances" has occurred.
8. The parties have stipulated that the petitioned-for non-supervisory civil service employees in the Background Check Central Unit share a community of interests with each other and with the employees in the existing bargaining unit described in paragraph 3 of these findings of fact, and that the required separation of supervisors was completed prior to the onset of this proceeding.
9. The parties have stipulated that no fragmentation will occur as a result of the proposed perfection of the bargaining unit described in paragraph 3 of these findings of fact.
10. The parties have stipulated to the eligibility list of employees in the Background Check Central Unit, and the union's claim of majority support was verified by a confidential cross-check conducted by the Commission staff.
11. No other facts have been discovered or brought to the attention of the Executive Director which call into question the propriety of the parties' stipulations in this proceeding.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW, Chapter 391-35 WAC in general, and WAC 391-35-026 in particular.
2. The accretion of the nonsupervisory employees in the Background Check Central Unit into the existing bargaining unit of

nonsupervisory economic and social services employees is an appropriate unit modification under 41.80.070.

ORDER

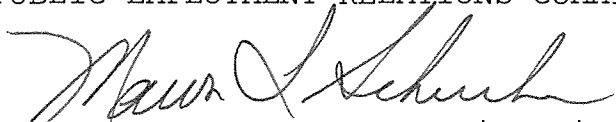
1. The description of the bargaining unit involved in this proceeding is modified to read as follows:

All nonsupervisory civil service employees of the Department of Social and Health Services in the following divisions/units: (1) DSHS Office of Appeals; (2) Economic Services Administration; (3) Aging and Adult Services Administration; (4) Children's Administration; (5) Medical Assistance Administration; (6) Division of Fraud Investigations; (7) Financial Services Administration; (8) Alcohol and Substance Abuse Division; (9) Information Systems Services Division; (10) Management Services Fiscal Office; (11) Facilities Operations Administration in the Lands and Building Division; and (12) Background Check Central Unit; excluding confidential employees, internal auditors, supervisors, Washington Management Service members, employees excluded by orders of the State Personnel Board and/or Washington Personnel Resources Board that remain in effect, and employees included in any other bargaining unit.

2. The accretion ordered herein is effective upon issuance of this Order.

Issued at Olympia, Washington, on the 23rd day of February, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

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.