



Liquor Control Board, Case 20260-C-06-1261 involves supervisory employees working at the Department of Natural Resources, and Case 20261-C-06-1262 involves employees working at the Department of Agriculture. The Washington Public Employees Association (WPEA) supports the Executive Director's ruling.

#### ISSUE PRESENTED

Does the FWLA have legal standing to intervene in these unit clarification proceedings initiated by the WPEA?

For the reasons set forth below, we affirm the Executive Director's ruling that the FWLA lacks standing to intervene in these cases.

#### APPLICABLE LEGAL STANDARD

The Personnel System Reform Act of 2002 (PSRA) directs this Commission to determine appropriate bargaining units and resolve questions concerning representation. RCW 41.80.070 - .080. To effectuate the purposes of the PRSA and the other state collective bargaining laws it administers, this Commission has adopted rules codifying best practices developed over its 30-year history of administering collective bargaining statutes. The unit clarification proceedings authorized and regulated by Chapter 391-35 WAC authorize parties who have existing bargaining relationships to resolve ambiguities concerning the scope of their relationship.

[U]nit placement of individuals, who, for example, come within a newly established classification of disputed unit placement, or within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create substantial doubt as to whether the individuals in such classifications continue to fall within the category - excluded or included - that they occupied in the past.

*City of Richland, Decision 279-A* (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981) (quoting *Union Electric Company*, 217 NLRB 666 (1975)). Unit clarification proceedings function, in part, to protect the work jurisdiction of the exclusive bargaining representative. See *Pierce County Rural Library District, Decision 7035* (PECB, 2000). If the evidence demonstrates that the petitioned-for classifications properly belong is a different or separate bargaining unit, the Commission will deny the petition.

Consistent with the concept of adjusting existing relationships, only the employer or an organization claiming to be the exclusive bargaining representative of the employee(s) involved have legal standing to pursue a unit clarification. That principle is imbedded in the Commission's rules, as follows:

WAC 391-35-010 PETITION FOR CLARIFICATION OF AN EXISTING BARGAINING UNIT--WHO MAY FILE. A petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative, or their agents, or by the parties jointly.

Where a unit clarification dispute involves employees who are or may be claimed by another existing bargaining unit, the rules require the party or parties filing the petition to identify any organization that claims to represent the affected employees.<sup>1</sup>

---

<sup>1</sup> WAC 391-35-050 requires that unit clarification petitions contain,

(3) Identification of other interested organizations, including names and addresses of any other employee organizations claiming to represent any employees affected by the proposed clarification(s), and brief description(s) of the contracts, if any, covering such employees.

Notice to the incumbent exclusive bargaining representatives of any existing bargaining units that may be affected affords it an opportunity to participate in the proceedings to protect its interests.

#### ANALYSIS

Applying the standards set forth above, we affirm the Executive Director's denial of the motions for intervention in these cases. The FWLA is neither an incumbent exclusive bargaining representative permitted to file a unit clarification petition under WAC 391-35-010, nor an exclusive bargaining representative entitled to notice under WAC 391-35-050. Therefore, the FWLA lacked standing to intervene in the above-captioned case.

The FWLA readily admits that it has not been certified as exclusive bargaining representative of any employees involved in the WPEA's unit clarification petitions.<sup>2</sup> In order to qualify for intervention under WAC 391-35-050, an employee organization must have a tangible interest to protect. As a practical matter, short-term issues regarding work jurisdiction can only be resolved by the two parties to an existing bargaining relationship.

The FWLA nevertheless argues that individual employees subject to these petitions are FWLA members, and that their interests are best served by allowing the FWLA to intervene in the unit clarification proceedings between the WPEA and the employer. We are not persuaded that these cases are the appropriate forum to address the concerns asserted by the FWLA. Under RCW 41.80.005(9), an exclusive bargaining representative must be "certified" by the

---

<sup>2</sup> See FWLA's June 5, 2006, "Appeal of Executive Director Denial of Motion".

Commission. That requires either grandfathered status under RCW 41.80.070(2) or a certification under Chapter 391-25 WAC. Subject to conformity with "certification bar" and "contract bar" requirements, an organization must obtain exclusive bargaining representative status through representation proceedings under Chapter 391-25 WAC. Any and all issues concerning the scope of the bargaining unit (and thus of the bargaining relationship which is to result from the proceedings) can be resolved in the representation proceedings. As noted in WAC 391-35-020(5), requests that raise a "question concerning representation" cannot be processed in unit clarification cases.

NOW, THEREFORE, it is


ORDERED

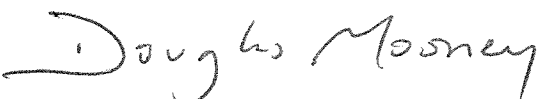
The action of Executive Director Marvin L. Schurke in denying the motion of Fair Washington Labor Association for intervention in the above-captioned cases is AFFIRMED.

Issued at Olympia, Washington, the 12th day of July, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
PAMELA G. BRADBURN, Commissioner

  
DOUGLAS G. MOONEY, Commissioner