

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
WASHINGTON PUBLIC EMPLOYEES )  
ASSOCIATION ) CASE 19946-E-05-3118  
 )  
Involving certain employees of: ) DECISION 9194 - PSRA  
 )  
COMMUNITY COLLEGE ) ORDER MERGING  
DISTRICT 14 - CLARK ) BARGAINING UNITS  
 )  
\_\_\_\_\_ )

*Herb Harris*, Organizer, for the Washington Public Employees Association.

*Katrina Golder*, Human Resources Director, for the employer.

The Washington Public Employees Association (union) filed a petition with the Public Employment Relations Commission on November 21, 2005, seeking merger of two existing bargaining units of nonsupervisory classified employees of Community College District 14 d/b/a Clark College (employer). The employer stipulated to the merger during an investigation conference held on December 15, 2005.

ISSUE

Should the parties stipulation to merge two bargaining units be accepted?

The Executive Director accepts the stipulations made by the parties and, acting under WAC 391-25-426, merges the historical bargaining units into one unit.

APPLICABLE LEGAL PRINCIPALS

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. A PSRA provision 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) 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. . . .*

. . . .  
(3) *If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if the commission considers the larger unit to be appropriate. If consolidation is appropriate, the commission shall certify the employee organization as the exclusive bargaining representative of the new unit.*

(emphasis added.) The Commission adopted a special rule to implement that statutory provision as follows:

WAC 391-25-426 SPECIAL PROVISION--STATE CIVIL SERVICE EMPLOYEES. An employee organization that represents two or more bargaining units of state civil service employees may obtain a merger of those units by filing a petition under WAC 391-25-420(2)(a). If the merged unit is found to be appropriate under WAC 391-25-420(2)(c)(i) and (ii), the employee organization shall be

certified as exclusive bargaining representative without need for unit determination elections.

In essence, the special rule eliminates the need for concurrent unit determination elections to validate the merger of separately-organized bargaining units.<sup>1</sup>

#### ANALYSIS

The union represents several bargaining units of classified employees of this employer. This case involves two separate bargaining units that were organized at different times:

- Bargaining Unit "A" encompasses custodial and maintenance employees, with the required exclusion of supervisors. It was created by the Higher Education Personnel Board in 1972 (HEPB Case HRD 7) and has apparently remained unchanged since.
- Bargaining Unit "B" encompasses clerical and professional employees, excluding classified positions reporting to the president, classified positions working in personnel and reporting to the director of personnel or personnel or personnel staff, the classifications in bargaining unit "A" and supervisors. It was created by the Washington Personnel Resources Board in 2001 (WPRB Case RU-585).

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<sup>1</sup> WAC 391-25-420 is the Commission's general rule allowing mergers of bargaining units where the proposed merged unit is an appropriate unit under the applicable statute. Conclusions about the propriety of unit mergers can be based on evidence produced at a hearing (under WAC 391-25-420(2)(c)(I)) or the parties' stipulation that a unit that is appropriate (under WAC 391-25-420(2)(c)(ii)). The general rule then requires ratification of the ruling or stipulation by vote of the affected employees in unit determination elections in WAC 391-25-420(2)(d).

Although it may be possible to apply the "community of interest" criteria in RCW 41.80.070 and similar statutes to identify multiple appropriate bargaining units within the workforce of a particular employer, an "employer-wide" or "wall-to-wall" bargaining unit is almost always appropriate. The bargaining units proposed for merger in this case were among more than 180 separate bargaining units that existed among state civil service employees when the PSRA was enacted, and both the "fragmentation" and "merger" provisions in RCW 41.80.070 are understood to reflect legislative concern about a potentially-unwieldy bargaining unit structure.

By the stipulations now before the Executive Director, the parties essentially seek a unit that encompasses all classified employees of the employer, with the exclusion of supervisors required by RCW 41.80.070(1).<sup>2</sup> That appears to satisfy the requirements of WAC 391-25-420(2)(c)(ii), and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the requested action. The merger of two bargaining units in this case will both address the "fragmentation" component of the statutory unit determination criteria and implement the statutory endorsement of merging historical bargaining units.

#### FINDINGS OF FACT

1. Community College District 14 is a state institution of higher education within the meaning of RCW 41.80.005(1).

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<sup>2</sup> Although the office-clerical and professional bargaining unit has historically excluded persons who may or may not qualify for exclusion as "confidential" employees under the PSRA (at RCW 41.80.005(4)), neither party has raised any issue here concerning the propriety of those exclusions. Hence, nothing in this order constitutes a ruling that the historical exclusions remain appropriate.

2. The Washington Public Employees Association, an employee organization within the meaning of RCW 41.80.005(7), has been the exclusive bargaining representative of two separate bargaining units of non-supervisory employees of Community College District 14.
3. The parties have stipulated that the non-supervisory employees historically divided between two separate bargaining units have similar duties, skills and working conditions, and share a community of interest.
4. No facts have been discovered or brought to the attention of the Executive Director which call into question the propriety of the proposed merger described in 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 391-25-426.
2. The merger of the bargaining units described in paragraph 3 of the foregoing findings of fact will result in an appropriate unit for the purposes of collective bargaining under RCW 41.80.070, implementing the fragmentation and merger components of that section.

#### ORDER

1. The historical bargaining units shall be merged into one bargaining unit described as follows:


All non-supervisory classified employees of Community College District 14 d/b/a Clark College,

excluding confidential employees, internal auditors, supervisors, and employees included in any other bargaining unit.

2. The Washington Public Employees Association shall continue to be the exclusive bargaining representative of all employees in the merged unit.

ISSUED at Olympia, Washington, on the 22nd day of December, 2005.

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 391-25-660.