State – Health Care Authority, Decision 11254 (PSRA, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: WASHINGTON FEDERATION OF STATE EMPLOYEES Involving certain employees of: STATE – HEALTH CARE AUTHORITY	CASE 24247-E-11-3667 DECISION 11254 - PSRA ORDER OF DISMISSAL

On September 15, 2011, the Washington Federation of State Employees (union) filed a petition seeking to represent a bargaining unit of six supervisory employees in the Health Insurance Benefit Specialist (HIBS) classification at the Health Care Authority. During the October 6, 2011 investigation conference, the employer challenged the appropriateness of the petitioned-for bargaining unit on the basis that recent legislation altered the duties and composition of the employer's workforce.

Medical assistance programs pay for the health care of low-income residents, primarily through the Medicaid program. The Washington State Department of Social and Health Services (DSHS) is designated as the single state agency responsible for administering the Medicaid program. Federal law requires that each state that participates in Medicaid designate a single state agency responsible for the administration of that program. A different state agency, the Washington State Health Care Authority (Health Care Authority or employer) administers state employee health benefit programs, and as well as health care programs targeted at low-income individuals. Laws of 2011, 1st Spec. Sess., ch. 14 (HB 1738) transferred the Medicaid designation from DSHS to the Heath Care Authority, and the DSHS Medical Assistance Program and Medicaid Purchasing Division to the Health Care Authority. HB 1738 became effective on July 1, 2011.

The employer reports that, as a result of the legislation, 29 supervisory employees in the Medical Assistance Specialist (MAS) classification at DSHS will physically move to the Health Care Authority. The employer asserts that the union and employer agreed that once the transfer of employees from DSHS is completed, all employees in the HIBS classification at the Health Care Authority will be reallocated to the MAS classification because the MAS classification more accurately reflects their job duties. The six supervisory employees that the union petitioned to represent are among the employees who will be reallocated.

On October 18, 2011, the employer was asked to provide any pertinent information regarding the timeframe in which it expected the reallocation process to be completed. On October 27, 2011, the employer provided a letter explaining that the transfer of employees from DSHS to the Health Care Authority involved the movement of approximately 640 staff. The employer stated that the process of reallocating the employees in the HIBS classification to the MAS classification would begin in February 2012.

On November 8, 2011, a show cause letter issued asking the union to explain why, in light of the legislatively directed merger and the agreed upon reallocation, its petition should not be dismissed as premature. In responding to the show cause letter, the union first, and correctly, pointed out that neither a contract bar nor certification is in effect for the employees at issue. The union also claimed that the petitioned-for employees have a distinct community of interest from other supervisory employees. Finally, the union noted that not all employees in a particular job class are represented by a single labor organization at many state agencies and higher education institutions, and therefore the mere fact that it is petitioning for only a portion of the employees in the HIBS class should not be an impediment to the processing of this case.

DISCUSSION

This case presents a dilemma. This agency places great emphasis on promptly processing representation petitions to ensure that employees' free exercise of collective bargaining rights is not delayed or impeded. However, this case presents a unique factual situation created by a legislatively directed reorganization of state agencies. The impacts that the reorganization have

on the current and future collective bargaining rights of all employees working within the affected agencies cannot be ignored and this agency must be mindful of the Legislature's instructions and goals when making unit determinations under RCW 41.80.070.

If a party to a representation proceeding questions the propriety of the petitioned-for bargaining unit, the agency normally considers the factors outlined in RCW 41.80.070(1) to determine if the employees enjoy a community of interest so that they will be able to effectively bargain with their employer. *See State – Attorney General*, Decision 9951-A (PSRA, 2009)(discussing the point at which the agency makes 'snapshot' of petitioned-for employees during representation proceedings). The RCW 41.80.070(1) factors include the duties, skills and working conditions of the employees, the history of collective bargaining, the extent of organization among the employees, the desires of employees, and the avoidance of excessive fragmentation.

When this agency makes a unit determination analysis, it is appropriate and customary to examine the factual situation as it exists when a petition is filed. The Commission has universally rejected any attempts on the part of the parties to speculate as to future duties of employees in order to affect the results of an election. *City of Yakima*, Decision 9983-A (PECB, 2008); *Lake Washington School District*, Decision 1550 (PECB, 1982).

In its response to the show cause directive, the union asserts that any changes that might occur to the duties, skills and working conditions of the petitioned-for employees are speculative, and that the union can demonstrate that the petitioned-for employees in the HIBS classification have a distinct community of interest from other employees in the employer's workforce. The union also points out that it is not uncommon for only a portion of employees in a particular job classification at a state agency to be represented, while other employees in that job class are either unrepresented or represented by a different union.

The union's argument ignores the fact that HB 1738 *requires* certain structural and organizational changes to occur at DSHS and the Health Care Authority that substantially affect the working conditions of not just the petitioned-for employees, but also the employees being

transferred to the Health Care Authority. These changes are not speculative; rather, the legislation mandates that changes *will* occur.

As mentioned above, HB 1738 transfers employees in the DSHS Medical Assistance Program and Medicaid Purchasing Administration to the Health Care Authority. While the law became effective on July 1, 2011, the changes mandated by the legislation have not yet fully materialized. For example, the employer notes that it is still in the process of moving 640 employees to the Health Care Authority's Olympia facility and combining the processes and systems of the two agencies. These changes will not be completed until early in 2012. Until the employer has completed the merger required by the legislation, the duties, lines of supervision, degree of interchange and other working conditions of the six petitioned-for supervisory employees *and* the 29 supervisors being transferred to the Health Care Authority will not be known. It is speculative to assume that the duties performed by the petitioned-for employees will continue as they currently exist and it is speculative to assume otherwise.

Furthermore, the June 3, 2011 agreement to reallocate the employees in the HIBS classification to the MAS classification also highlights the possibility that the six petitioned-for supervisors may no longer have a unique community of interest that separates them from the 29 supervisors who will be joining them at the Health Care Authority. Upon the completion of the agreed-upon reallocation, the employer will have 35 supervisory employees in the MAS classification. It is possible that the petitioned-for supervisory HIBS could be performing the same work as the supervisory employees in the MAS classification. If this petition were to be processed, the resulting unit could create a fragmented workforce that causes jurisdictional disputes between represented and non-represented employees who perform the same work.

Finally, this case raises a policy concern. It has long been held that it is inappropriate to organize a portion of a group that shares a community of interest. *State – Attorney General*, Decision 9951-A (PSRA, 2009); *Central Washington University*, Decision 10336-A (PSRA, 2009). If the petition were to be processed in the normal course, the bargaining unit could, within two months, become inappropriate when the 29 supervisory employees from DSHS join the six petitioned-for employees at the Health Care Authority, provided they perform the same or similar work and

share a community of interest. In that event, the resulting work jurisdiction issue could not be corrected through the unit clarification process as the unrepresented employees would far outnumber the represented employees. The newly certified unit of six might even be deemed inappropriate resulting in a revocation of the newly issued certification. In terms of resources expended and potential disruptions to the workforce, it is more prudent to wait until the legislatively mandated merger has occurred so a proper investigation of the employer's workforce can be conducted.

In sum, the ongoing structural changes mandated by the Legislature preclude this agency from being able to accurately rule upon the RCW 41.80.070(1) unit determination criteria at this time. While the duties, skills, and working conditions of the petitioned-for employees *may* presently be distinguishable from the other employees within the Health Care Authority, it is not possible to discern the duties, skills, and working conditions of the other 29 supervisory employees in the MAS classification who are in the process of being transferred to the Health Care Authority. Until the mandated merger is complete, it will not be possible to properly determine whether the petitioned-for unit improperly fragments the employer's workforce or if the petitioned-for unit would cause work jurisdictional disputes. As such, the union's argument that not all employees in a particular job class are represented by a single labor organization must also be rejected. The appropriateness of other bargaining units in state government is not dispositive in this case.

Because the union's petition is premature as it relates to the implementation of HB 1738, an Order of Dismissal is appropriate. However, this Order of Dismissal should not be considered a license to unnecessary delay in implementation of the directives set forth in HB 1738, or to delay the reallocation of the employees in the HIBS classification to the MAS classification. The employer states that the physical move of employees has begun, and the reallocation of the HIBS employees will commence by no later than February 2012. While this agency cannot place a deadline on completing those actions, an unreasonable delay on the part of the employer in completing these tasks will give rise to consideration of a new petition filed with this agency involving the same employees.

NOW, THEREFORE, it is

ORDERED

The petition filed by the Washington Federation of State Employees in the above captioned case is DISMISSED.

Dated at Olympia, Washington, this 19th day of December, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under 391-25-660.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 12/19/2011

The attached document identified as: DECISION 11254 - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBERT DUFFIELD

CASE NUMBER:	24247-E-11-03667	FILED:	09/15/2011	FILED BY:	PARTY 2
DISPUTE:	QCR UNORGANIZED				
BAR UNIT:	SUPERVISORS				
DETAILS:	-				
COMMENTS:					

EMPLOYER: STATE - HEALTH CARE AUTHORITY
ATTN: DIANE LEIGH
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5154 Ph2: 360-725-5152

REP BY: DIANE LUTZ
STATE - FINANCIAL MGMT
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5513 Ph2: 360-725-5167

PARTY 2: WA FED OF STATE EMPLOYEES
ATTN: GLADYS BURBANK
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
Ph1: 800-562-6002 Ph2: 360-352-7603

REP BY: HERB HARRIS
WA FED OF STATE EMPLOYEES
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
Ph1: 360-352-7603

REP BY: EDWARD YOUNGLOVE
YOUNGLOVE COKER
1800 COOPER PT RD SW, BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
Ph1: 360-357-7791