

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 – AGRICULTURE

CASE 27154-E-15

DECISION 12375 - PSRA

ORDER MERGING
BARGAINING UNITS

Lewis Woods, Director of PERC Activities, for the Washington Federation of State Employees.

Robert W. Ferguson, Attorney General, by *Ohad Lowy*, Assistant Attorney General, for the Washington State Department of Agriculture.

On April 9, 2015, the Washington Federation of State Employees (union) filed a petition with the Public Employment Relations Commission seeking to merge four different bargaining units of employees at the Washington State Department of Agriculture (employer). The union's petition also sought to include in the newly merged bargaining unit any historically unrepresented non-permanent, temporary employees who perform the same work as bargaining unit employees.

The employer did not oppose the union's request to merge the four existing bargaining units. However, the employer did object to using this representation proceeding to include the historically unrepresented employees in the merged bargaining unit.

The union's request to merge the four bargaining units into a single bargaining unit is granted. If a single employee organization is the exclusive bargaining representative for two or more units of state civil service employees, those bargaining units may be consolidated into a single larger unit if the larger consolidated bargaining unit is deemed appropriate. RCW 41.80.070(3). In this instance, merging the four existing bargaining units into a single larger unit would result in an appropriate bargaining unit.

The union's request to include the historically unrepresented non-permanent, temporary employees who perform bargaining unit work in the merged bargaining unit is denied. Petitions to merge bargaining units of civil service employees under RCW 41.80.070(3) are accomplished through the representation process and rules. WAC 391-25-426. Absent agreement of the employer, petitions to merge bargaining units of civil service employees must pertain to the bargaining units as they existed at the time the petition was filed. Any modifications to either the existing bargaining units or the proposed, merged bargaining unit must be accomplished through the unit clarification process and Chapter 391-35 WAC.

BACKGROUND

The union represents four bargaining units of employees in the employer's workforce. The Grain Inspection bargaining unit was originally created by this agency's predecessor, the Washington State Personnel Board (SPB), in 1965. This agency modified that bargaining unit in 2012 to add the non-permanent employees. *State – Agriculture*, Decision 11459 (PSRA, 2012). The Grain Inspection bargaining unit is currently described as:

All non-supervisory civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW of the Washington State Department of Agriculture in the Grain Branch of the Grain and Chemical Division, excluding supervisors, confidential employees, WMS employees, and all other employees.

The Fruit and Vegetable Inspection bargaining unit was created by the SPB in 1968. In 2012 this agency modified that bargaining unit to add the non-permanent employees. *State – Agriculture*, Decision 11449-A (PSRA, 2012). The Fruit and Vegetable Inspection bargaining unit is currently described as:

All non-supervisory civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW of the Washington State Department of Agriculture in the Fruit and Vegetable Inspection Program, excluding supervisors, confidential employees, WMS employees, and all other employees.

The Plant Services bargaining unit was also created by the SPB in 1968. That bargaining unit has not been altered by this agency and is currently described as:

All employees occupying a permanent, project or seasonal position in the classified service within the Plant Services Division of the Department of Agriculture with the exception of the following exclusions: Plant Protection Program Manager; Plant Certification Program Manager; Plant Pathology Program Manager; Plant Services Field Supervisor; Plant Services Inspector 3; Entomologist, Chief; Weed Specialist 2; Seed Analysis Laboratory Supervisor; Seed Inspection Supervisor; Administrative Assistant 3 (only that position that functions as the principal assistant to the Assistant Director, Plant Services); other classes which may be subsequently created or modified which have supervisory duties.

The Regulatory bargaining unit was originally created by the SPB in 1969. That bargaining unit was deemed appropriate when administration of the collective bargaining law was transferred to this agency's jurisdiction as part of the Personnel System Reform Act of 2002. RCW 41.80.070(1). In 2008 this agency clarified the bargaining unit to more accurately reflect the job classes included in the bargaining unit following a revision of job class titles. *State – Agriculture*, Decision 10138 (PSRA, 2008). The Regulatory bargaining unit is currently described as:

All non-supervisory civil service employees of the Washington State Department of Agriculture in the Commission Merchants Program, Livestock Identification Program and Weights and Measures Program in the following classifications: Administrative Assistant 1, 2, 3, 4, Brand Control Specialists, Brand Inspectors, Commission Merchant Investigators 1, 2, Office Assistants, Secretary Seniors, Weight and Measures Supervisors, and Weight and Measures Inspectors, excluding supervisors, confidential employees, Washington Management Service employees, casual employees (Temporary Office Assistant 2 - Brand Clerks and Temporary Brand Inspectors), State Metrologists, CTED Specialist 2 (Biofuels Standard Coordinator) and all other employees.

DISCUSSION

This agency has the authority to define new bargaining units of employees and to modify existing bargaining units to ensure their continued appropriateness. RCW 41.80.070. Included with that authority is the ability to merge existing appropriate bargaining units into a single appropriate bargaining unit. RCW 41.80.070(3). Bargaining units of state civil service employees may be

merged provided only one exclusive bargaining representative represents the bargaining units subject to merger and the resulting merged bargaining unit is deemed appropriate under the statute. RCW 41.80.070(3); WAC 391-25-426. The merger of bargaining units under RCW 41.80.070(3) can be presumed to reflect a concern about the proliferation of bargaining units as well as an attempt to avoid fragmentation issues. *University of Washington*, Decision 11155 (PSRA, 2011).

In this instance, the parties agree that the four bargaining units should be merged into a single bargaining unit. All four bargaining units are appropriate and nothing has come to the attention of agency staff or the Executive Director that suggests a single merged bargaining unit comprised of these bargaining units would be inappropriate. Merging the bargaining units also addresses the “fragmentation” component of the statutory unit determination criteria.

Finally, as part of its request to merge the four bargaining units, the union also requested that the unrepresented temporary employees who perform the same work as bargaining unit employees be added to the bargaining unit. The employer opposed the union’s request. The union’s request to add the unrepresented temporary employees who perform the same work as bargaining unit employees is denied.

The merger of bargaining units is accomplished through a representation proceeding and that process is governed by RCW 41.80.070(3) and WAC 391-25-426. The scope of RCW 41.80.070(3) and WAC 391-25-426 is narrow; the statute and rule only apply to existing bargaining units. They do not provide a mechanism to accrete historically excluded employees into the merged bargaining unit as part of the same process.

If an employer or bargaining representative believe that historically unrepresented employees should be added to a bargaining unit without the need for an election, either party may petition this agency to clarify the bargaining unit. That process is governed by the unit determination criteria found in RCW 41.80.070(1) and Chapter 391-35 WAC. The timing of any unit clarification petition is governed by WAC 391-35-020.

Normally, a merger of bargaining units under RCW 41.80.070(3) and the clarification of bargaining units under RCW 41.80.070(1) and Chapter 391-35 WAC are separate processes. An employer and a bargaining representative may agree to request that this agency merge bargaining units and clarify the resulting bargaining unit as part of the same proceeding. *See, e.g., State – Fish and Wildlife*, Decision 12141 (PRSA, 2014), and *State – Health Care Authority*, Decision 12336 (PSRA, 2015). If the employer does not consent to the use of both processes, then this agency is bound by the existing rules process of merging bargaining units, and clarification of bargaining units must be handled through separate proceedings.

Here, the employer has objected to the use of a blended process. Accordingly, the union must utilize the unit clarification process to add the historically non-represented employees into the newly merged bargaining unit, and the unit clarification rules and standards will apply to that proceeding.

FINDINGS OF FACT

1. The Washington State Department of Agriculture is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (union) is an employee organization within the meaning of RCW 41.80.005(7) and is the exclusive bargaining representative of four separate bargaining units of non-supervisory employees at the Department of Agriculture.
3. Since 1965 the union has represented the Grain Inspection bargaining unit. That bargaining unit is currently defined as:

All non-supervisory civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW of the Washington State Department of Agriculture in the Grain Branch of the Grain and Chemical Division, excluding supervisors, confidential employees, WMS employees, and all other employees.

4. Since 1968 the union has represented the Fruit and Vegetable Inspection bargaining unit. That bargaining unit is currently defined as:

All non-supervisory civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW of the Washington State Department of Agriculture in the Fruit and Vegetable Inspection Program, excluding supervisors, confidential employees, WMS employees, and all other employees.

5. Since 1968 the union has represented the Plant Services bargaining unit. That bargaining unit is currently described as:

All employees occupying a permanent, project or seasonal position in the classified service within the Plant Services Division of the Department of Agriculture with the exception of the following exclusions: Plant Protection Program Manager; Plant Certification Program Manager; Plant Pathology Program Manager; Plant Services Field Supervisor; Plant Services Inspector 3; Entomologist, Chief; Weed Specialist 2; Seed Analysis Laboratory Supervisor; Seed Inspection Supervisor; Administrative Assistant 3 (only that position that functions as the principal assistant to the Assistant Director, Plant Services); other classes which may be subsequently created or modified which have supervisory duties.

6. Since 1969 the union has represented the Regulatory bargaining unit. That bargaining unit is currently described as:

All non-supervisory civil service employees of the Washington State Department of Agriculture in the Commission Merchants Program, Livestock Identification Program and Weights and Measures Program in the following classifications: Administrative Assistant 1, 2, 3, 4, Brand Control Specialists, Brand Inspectors, Commission Merchant Investigators 1, 2, Office Assistants, Secretary Seniors, Weight and Measures Supervisors, and Weight and Measures Inspectors, excluding supervisors, confidential employees, Washington Management Service employees, casual employees (Temporary Office Assistant 2 - Brand Clerks and Temporary Brand Inspectors), State Metrologists, CTED Specialist 2 (Biofuels Standard Coordinator) and all other employees.

7. The parties agree that merging the bargaining units described in Findings of Fact 3 through 6 would result in an appropriate bargaining unit.

8. No facts have been discovered or brought to the attention of agency staff or the Executive Director which calls into question the propriety of the proposed merger described in these Findings of Fact.
9. The employer does not agree that any historically unrepresented employees who perform the same work as employees in the newly merged bargaining unit described in Finding of Fact 7 should be included in that unit as part of this proceeding.

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 paragraphs 3 through 6 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.
3. The union's request to add any historically unrepresented non-permanent, temporary employees who perform the same work as employees in the newly merged bargaining unit described in Finding of Fact 7 is not germane to this proceeding. Requests to include historically unrepresented employees in an existing bargaining unit must be accomplished through unit clarification proceedings under Chapter 391-35 WAC.

ORDER

1. The bargaining units described in Findings of Fact 3 through 6 shall be merged into one bargaining unit described as follows:

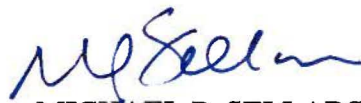
All non-supervisory employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW employed by the Washington State Department of

Agriculture in the Grain Branch of the Grain and Chemical Division, the Fruit and Vegetable Inspection Program, the following classifications in the Commission Merchants Program, Livestock Identification Program, and Weights and Measures Program: Administrative Assistant 1, 2, 3, 4; Brand Control Specialists; Brand Inspectors (excluding temporary Brand Inspectors); Commission Merchant Investigators 1 and 2; Office Assistants (excluding temporary Office Assistant 2 - Brand Clerks); Secretary Seniors; Weights and Measures Supervisors; and Weights and Measures Inspectors, and all employees in the Plant Services Program, excluding the Plant Protection Program Manager; Plant Certification Program Manager; Plant Pathology Program Manager; Plant Services Field Supervisor; Plant Services Inspector 3; Entomologist, Chief; Weed Specialist 2; Seed Analysis Laboratory Supervisor; Seed Inspection Supervisor; Administrative Assistant 3 (only that position that functions as the principal assistant to the Assistant Director of Plant Services), and excluding supervisors, confidential employees, Washington Management Service employees, and all other employees.

2. The Washington Federation of State Employees shall continue to be the exclusive bargaining representative of all employees in the merged bargaining unit described in paragraph 1 of this order.

ISSUED at Olympia, Washington, on this 16th day of July, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

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



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12375 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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