

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON FEDERATION OF
STATE EMPLOYEES

For clarification of an existing bargaining
unit of employees of:

STATE – HEALTH CARE AUTHORITY

CASE 26665-E-14-3886

DECISION 12336 - PSRA

ORDER MERGING
BARGAINING UNITS

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

Tina Peterson, Labor Negotiator, for the Washington State Health Care Authority.

On August 6, 2014, the Washington Federation of State Employees (union) filed a petition to merge two of its bargaining units at the Washington State Health Care Authority (employer). One of the bargaining units is a mixed-class bargaining unit that was created by the Washington State Legislature in 2011 when it transferred the Medicaid Purchasing Administration from the Department of Social and Health Services to the employer. Laws of 2011, 1st Spec. Sess. Ch 15. The other bargaining unit contains non-supervisory employees in the Medical Assistance Specialist job series. *State – Health Care Authority, Decision 9725 (PSRA, 2007)*.¹

Representation Case Administrator Dario de la Rosa examined the bargaining units and determined that merging them would not result in an appropriate unit. He found that certain job classes in the employer's workforce would have positions both included and excluded from the proposed merged bargaining unit. If the two bargaining units were merged as petitioned for by the union, the employer's workforce would remain fragmented and work jurisdiction issues would continue to exist.

¹ When this bargaining unit was originally certified, the employees were in the Health Insurance Benefits Specialist job series. They have since been reallocated to the Medical Assistance Specialist job series and the bargaining unit will be described as the Medical Assistance Specialist bargaining unit for the purposes of this decision.

The Representation Case Administrator worked with the parties to restructure the proposed merged bargaining unit. That process involved identifying the job series throughout the employer's workforce that had a majority of employees currently included in either the mixed-class or Medical Assistance Specialist bargaining units as they existed on March 17, 2015. If the majority of employees in a job series were represented, all employees in that particular job series throughout the employer's workforce would be included in the proposed merged bargaining unit.² Conversely, if the majority of employees in a job series were unrepresented, all employees in that particular job series throughout the employer's workforce would be excluded from the proposed merged bargaining unit.³

The proposed bargaining unit configuration is horizontally structured by job class including all of the positions in the particular job series and is appropriate under RCW 41.80.070. Accordingly, the two bargaining units shall be merged and restructured by job class. The historically excluded positions in the included job series and classes will be added to the bargaining unit because those positions logically belong in the merged and redefined bargaining unit.

BACKGROUND

The union represents two bargaining units of non-supervisory employees at the Health Care Authority. One bargaining unit is a mixed-class bargaining unit that was created by the Legislature when it transferred the Medicaid Purchasing Administration from the Department of Social and Health Services to the employer. There are approximately 480 employees in the mixed-class bargaining unit, including Office Assistants, Secretaries, Cost Reimbursement Analysts, Contracts Assistants, Contracts Specialists, Information Technology Specialists, Information Technology Technicians, Management Analysts, Physicians, Procurement & Supply

2 For example, a majority of the employees in the Information Technology Specialist job series have historically been represented. The parties agreed that all of the employees in that job series would be included in the bargaining unit.

3 For example, a majority of the employees in the Fiscal Analyst job series have historically been unrepresented. The parties agreed that all of the employees in that job series would be excluded from the bargaining unit.

Specialists, and Review Judges. There are also approximately 340 employees in the Medical Assistance Specialists job series in that bargaining unit. The legislation that created the mixed-class bargaining unit did not provide any mechanism for this agency to review the appropriateness of the bargaining unit. The employer's workforce also contains other non-supervisory employees in these job classes that are not represented. This has led to work jurisdiction problems between the represented and unrepresented employees in each job series.

The other bargaining unit consists of employees in the Medical Assistance Specialist job series. When that bargaining unit was certified by this agency, it contained all of the employees in the Medical Assistance Specialist job series that were in the employer's workforce. Although the employees in this bargaining unit historically had their own identifiable work, that unique identity ended when the Medicaid Purchasing Administration was transferred to the employer.

DISCUSSION

Applicable Legal Standards

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. When this agency certifies a bargaining unit, the work performed by the employees in that bargaining unit becomes the historic work jurisdiction of that unit. *See, e.g., Kitsap County Fire District 7, Decision 7064-A (PECB, 2001)* (bargaining unit work is defined as "work that bargaining unit employees have historically performed").

Defining Bargaining Units

A bargaining unit description defines the employees that are included or excluded from the bargaining unit and ensures that the duty to bargain is enforced if an attempt is made to transfer work outside of the bargaining unit. *University of Washington, Decision 8392 (PSRA, 2004)*. No hard-and-fast rule exists proscribing how bargaining units should be described. New bargaining units are often described by the work performed by the employees in the unit, as opposed to the job classes within that unit, because the use of generic terms avoids the need to

revisit and revise the bargaining unit description should a job title be changed or a new job title added within the occupational type. *Id.*

Defining the bargaining unit by work is not always possible where employers are larger and include multiple divisions or work groups, where similar duties are performed by several groups of employees, or where one or more unions represent employees performing the same or similar functions in different bargaining units. *Central Washington University*, Decision 10215-A (PSRA, 2009), *aff'd*, Decision 10215-B (PSRA, 2010). A different type of bargaining unit description may be necessary and appropriate. This is especially true of employers under the jurisdiction of Chapter 41.80 RCW. *University of Washington*, Decision 11833 (PSRA, 2013). Each unit is examined individually based upon the factual situation presented. Bargaining units will be described in a manner that provides the parties with a clear understanding of which employees are included in the bargaining unit.

A bargaining representative that represents more than one bargaining unit of state employees may petition this agency to merge those bargaining units into a single unit. RCW 41.80.070(3). If the resulting bargaining unit is appropriate, then this agency shall certify the petitioner as the exclusive bargaining representative of the merged unit.

Accretions

Ordinarily, employees are permitted a voice in the selection of an exclusive bargaining representative. RCW 41.80.080. Accretions are the exception to the statutory rule of employee free choice. An accretion may be ordered when unrepresented employees logically belong in only one existing bargaining unit and the positions can neither stand on their own as a separate unit nor be logically accreted to any other existing bargaining unit. *Pierce County*, Decision 6051-A (PECB, 1998), *citing City of Auburn*, Decision 4880-A (PECB, 1995). The employees will be placed in the existing bargaining unit without the benefit of being able to vote on representation. In order for an accretion to be directed, the resulting bargaining unit must be an appropriate unit. The party proposing accretion bears the burden of demonstrating that the conditions for accretion are present. *Pierce County*, Decision 6051-A.

Application of Standards

The parties agree that the existing bargaining units should be restructured and merged into a single bargaining unit that is defined by job class. Restructuring the bargaining unit will alleviate existing work jurisdiction issues because the new horizontal bargaining unit structure will include all of the employees in a particular job class. *See Washington State University, Decision 9613-A (PSRA, 2007)* (explaining the differences between vertical and horizontal bargaining unit structures). Merging the two bargaining units also removes the fragmentation that previously existed when the employees in the Medical Assistance Specialist job series were included in two different bargaining units.

The unrepresented employees in job classes that are to be included in the newly merged bargaining unit logically belong in that bargaining unit because work jurisdiction issues would be created if they were either allowed to remain unrepresented or be placed in another bargaining unit. Since there are approximately 543 employees in the merged bargaining unit but only 58 historically-excluded permanent positions being added, no question concerning representation is raised.

FINDINGS OF FACT

1. The Washington State Health Care Authority 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).
3. Since 2007 the union has represented a bargaining unit of Medical Assistance Specialists. The bargaining unit currently contains approximately 340 employees.
4. In 2011 the Washington State Legislature created the mixed-class bargaining unit when it transferred the Medicaid Purchasing Administration from the Department of Social and

Health Services to the employer. Laws of 2011, 1st Spec. Sess. Ch 15. The union described in Finding of Fact 2 represents the mixed-class bargaining unit.

5. The legislation that created the mixed-class bargaining unit did not provide any mechanism for this agency to review the appropriateness of the bargaining unit. The employer's workforce also contains other non-supervisory employees in these job classes that are not represented. This has led to work jurisdiction problems between the represented and unrepresented employees in each job series.
6. The union represents a majority of employees in various job classes including Office Assistants, Secretaries, Copy Center Leads, Cost Reimbursement Analysts, Contracts Assistants, Contracts Specialists, Information Technology Specialists, Information Technology Technicians, Management Analysts, Physicians, Procurement & Supply Specialists, Review Judges, and Medical Assistance Specialists

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-25 WAC.
2. Based upon Finding of Fact 5, the employees in the bargaining units described in Findings of Fact 3 and 4 share a community of interest and could be merged to form a single appropriate bargaining unit under RCW 41.80.070 provided all of the positions in the job classes described in Finding of Fact 6 are included in the merged bargaining unit.

ORDER

1. The bargaining units described in Findings of Fact 3 and 4 are merged to form a single bargaining unit described as follows:

All non-supervisory, civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW who are employed by the Washington State Health Care Authority in the following job classes: Copy Center Leads A; Contracts Assistants; Contracts Specialists; Cost Reimbursement Analysts; Information Technology Specialists; Information Technology Technicians; Medical Assistance Specialists 1, 2, and 3; Physicians; Procurement & Supply Specialists; Review Judges; Secretaries; and Office Assistants, excluding confidential employees, supervisors, internal auditors, Washington Management Services employees, employees in other bargaining units, and all other employees.

2. The historically unrepresented employees described in Finding of Fact 6 are added to the bargaining unit described in paragraph 1 of this order without the need for an election.
3. All previously represented employees who are not within the scope of the bargaining unit described in paragraph 1 of this order are now unrepresented for purposes of collective bargaining.

ISSUED at Olympia, Washington, this 8th day of June, 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 391-35-210.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

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