STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: UNITED PROFESSIONAL SOCIAL WORKERS Involving certain employees of: STATE – VETERANS AFFAIRS	CASE 27125-E-15 DECISION 12549-A - PSRA DECISION OF COMMISSION

Rhonda J. Fenrich, Attorney at Law, Fenrich & Gallagher, P.C., for the petitioner, United Professional Social Workers.

Valerie B. Petrie, Senior Counsel, Attorney General Robert W. Ferguson, for the employer, Washington State Department of Veterans Affairs.

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, P.L.L.C., for the incumbent, Washington Federation of State Employees.

The Washington Federation of State Employees (WFSE) represents employees working for the Washington State Department of Veterans Affairs (employer). Employees in the Psychiatric Social Worker 3 (PSW3) job classification are included in the bargaining unit WFSE represents. The United Professional Social Workers (UPSW) filed a petition to represent employees in the PSW3 classification. For employees in the PSW3 classification to vote on whether they want to be represented by the UPSW, the PSW3 job classification would need to be severed from the bargaining unit.

After a hearing, the Executive Director concluded that severance was not appropriate. *State – Veterans Affairs*, Decision 12549 (PSRA, 2016). The UPSW filed a timely appeal identifying the findings of fact and conclusions of law it found to be in error.

None of the parties filed appeal briefs. A party is not required to file a brief. However, parties are afforded an opportunity to file appeal briefs to direct the Commission to any error that may exist in the decision below or to explain why the decision should be sustained. Appeal briefs may also

be used by the parties to point to any relevant portion of the record or legal precedent that supports their positions on appeal.

In this case, the Executive Director applied *Yelm School District*, Decision 704-A (PECB, 1980), in the context of the unit determination standards to determine whether the petitioned-for employees continued to share a community of interest with the existing bargaining unit. He concluded that severance was not appropriate because (1) the PSW3s continued to share a community of interest with the larger bargaining unit; (2) the PSW3s worked with other employees to perform their jobs; (3) the history of bargaining did not establish a basis for severing the employees; and (4) the PSW3s' duties, although unique, did not demonstrate that the overall community of interest had been altered.

The issue before the Commission is whether the PSW3 job classification should be severed from the existing bargaining unit. We affirm the Executive Director's conclusion that severance is not appropriate in this case.

BACKGROUND

The Legislature created the Washington State Department of Veterans Affairs in 1976. Before the Legislature created the Department of Veterans Affairs, employees in the PSW job classification, with the exception of the PSW4s, were briefly included in a bargaining unit represented by the WFSE at the Department of Social and Health Services. The WFSE has represented employees working at the employer since 1978. RU-145 (1978). The registered nurses who work for the employer are in a separate bargaining unit.

The employer operates three homes that serve veterans of the armed forces; the spouses, widows, or widowers of eligible veterans; or Gold Star Parents, the parents of those who died while serving the country in the armed forces. The veterans homes are located in Orting, Retsil, and Spokane. The homes provide around-the-clock nursing services to residents. Employees are assigned to work in the PSW job classification at all three veterans homes.

The Washington Soldiers Home in Orting is the only home that provides continuing levels of care in its domiciliary, assisted living, and skilled nursing care units. The skilled nursing facility has 97 resident beds. Two PSW3s and one PSW2 work at the Orting facility; all three positions are in the bargaining unit. One of the PSW3 positions was vacant at the time of the hearing. The PSW3 and PSW2 are each assigned a duty station and perform the same general functions.

The Washington Veterans Home in Retsil is divided into four "neighborhoods" with a PSW3 staffing each neighborhood. All four PSW3s are included in the bargaining unit. The employer does not employ a PSW2 position at the Retsil facility.

The Spokane Veterans Home has one PSW3, one PSW2, and one on-call PSW2 performing social work. The PSW3 is the Social Work Director of the facility, is considered a supervisory position, and is not included in the bargaining unit. RU-422 (1996). The PSW2 positions are included in the bargaining unit. Despite the differences in bargaining unit status, the PSW3 and PSW2s perform substantially similar work and cover for each other in the event of an absence.

Employees in the PSW job classification must have a bachelor's degree in social work from an accredited school. Employees working in the PSW3 job classification must have obtained a master's degree in social work and be licensed by the state or become licensed within three years. Licensed PSW3s are permitted to diagnose mental illnesses.

ANALYSIS

Applicable Legal Standards

Standard of Review

The Commission reviews conclusions of law, as well as applications of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Executive Director's conclusions of law. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Id.*

Severance

The Legislature delegated to the Commission the authority to determine appropriate bargaining units. RCW 41.80.070(1). When the Commission certifies a bargaining unit, a presumption that the bargaining unit is appropriate attaches. *Cowlitz County*, Decision 12115 (PECB, 2014). That other groupings of employees may also be appropriate, or more appropriate, does not render a bargaining unit certified by the Commission inappropriate. The Commission is required to certify *an* appropriate bargaining unit, not the *most* appropriate bargaining unit. We decline to use severance as a means to create a more perfect unit.

A petition to sever employees from an existing bargaining unit seeks to disrupt the status quo of the existing bargaining unit. To obtain severance, the petitioner must overcome the stability and maturity of relationships usually present in established bargaining units that lead to sound labor relations. To do so, the petitioner must establish either that (1) the petitioned-for employees no longer share a community of interest with the existing bargaining unit or (2) the incumbent bargaining representative has inadequately represented the petitioned-for employees.

The petitioner must show that a change in the community of interest has occurred to make the existing bargaining unit inappropriate. This is usually demonstrated by substantial changes to the job duties or working conditions of the petitioned-for employees or substantial changes in the employer's operations. *King County*, Decision 11441-A (PECB, 2013).

To show inadequate representation, the petitioner must demonstrate more than a short-term inability of the incumbent union to achieve the bargaining goals of the petitioned-for employees or the employees' dissatisfaction with their bargaining representative's accomplishments. Inadequate representation may be shown by factors such as lack of opportunities to participate in union affairs, lack of collective bargaining agreement provisions addressing specific concerns of the employees at issue, lack of involvement by the petitioned-for employees in negotiation processes, and lack of any formal or informal efforts by the incumbent union to resolve issues of concern to the employees at issue. Where a bargaining relationship has been in existence, the "history of bargaining" weighs against its disruption by severing the unit into two or more components. *Cowlitz County*, Decision 4960 (PECB, 1995). These considerations should not be

read as a mechanical test, as each case is fact dependent and may present different variables worthy of consideration.

If the petitioner meets its burden of proof and the conditions for severance are met, the Commission will evaluate the appropriateness of the petitioned-for bargaining unit and whether the residual unit would maintain its appropriateness. If either of the resulting bargaining units would be inappropriate under the statute, then severance shall not be granted and the original unit shall be maintained. If severance is appropriate and the petitioned-for bargaining unit is an appropriate unit, an election—which includes the incumbent union on the ballot—must be conducted among the petitioned-for employees.

Application of Standards

The UPSW appealed Findings of Fact 6, 9, 11, and 13. After reviewing the record, we conclude that substantial evidence supports those findings of fact. We affirm those findings of fact. We affirm the Executive Director's conclusion that the petitioned-for employees maintain a community of interest with the existing bargaining unit.

The UPSW bears the burden of proving that the PSW3s no longer share a community of interest with the existing bargaining unit or that the WFSE has inadequately represented the PSW3s, and that the petitioned-for bargaining unit is appropriate. The UPSW has failed to meet its burden of proof.

The UPSW has failed to show the existence of any changes in the petitioned-for employees' working conditions that would have resulted in a change in circumstances and disrupted the community of interest between the petitioned-for employees and the existing bargaining unit. There is no evidence that the PSW3s' job duties or working conditions have changed.

The PSW3s work with other employees, including doctors, nurses, and therapists, to provide services to clients. At the Orting facility, the PSW3s work alongside an employee in the PSW2 job class. While differences exist as to what duties the PSW3s and the PSW2 can perform, the

PSW3s and the PSW2 have overlapping job duties. The UPSW has failed to demonstrate that the petitioned-for employees no longer share a community of interest with the existing bargaining unit.

The existing bargaining unit is a large bargaining unit and includes all of the employees working for the employer except chaplains, physicians, licensed registered nurses, and those employees excluded by the Washington State Personnel Board. Large bargaining units are appropriate and prevent the fragmentation of an employer's workforce. Whether creating additional bargaining units would fragment the employer's workforce is a criteria the Commission must examine in determining whether severance is appropriate. RCW 41.80.070(1). While the employer's workforce includes other smaller bargaining units of classification-specific employees, such as registered nurses, severing the PSW3s from the existing bargaining unit would add an additional bargaining unit and begin the process of fragmenting the employer's workforce.

In a severance petition, the history of bargaining weighs heavily against severance. A long history of bargaining exists between the employer and the WFSE. The history of bargaining includes evidence of the WFSE's representation of the PSW3s. The WFSE's shop stewards have represented the PSW3s. When the employer implemented a death with dignity policy that would affect the PSW3s, the union negotiated with the employer. The WFSE's negotiation team included a PSW3. This is evidence that the WFSE has attempted to resolve issues on behalf of the PSW3s, has not ignored the PSW3s, and has allowed PSW3s to participate in representation.

Prior to the passage of the Personnel System Reform Act in 2002, unions representing state employees could not negotiate wages. The record contains evidence that the WFSE has negotiated for and obtained general wage increases for all bargaining unit employees. Additionally, the WFSE negotiated for and obtained a class-specific wage increase for the PSW3s. The petitioned-for employees' inability to achieve their bargaining goals or their dissatisfaction with the WFSE's accomplishments is insufficient to establish a failure to represent that would warrant severance.

The UPSW petitioned for a bargaining unit of PSW3s. At the Orting and Spokane facilities, employees work in the PSW2 classification. The PSW2s perform similar duties to the PSW3s.

The petitioned-for bargaining unit is not appropriate because it does not include all of the employees performing similar job duties and would create work jurisdiction issues.

CONCLUSION

The UPSW has not met its burden of proving that the petitioned-for employees no longer share a community of interest with the existing bargaining unit. There is no evidence of changes to the PSW3s' job duties or working conditions that disrupted the community of interest. Further, there is no evidence of substantial changes in the employer's operations that would make the existing bargaining unit inappropriate. The UPSW has not met its burden to prove that the WFSE has not adequately represented the PSW3s. The petitioned-for bargaining unit of only PSW3s is inappropriate. We affirm the Executive Director's decision denying severance.

ORDER

The Findings of Fact, Conclusions of Law, and Order issued by Executive Director Michael P. Sellars are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 23rd day of June, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

MARK E. BRENNAN, Commissioner

Commissioner McLane did not participate in the consideration or decision of this case.

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DECISION 12549-A - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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