

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,
LOCAL 23

For clarification of an existing bargaining
unit of employees of:

BREMERTON HOUSING AUTHORITY

CASE 22893-C-09-1420

DECISION 10831 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Allan Jacobson, Business Manager, for the union.

Foster Pepper PLLC, by P. Stephen DiJulio, Attorney at Law, for the employer.

The Office and Professional Employees International Union, Local 23 (union) filed a Petition for Clarification of Bargaining Unit on December 2, 2009, seeking inclusion of one quality assurance analyst position into the existing bargaining unit. On January 25, 2010, the union amended its petition seeking inclusion of four quality assurance analyst positions into the bargaining unit. Jamie L. Siegel was assigned as Hearing Officer and she held a hearing on April 15 and 16, 2010. The parties filed post-hearing briefs which were considered.

ISSUES

Did the union file its petition in a timely manner, consistent with WAC 391-35-020? If so, does the quality assurance analyst position share a community of interest with other bargaining unit positions?

On the basis of the record presented, the Executive Director rules that the union's unit clarification petition is untimely. The union did not establish that the quality assurance analyst position is new or that circumstances have changed as required by WAC 391-35-020(4) or (5).

APPLICABLE STANDARDS

A party may file a unit clarification petition at any time with regard to certain disputes, including: newly created positions, positions claimed by two or more bargaining units, the confidential status of positions, professional education certificate requirements, eligibility for interest arbitration, and one-person bargaining units. WAC 391-35-020(1).

A current collective bargaining agreement bars the processing of a petition concerning a position's supervisory status unless the petitioner (1) put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position through a unit clarification proceeding, and (2) filed the petition before signing the current collective bargaining agreement. WAC 391-35-020(2)(a). Alternatively, a current signed collective bargaining agreement between the parties will not bar the processing of a petition concerning a position's supervisory status if "the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class." WAC 391-35-020(2)(b).

Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions, or where the existing bargaining unit is the only appropriate unit for the employees or positions. WAC 391-35-020(4). When a unit clarification petition is not filed within a reasonable time period after the creation of new positions, an order clarifying bargaining unit will not be issued.

ANALYSIS

The Bremerton Housing Authority (employer) employs approximately 140 employees. The employer operates through a number of departments, including Contract Management Services (CMS). In addition to its work on contracts specific to the employer, CMS performs as a contract administrator on behalf of the federal Department of Housing and Urban Development (HUD) in five states or areas, including Washington, Hawaii, Nebraska, Southern California, and Utah. The employer maintains several divisions within CMS, including compliance, contracts, program support, and vouchers.

In 1988, the Commission certified the Office and Professional Employees International Union, Local 23 (union) as the exclusive bargaining representative for “all full-time and regular part-time office and clerical employees of the Bremerton Housing Authority; excluding supervisors, confidential employees and all other employees.”¹ The parties signed the current collective bargaining agreement on September 26, 2007; it expires September 30, 2010. The current collective bargaining agreement does not address the disputed positions and, until the union filed the petitions at issue in this case, the union had not pursued inclusion of the disputed positions in the bargaining unit.

The employer first hired “quality assurance managers” (QAM) in 2004. One worked in CMS; the other worked in the Housing Department. In the summer of 2008, the employer changed the QAM job title to “quality assurance analyst” (QAA) and reformatted the job description.² The job duties did not change.³ Compensation remained the same. The QAA position “implements and maintains comprehensive quality assurance reviews to assess compliance with internal processes and procedures, HUD regulations, and the Annual Contributions Contract (ACC).” In essence, the QAA positions audit the work of employees in the contracts, compliance, and voucher divisions, compile reports on their findings, and recommend corrective action.

1 *Bremerton Housing Authority*, Decision 2834 (PECB, 1988).

2 The employer reformatted all job descriptions at that time.

3 Lisa Rehberger held the QAM/QAA position at CMS at the time of the change in job title and job description reformatting. She testified unequivocally that the job duties did not change.

In March 2009, the employer made some temporary changes in the voucher division of CMS.⁴ While trying to fill its vacant voucher manager position, the employer appointed one of the voucher specialists, Lori Mannerude, to serve as interim voucher manager. The voucher specialist position is a bargaining unit position.⁵ The voucher manager position is an unrepresented position. With this change, the employer decided to expand its quality assurance review of the voucher program. As the interim voucher manager, Mannerude took on a larger role than the position's previous incumbent in reviewing the voucher division's work. The previous voucher manager had been completing a ten percent review of the voucher division's work and Mannerude began completing a 100 percent review.

In June 2009, after hiring a new voucher manager, the employer decided to hire an additional QAA position for CMS and eliminate one of the voucher specialist positions. The employer also decided to assign the additional QAA position responsibility for completing the 100 percent review of the voucher division's work, rather than assigning that responsibility to the unrepresented voucher manager. The employer selected Mannerude to serve in that QAA position, leaving her position as a voucher specialist unfilled.

The record established that over the years the voucher specialists have done peer reviews, checking some aspects of each others' work. That work has varied over time. After Mannerude left the voucher specialist position to become a QAA, the voucher specialists continued to do some peer reviews. The work of the QAAs differs from the voucher specialists' peer review work. The QAAs review the work of the entire voucher division and compile reports that may include recommendations for corrective actions.

In November 2009, the employer hired three additional QAA positions in CMS due to the increased workload generated from the employer's new Southern California contracts. The

4 The voucher division is responsible for accounting support functions involved with collecting, maintaining, and reporting financial and accounting information, including processing and disbursing payments.

5 The parties used the "voucher specialist" job title interchangeably with the "accounting specialist III" job title. For purposes of consistency, this decision uses voucher specialist.

employer also hired additional voucher specialists and other employees to meet the demands of the increased workload.

At hearing, the employer clarified that it was not arguing confidential status for the QAA positions. Although the employer initially claimed that the QAA positions were supervisory, it failed to support that claim during the hearing and appears to have abandoned it.

No Notice Prior to Signing Contract

If the employer had established that the QAA positions are supervisory, as it initially claimed, the requirements of WAC 391-35-020(2) would have applied and the union would have had to put the employer on notice during negotiations that it would contest the exclusion of the QAA positions from the bargaining unit and file its petition prior to signing the current collective bargaining agreement. However, because the record did not establish that the QAA positions are supervisory, further analysis under this rule is unnecessary.

Position Not Newly Created

The union cannot establish that the QAA position was newly created. The employer created the position in 2004. The evidence established that the union was aware of the position at least by 2006. Neither the 2008 title change nor the reformatting of the job description impacts the position's status as an established position. Furthermore, hiring one additional QAA in June 2009 and hiring three additional QAAs in November 2009 certainly expanded the number of QAA positions. Expanding the number of employees in a position does not, however, convert an established position into "newly created" status under WAC 391-35-020.

No Change of Circumstances

The union must establish that it filed its petition within a reasonable time period after a change of circumstances altering the QAA position's community of interest with positions in the existing bargaining unit. It failed to do so. The 2008 job title change did not amount to a change of circumstance nor did the reformatting of the job description. The employer's decisions to hire an additional QAA in June of 2009 to enhance its quality assurance process and three additional

QAAs in November of 2009 due to increased workloads did not amount to a change of circumstances altering the community of interest.

When the employer hired the additional QAA in June 2009, it assigned that position some of the work previously performed by the unrepresented voucher manager position. QAAs had not previously performed reviews of 100 percent of the voucher division's work. Although this was a change, it did not amount to a change of circumstances altering the QAA position's community of interest with positions in the existing bargaining unit.

Modifying an existing bargaining unit while a collective bargaining agreement is in effect impacts the stability of the collective bargaining relationship. As a result, the party petitioning to do so bears the burden of establishing changed circumstances warranting such modification. In this case, the union failed to meet this burden.

Not the Only Appropriate Unit

The union has not alleged, nor could it establish from the record, that the existing bargaining unit is the only appropriate unit for the QAA position.

FINDINGS OF FACT

1. The Bremerton Housing Authority is a public employer within the meaning of RCW 41.56.030(1).
2. The Office and Professional Employees International Union, Local 23 is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The parties signed the current collective bargaining agreement on September 26, 2007; it expires September 30, 2010.
4. The union filed a Petition for Clarification of Bargaining Unit on December 2, 2009, seeking to include one quality assurance analyst position in its existing bargaining unit.

On January 25, 2010, the union amended its petition seeking to include four additional quality assurance analyst positions in its existing bargaining unit.

5. The employer first hired “quality assurance managers” in 2004. One worked in Contract Management Services (CMS); the other worked in the Housing Department.
6. In the summer of 2008, the employer changed the quality assurance manager job title to “quality assurance analyst” (QAA) and reformatted the job description. The job duties and pay remained the same.
7. In March 2009, while trying to fill its vacant voucher manager position, the employer appointed one of its voucher specialists, Lori Mannerude, to serve as interim voucher manager. The voucher specialist position is a bargaining unit position. The voucher manager position is an unrepresented position.
8. With the change described in Finding of Fact 7, the employer decided to expand its quality assurance review of the voucher program. As the interim voucher manager, Mannerude took on a larger role than the position’s previous incumbent in reviewing the voucher division’s work. The previous voucher manager had been completing a ten percent review of the voucher division’s work and Mannerude began completing a 100 percent review.
9. In June 2009, after hiring a new voucher manager, the employer hired an additional QAA position for CMS and eliminated one voucher specialist position. The employer decided to assign the additional QAA position responsibility for completing the 100 percent review of the voucher division’s work, rather than assigning that responsibility to the unrepresented voucher manager. The employer selected Mannerude to serve in that QAA position, leaving her position as a voucher specialist unfilled.

10. The record established that over the years the voucher specialists have done peer reviews, checking some aspects of each others' work. The work of the QAAs differs from the voucher specialists' peer review work.
11. In November 2009, the employer hired three additional QAA positions in CMS due to the increased workload generated from the employer's new Southern California contracts.
12. The current collective bargaining agreement does not address the QAA position and, until the union filed the petition in this case, the union had not pursued inclusion of the QAA position in the bargaining unit.
13. The record does not establish that the QAA position is newly created or that there has been a change of circumstances altering the QAA position's community of interest with bargaining unit positions.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The Office and Professional Employees International Union, Local 23's unit clarification petition was not timely under WAC 391-35-020(4) because it was not filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions, and because evidence was insufficient to establish that the existing bargaining unit is the only appropriate unit for the employees or positions.
3. The Office and Professional Employees International Union, Local 23's unit clarification petition was not timely under WAC 391-35-020(5) because it was not filed within a reasonable time period after creation of new positions.

ORDER

The unit clarification petition filed by the union is hereby dismissed. The quality assurance analyst positions will remain excluded from the bargaining unit.

ISSUED at Olympia, Washington, this 16th day of August, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink that reads "Cathleen Callahan". The signature is written in a cursive style.

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 WAC 391-35-210.