

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of the

UNIVERSITY OF WASHINGTON

For clarification of an existing bargaining
unit represented by:

WASHINGTON FEDERATION OF STATE
EMPLOYEES

CASE 24318-C-11-1469

DECISION 11259 - PSRA

ORDER OF DISMISSAL

On October 6, 2011, the University of Washington (employer) filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. The petition concerns classified employees of the employer. The petition was reviewed under WAC 391-35-020, and a deficiency notice issued on November 21, 2011, indicated that the petition was defective. The employer was given a period of 21 days in which to file and serve an amended petition or face dismissal of the case.

The employer has not filed an amended petition, and the petition is dismissed.

DISCUSSION

The deficiency notice pointed out several defects to the complaint. Unit clarification proceedings are controlled by Chapter 391-35 WAC. Within that chapter, WAC 391-35-050 reads as follows:

WAC 391-35-020 TIME FOR FILING PETITION –
LIMITATIONS ON RESULTS OF PROCEEDINGS.

TIMELINESS OF PETITION

- (1) A unit clarification petition may be filed at any time, with regard to:
 - (a) Disputes concerning positions which have been newly created by an employer.
 - (b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.

(c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.

(d) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.

(e) Disputes under WAC 391-35-320 concerning status as a confidential employee.

(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

(b) Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless 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.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) 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

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

(5) Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:

(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.

(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.

(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

(6) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

DISCUSSION

The employer previously filed a petition regarding the same employees and the same issues; that petition was dismissed as untimely. *University of Washington*, Decision 10263 (PSRA, 2008). The present petition states that the employer would like to reallocate the positions of Specimen Processing Technicians/Lead (SPT) to Clinical Laboratory Technicians (CLT), and that the reallocation would constitute a change of circumstances that would justify moving the employees from a bargaining unit currently represented by the Washington Federation of State Employees (WFSE), to one represented by Service Employees International Union 925. The employer states that the present petition is timely under a recent Commission decision that suggested that a unit clarification petition is appropriate in cases involving reallocations of positions. *University of Washington*, Decision 10409-C (PSRA, 2011).

The petition is premature, since no positions have been reallocated. The employer is incorrect in stating that it is prevented from reallocating the SPT class to the CLT class by a question concerning representation. The employer may reallocate the work, although it has a duty to bargain the impacts of that reallocation with the incumbent bargaining representative (WFSE) concerning wages, hours, and working conditions for the reallocated positions. Once that bargaining is completed, the petition could be ripe for filing, because reallocation might raise a timely unit clarification issue both as a change of circumstances and because at least two bargaining units might claim the positions. Thus, once the positions are actually reallocated, and

the employer fulfills its bargaining obligations over the impacts of reallocation, then the petition could be appropriate.

NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit filed in Case 21318-C-11-1469 is DISMISSED.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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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CASE NUMBER: 24318-C-11-01469 FILED: 10/06/2011 FILED BY: EMPLOYER
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