

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 763

For clarification of an existing bargaining
unit of employees of:

CITY OF FEDERAL WAY

CASE 24336-C-11-1470

DECISION 11355 - PECB

ORDER OF DISMISSAL

On October 18, 2011, Teamsters Local 763 (Teamsters) filed a unit clarification petition, pursuant to Chapter 391-35 WAC, seeking to add “[t]emporary’ or ‘[s]easonal’ employees working as Maintenance I & II, Custodian and Facility Operators.” The bargaining unit is currently certified to include:

All full-time and regular part-time maintenance and operations employees within the public works and park departments of the City of Federal Way, excluding supervisors and confidential employees.

City of Federal Way, Decision 4898-A (PECB, 1994).

The certification including regular part-time employees in the same bargaining unit as full-time employees performing the similar work is consistent with WAC 391-35-350. That rule states:

(1) It shall be presumptively appropriate to include regular part-time employees in the same bargaining unit with full-time employees performing similar work, in order to avoid a potential for conflicting work jurisdiction claims which would otherwise exist in separate units. Employees who, during the previous twelve months, have worked more than one-sixth of the time normally worked by full-time employees, and who remain available for work on the same basis, shall be presumed to be regular part-time employees.

WAC 391-35-350(1). The purpose of the rule is to avoid the potential for work jurisdiction conflicts that can accompany unnecessary fragmentation of bargaining units. Accordingly, if the employees who work less than full-time share common duties, skills and working conditions with the full-time employees, they must be included in the same bargaining unit unless they qualify for exclusion as “casual” or “temporary” employees. *King County Public Hospital District 2*, Decision 9205-D (PECB, 2007).

Generally, those employees working approximately 346 hours per year are considered “regular part-time” employees. *King County Public Hospital District 2*, Decision 9205-D (346 hours is one-sixth of the 2080 hours the typical full-time employee works in a year). Employees who have not worked a sufficient amount of time to qualify as regular part-time employees and who lack an expectation of continued employment are considered “casual” or “temporary” employees and excluded from bargaining. WAC 391-35-350(2). *King County Public Hospital District 2*, Decision 9205-D.

The Teamsters’ petition is unclear as to whether it seeks to add “casual” or “temporary” employees as defined by WAC 391-35-350(2) or whether it seeks to add regular part-time employees that are already considered to be part of the bargaining unit. Article 1.1.1 of the current collective bargaining agreement between the parties excludes from coverage those employees “employed for less than twelve hundred (1200) hours in a rolling twelve (12) month period.” However, agreements made by parties on unit matters are outside the “mandatory/permissive/illegal” scope of bargaining analysis and not binding on the Commission. *City of Richland*, Decision 279-A (PECB, 1979).

Due to this lack of clarity, the parties were directed to provide clarification as to what type of employees the Teamsters seek to add. The Teamsters responded, indicating that its petition is “intended to ensure inclusion of employees working more than one-sixth of the time of a regular employee.”

The starting point for analysis in a unit clarification case under Chapter 391-35 WAC is the existing bargaining unit certified by this agency. *Spokane County*, Decision (PECB, 1999).

Clearly, the current bargaining unit certification includes the employees covered by the Teamsters' petition: regular part-time employees. While the current collective bargaining agreement contains language excluding employees who would otherwise meet the Commission's definition of regular part-time employees, parties may not bargain changes to the certification issued by this Commission. Rather, changes to the certification as written may only be accomplished through a unit clarification proceeding. To the extent the parties have bargained otherwise does not and cannot supersede our rule.

Since the Teamsters' petition seeks to add employees already included in the existing bargaining unit certification, the petition is superfluous and will be dismissed as moot.

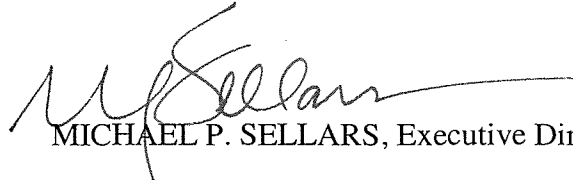
NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit is DISMISSED.

ISSUED at Olympia, Washington, this 24th day of April, 2012.

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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CASE NUMBER: 24336-C-11-01470 FILED: 10/17/2011 FILED BY: PARTY 2
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BAR UNIT: CUSTOD/MAINT
DETAILS: -
COMMENTS: -

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