

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of

AFT WASHINGTON

For clarification of an existing bargaining
unit of employees of:

BATES TECHNICAL COLLEGE

CASE 24262-C-11-1465

DECISION 11211 - PECB

ORDER OF DISMISSAL

On September 21, 2011, AFT Washington (union) 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 Bates Technical College (employer). The petition was reviewed under WAC 391-35-020, and a deficiency notice issued on September 27, 2011, indicated that the petition was defective. The union was given a period of 21 days in which to file and serve an amended petition or face dismissal of the case.

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

DISCUSSION

The deficiency notice pointed out that a question of timeliness exists; thus, the petition is defective as presented.

Unit clarification proceedings are controlled by Chapter 391-35 WAC. Within that chapter, WAC 391-35-020 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.

It appears from information submitted with the petition that four positions are involved: Two currently within the bargaining unit and two outside of the unit. The union states that the positions “are substantially similar in job responsibilities.” The union states that the employer has indicated an interest in removing the two bargaining unit positions from the unit. It appears that the union filed this petition in order to add the two non-bargaining unit positions to the unit. The union indicates that the two non-bargaining unit positions were created in 2007, and that a substantial change in circumstances occurred in 2010-2011 with two reductions in force. The petition does not indicate, though, that there has been a recent substantial change to the positions themselves. The reductions in force do not in themselves affect the community of interest, absent a showing of a resulting change to the positions in question.

The petition also does not indicate why the positions created in 2007 were excluded from the bargaining unit, and why the employer contends that the current bargaining unit positions should be removed from the bargaining unit. The employer cannot lawfully remove the two present bargaining unit positions from the bargaining unit absent a timely petition. WAC 391-35-020(3). On the other hand, based upon the information presented, a petition under Chapter 391-35 WAC should have been filed in 2007 regarding the two new positions. The unit clarification petition regarding the four identified positions appears to be untimely. *See* WAC 391-35-020(5).

NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit filed in Case 24262-C-11-1465 is DISMISSED as procedurally defective.

ISSUED at Olympia, Washington, this 26th day of October, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "David I. Gedrose".

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


BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 24262-C-11-01465 FILED: 09/21/2011 FILED BY: PARTY 2
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