

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

STATE – ENTERPRISE SERVICES
(COMMUNICATIONS)

and

WASHINGTON FEDERATION OF
STATE EMPLOYEES

For clarification of an existing
bargaining unit.

CASE 24606-C-12-1489

DECISION 11660 - PSRA

ORDER CLARIFYING
BARGAINING UNIT

AND

DIRECTION OF ELECTION

Younglove & Coker, P.L.L.C., by *Edward E. Younglove III*, Attorney at Law, for the union.

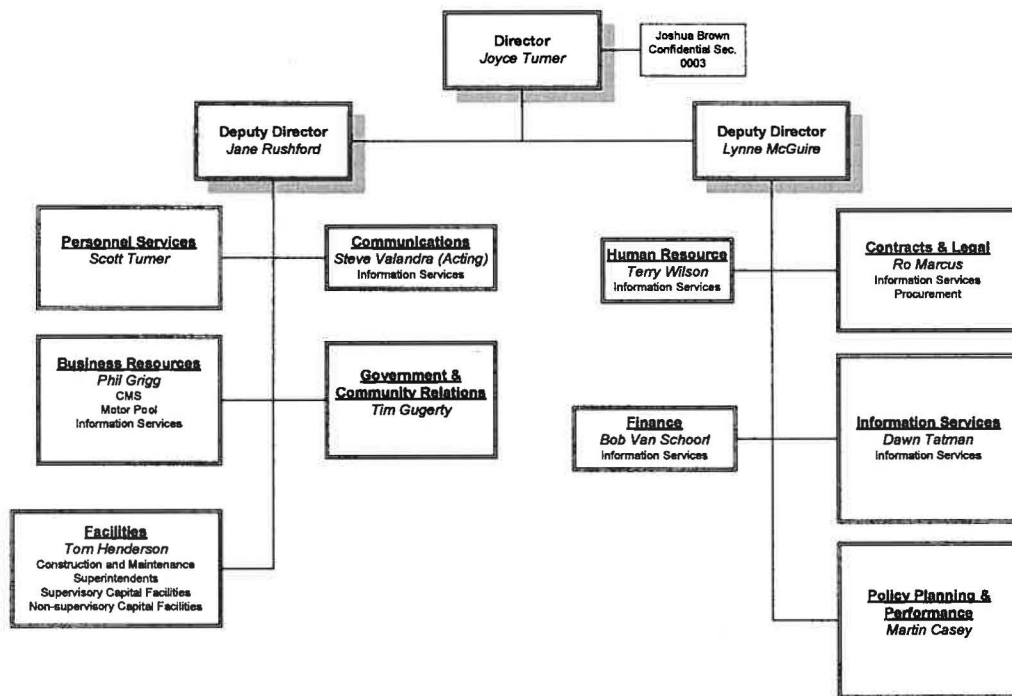
Robert W. Ferguson, Attorney General, by *Kara A. Larsen*, Senior Counsel, for the employer.

This matter comes as a result of legislation that consolidated, created, and abolished several state agencies. Engrossed Substitute Senate Bill (ESSB) 5931 was passed by the Legislature and signed by the Governor in 2011. The legislation created two new state agencies: Consolidated Technology Services and the Department of Enterprise Services (Enterprise Services). The legislation eliminated four agencies: the Public or State Printer, the Department of General Administration (General Administration), the Department of Information Services (Information Services), and the Department of Personnel. The work and employees of the abolished agencies were dispersed as follows: The Public Printer became part of Enterprise Services; General Administration became part of Enterprise Services; Information Services was split between Consolidated Technology Services, Enterprise Services, and the Office of Financial Management; and the Department of Personnel was split between Enterprise Services, and the Office of Financial Management. Additionally, a portion of the Office of Financial Management was transferred to Enterprise Services.

The purpose of the creation of Enterprise Services was to “provide centralized leadership in efficiently and effectively managing resources necessary to support the delivery of state government services.” Section 101 of ESSB 5931. The consolidations and transfers affected several existing bargaining units. At Enterprise Services alone, ten bargaining units transferred from other state agencies. The units transferred to Enterprise Services as follows:

- The Public Printer transferred three bargaining units.¹
- Information Services transferred a portion of its agency-wide bargaining unit.²
- General Administration transferred six bargaining units – Consolidated Mail Services (CMS), Construction and Maintenance Superintendents, Facilities Non-Supervisory, Facilities Supervisory, Motor Pool, and Procurement.

The Washington Federation of State Employees (WFSE) is the certified bargaining representative of all but the Printer bargaining units. The organizational structure of Enterprise Services, including notations of bargaining units or portions of bargaining units contained within a division is shown below:



¹ Those units are addressed in *State – Enterprise Services*, Decisions 11341, 11342, and 11345 (PSRA, 2012).

² The remainder of the Information Services bargaining unit transferred to Consolidated Technology Services and is addressed in *State - Consolidated Technology Services*, Decision 11266-A (PSRA, 2012).

The employees in the Motor Pool and Consolidated Mail Services bargaining units are located in the Business Resources Division. The employees in the Construction and Maintenance Superintendents, Supervisory Facilities, and Non-Supervisory Facilities bargaining units are located in the Facilities Division. The employees in the Procurement bargaining unit are located in the Contracts & Legal Services Division. Finally the employees in the Information Services bargaining unit are dispersed throughout the Business Resources, Communications, Human Resources, Contracts & Legal Services, Finance, and Information Services divisions.

Both the employer and union filed petitions seeking review of the bargaining unit that contains employees now located in the Communications Division. The Communications Division is responsible for writing press releases and interacting with the media concerning events that occur at Enterprise Services. Steve Valandra was the acting director of the division.

Two employees from the Information Services bargaining unit are located in the Communications Division. Both parties seek to clarify the Information Services bargaining unit. The Information Services bargaining unit was described as follows:

All non-supervisory civil service employees of the Washington State Department of Information Services covered under Chapter 41.80 RCW, excluding supervisors, confidential employees, WMS employees, and employees in pre-existing bargaining units.

State – Information Services, Decision 8629 (PSRA, 2004). The employer seeks to clarify the Information Services bargaining unit by removing the two positions included in the Communications Division and making every employee in that division unrepresented. WFSE seeks a bargaining unit that includes all of the employees in the Communications Division as part of a larger bargaining unit that includes employees in the Business Resources Division.

ISSUES PRESENTED

1. Is the Information Services bargaining unit an appropriate bargaining unit under RCW 41.80.070?

2. If the Information Services bargaining unit is deemed inappropriate, how should the bargaining unit be modified to make it appropriate under RCW 41.80.070?

The Information Services bargaining unit is not appropriate under RCW 41.80.070 because the employees from that bargaining unit were not placed within the Enterprise Services organizational structure as a distinct, identifiable group. The evidence demonstrates that the employees in the Information Services bargaining unit located in the Communications Division have been commingled with employees who are not represented for purposes of collective bargaining. These employees all share a community of interest, and unless these employees are in a single bargaining unit, work jurisdiction issues will arise between the represented and non-represented employees.

Because the Information Services bargaining unit is not appropriate, the unit must be modified to make it appropriate. The employees eligible for collective bargaining in the Communications Division constitute an appropriate bargaining unit under RCW 41.80.070. Although WFSE represents two employees in the Communications Division, it does not represent a majority of the employees in the division. An election is directed to determine the representational status of a bargaining unit comprised of the eligible employees in the Communications Division.

DISCUSSION

Applicable Legal Standard

ESSB 5931 sets forth the scope and manner of review in this case. In creating, consolidating, and abolishing agencies through this legislation, the Legislature addressed the labor relations impact to the affected employees. ESSB 5931 provides that the affected employees will not automatically experience an alteration or loss of existing collective bargaining rights or relationships upon transfer to Enterprise Services. RCW 43.19.900(7) and RCW 43.19.902(7) discuss the transfer of employees from Information Services and General Administration to Enterprise Services, and state:

(7) Unless or until modified by the public employment relations commission pursuant to RCW 41.80.911 of this act:

(a) The portions of the bargaining units of employees at the department of general administration (information services) existing on the effective date of this section shall be considered appropriate units at the department of enterprise services and will be so certified by the public employment relations commission.

(b) The exclusive bargaining representatives recognized as representing the portions of the bargaining units of employees at the department of information services existing on the effective date of this section shall continue as the exclusive bargaining representative of the transferred bargaining units without the necessity of an election.

The Legislature further recognized that the transfer and resulting consolidation may impact any community of interest and render existing bargaining units, or portions thereof, inappropriate. RCW 41.80.911 grants this agency the authority to review any bargaining unit transferred to Enterprise Services in order to ensure that the unit remains appropriate under the standards set forth in RCW 41.80.070. RCW 41.80.911 provides as follows:

(1) By January 1, 2012, the public employment relations commission may review the appropriateness of the collective bargaining units transferred under RCW 43.19.900, 43.19.901, 43.19.902, 43.330.910, and 43.41A.900. The employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section.

(2) If the commission determines that an existing collective bargaining unit is appropriate pursuant to RCW 41.80.070, the exclusive bargaining representative certified to represent the bargaining unit prior to January 1, 2012, shall continue as the exclusive bargaining representative without the necessity of an election.

(3) If the commission determines that existing collective bargaining units are not appropriate, the commission may modify the units and order an election pursuant to RCW 41.80.080. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot.

(4) The commission may require an election pursuant to RCW 41.80.080 if similarly situated employees are represented by more than one employee organization. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot.

This section provides two ways for this agency to review the appropriateness of any transferred bargaining unit. By January 1, 2012, this agency could, on its own initiative, review the appropriateness of any transferred bargaining unit. Alternatively, both the employer and the

certified bargaining representative may petition this agency to review the appropriateness of any transferred bargaining unit. No time limit is placed on this type of review. This specific grant of authority mirrors in many respects the authority generally granted to this agency to determine and modify bargaining units and certify the exclusive bargaining representative of appropriate bargaining units. RCW 41.80.070; *Central Washington University*, Decision 10215-B (PSRA, 2010).

Any review under RCW 41.80.911 utilizes the unit determination standards set forth in RCW 41.80.070. RCW 41.80.070 directs this Commission to examine and consider the duties, skills, and working conditions of the employees, the history of collective bargaining, the extent of organization among the employees, the desires of employees, and the avoidance of excessive fragmentation. None of the statutory criteria predominates to the exclusion of others, but have varying weight, depending on the factual settings of each particular case. *Central Washington University*, Decision 10215-B, *citing City of Centralia*, Decision 2940 (PECB, 1988).

If this agency determines that an existing bargaining unit is appropriate, then the exclusive bargaining representative that was certified as of January 1, 2012, shall continue without requiring an election. If this agency determines that an existing bargaining unit is inappropriate, then the Commission “may modify the bargaining unit and order an election pursuant to RCW 41.80.080.” In that instance, the certified bargaining representative will not be required to demonstrate a showing of interest to be included on the ballot. RCW 41.80.911.

This broad grant of authority to this agency to modify bargaining units in order to make them appropriate also generally mirrors the authority granted to this agency to modify bargaining units under RCW 41.80.070. *Eastern Washington University*, Decision 9950-A (PSRA, 2008). The one difference is the specific grant of authority to conduct a representation election without a showing of interest. Commission precedent generally precludes any unit clarification if the number of employees sought to be included in the unit equals or exceeds the number of employees that are currently in the unit. *See, e.g., City of Vancouver*, Decision 9469 (PECB, 2006) (petition to accrete 200 unrepresented positions into existing bargaining unit of 164 positions was dismissed because the proposed accretion would raise a question concerning representation).

The language in RCW 41.80.911 granting the Commission the authority to order an election without requiring a showing of interest by the employees reflects that the reorganization at issue was imposed by the Legislature, rather than by the employer. Thus, the Legislature did not want the affected employees to automatically suffer a detriment to their collective bargaining rights or existing collective bargaining relationships because of the transfer. Rather, there appears to be a preference to allow the employees to exercise their right of self-determination. Additionally, the Legislature did not want to hamper the newly created agency's ability to organize their operations in such a manner as to meet the purpose of the consolidation itself.

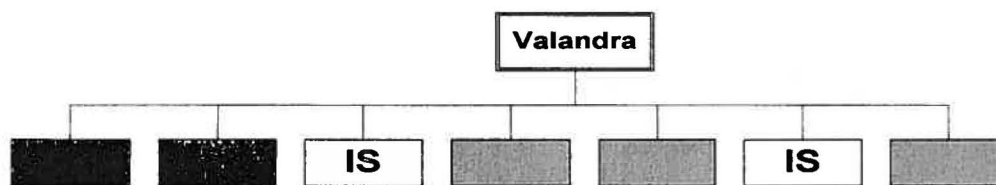
Application of Standards – Transferred Bargaining Unit

The starting point for the analysis is the transferred bargaining units. Under ESSB 5931, if a bargaining unit that transferred to Enterprise Services continues to be appropriate under RCW 41.80.070, then that bargaining unit shall continue to be an appropriate bargaining unit at Enterprise Services. A bargaining unit continues to be appropriate if it can be placed into the Enterprise Services organizational structure without the addition of any employees previously excluded from the bargaining unit, or the subtraction of employees that were previously included in the bargaining unit.

The Information Services bargaining unit is no longer appropriate under RCW 41.80.070. Prior to the creation of Enterprise Services, the Information Services bargaining unit contained approximately 300 employees in a wall-to-wall bargaining unit that encompassed all of the non-supervisory employees of the agency. The fact that all of the bargaining unit's employees were employees of the Department of Information Services established the community of interest of that unit. Following the enactment of ESSB 5931, the employees in the Information Services bargaining unit were dispersed between two different agencies: Enterprise Services and Consolidated Technology Services. Further, the employees assigned to Enterprise Services were dispersed throughout that agency. Applying the "extent of organization" criteria of RCW 41.80.070 requires consideration of the group sought by the union as against the balance of the employer's workforce. *City of Centralia*, Decision 2940. It is clear that the remaining Information Services bargaining unit at Enterprise Services has no community of interest. Excessive fragmentation and work jurisdiction issues would occur with such a unit. Neither the

union nor the employer asserts that the remaining Information Services bargaining unit is still appropriate. Since the Information Services bargaining unit is no longer appropriate, the Commission has the authority to modify the existing unit.

WFSE sought to include all of the eligible positions in the Communications Division as part of a larger bargaining unit centered on the represented employees in the Business Resources Division. See Case 24630-C-12-1495. The Communications Division is organized as follows:



The positions marked “IS” were included in the Information Services bargaining unit. The positions shaded in grey are unrepresented positions that WFSE seeks to include in its proposed bargaining unit. Positions that are blacked out are supervisory positions or positions ineligible for collective bargaining and are not in dispute.

As referenced above, the Communications Division is responsible for media relations for Enterprise Services and manages the media relations for the agency. The employees in this section are in the Communications Consultant job class and are not included in a bargaining unit.

The Bargaining Unit

Application of the RCW 41.80.070 criteria demonstrates the following:

Duties, Skills, and Working Conditions -

The employees in this division generally have a media background and a firm understanding of how the media operates. The employees in the division are in the Communications Consultant or Communications Manager job class.

The employees in the Communications Division are skilled in interacting with the media. The employees in the Communications Division are also skilled in drafting reports, letters, and memoranda that are grammatically correct, concise, and easy to read. The division assists in the preparation of written materials that are distributed inside and outside of Enterprise Services. The employees also assist in the preparation of the materials for the Enterprise Services website.

For example, if the media requests information about usage of vehicles managed by the Fleet Operations Section of the Business Resources Division, the employees in the Communications Division will work with the employees in Fleet Operations to ensure that the request is fulfilled. This might include drafting a fact sheet that presents the requested material in an organized manner.

The evidence demonstrates that the job duties of the employees in the Communications Division are distinctly different from other employees at Enterprise Services, including employees in the Business Resources Division. No other employees in Enterprise Services perform media relations. However, the Communications Division works with every division within Enterprise Services in preparing media materials.

History of Collective Bargaining -

WFSE successfully bargained on behalf of two of the employees in the Communications Division when those employees were included in the Information Services bargaining unit. Two eligible employees in the Communications Division were precluded from exercising collective bargaining rights while employed at Personnel. The fifth eligible employee in the Communications Division was not included in any bargaining unit while at General Administration.

Extent of Organization –

No other bargaining unit within Enterprise Services contains employees that are included in two separate divisions.

Desires of Employees –

Although “desires of the employees” is one of the unit determination criteria listed in RCW 41.80.070, testimony under oath is an inherently coercive and inappropriate method for ascertaining the desires of employees. *Valley Communications Center*, Decision 4465-A (PECB, 1994). The desires of employees are ascertained through the election process. *Central Washington University*, Decision 9963-B (PSRA, 2010).

Avoidance of Excessive Fragmentation -

The goal of any unit determination is to find employees who share *common* duties so that they may bargain effectively regarding the terms and conditions of their employment. The employees in the Communications Division share common duties, and no other employees in Enterprise Services perform similar duties that would create the potential for work jurisdiction issues where they previously did not exist.

Summary –

A bargaining unit consisting of just the employees in the Communications Division is an appropriate bargaining unit under RCW 41.80.070. The employees in the Communications Division are the only employees in Enterprise Services whose primary responsibility is to interact with the press. Additionally, the employees in the Communications Division are the only employees whose primary duty is to assist with drafting and preparing reports, letters, and memoranda. No other division within Enterprise Services has represented employees in the same job class as the employees in the Communications Division.

Although the employees in the Communications Division interact with other employees in Enterprise Services, they do not share a community of interest with those employees based upon their divergent duties. WFSE argues that the employees in the Communications Division share a community of interest with the employees in the Business Resources Division because the employees in both divisions have worked on similar projects. While the evidence certainly demonstrates that the employees in the Communications Division have worked with the employees in the Business Resources Division, the Communications Division employees work with employees in *all* divisions of Enterprise Services. The level of interaction the

Communications Division has with other divisions does not by itself create a community of interest with those employees. Accordingly, a bargaining unit of just the Communications Division would not unnecessarily fragment the employer's workforce and lead to a proliferation of small bargaining units.

A Representation Election of the Communications Division is Warranted

The expressed purpose of ESSB 5931 was to preserve the collective bargaining relationships that the employees transferred to Enterprise Services enjoyed prior to the consolidation. Where an existing bargaining unit is deemed inappropriate under RCW 41.80.070, this Commission has the authority to modify that unit and, where appropriate, order a representation election.

A bargaining unit consisting of the employees in the Communications Division is an appropriate bargaining unit. Those employees share similar duties and no work jurisdiction would be created if the employees in this section were included in a separate bargaining unit. The evidence demonstrates, however, that WFSE represents only two of the five employees in this division who are eligible for collective bargaining. WFSE does not represent a majority of the employees in the Communications Division and it would be inappropriate to accrete the unrepresented employees into a bargaining unit where the incumbent bargaining representative does not represent a majority of the employees. *See* WAC 391-35-020(5)(c). Because the two represented employees should not have their collective bargaining rights extinguished without due process, an election is directed for the employees in the Communications Division to determine their representational status. The bargaining unit of employees in the Communications Division shall be described as follows:

All employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW employed by the Department of Enterprise Services in the Communications Division, excluding supervisors, confidential employees, members of the Washington Management Service, and all other employees.

Processing of this matter is remanded to the Representation Case Administrator to conduct a representation election consistent with this decision.

FINDINGS OF FACT

1. The Department of Enterprise Services is a public employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (WFSE) is a bargaining representative within the meaning of RCW 41.80.005(7).
3. Prior to October 1, 2012, WFSE represented an all employees bargaining unit at the Department of Information Services. That bargaining unit was described in *State – Information Services*, Decision 8629 (PSRA, 2004).
4. Laws of 2011, 1st Spec. Sess., ch. 43 PV (ESSB 5931), eliminated the Public or State Printer, the Department of General Administration, the Department of Information Services, and the Department of Personnel. The employees at the Public Printer became part of Department of Enterprise Services; the employees at General Administration became part of Enterprise Services; the employees at Information Services were split between Consolidated Technology Services, Enterprise Services, and the Office of Financial Management; and the employees at the Department of Personnel were split between Enterprise Services and the Office of Financial Management. Additionally, a portion of the Office of Financial Management was transferred to Enterprise Services.
5. The Communications Division in Enterprise Services is responsible for writing press releases and interacting with the media concerning events that occur at Enterprise Services.
6. As a result of the transfer of employees described in Finding of Fact 4, two employees from the Information Services bargaining unit described in Finding of Fact 3 transferred to the Department of Enterprise Services and were placed in the Communications Division described in Finding of Fact 5.

7. Section 1001 of ESSB 5931 permits the Public Employment Relations Commission to review the appropriateness of any bargaining unit transferred to the Department of Enterprise Services.
8. The duties, skills, and working conditions of the employees in the Communications Division are similar and no other employees in Enterprise Services perform similar duties.
9. WFSE successfully negotiated on behalf of the two employees who were included in the Information Services bargaining units.
10. WFSE does not represent a majority of employees in the Communications Division described in Finding of Fact 5.

CONCLUSION OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW, Laws of 2011, 1st Spec. Sess., ch. 43 PV, and Chapter 391-35 WAC.
2. The bargaining unit described in Finding of Fact 3 is no longer an appropriate bargaining unit under RCW 41.80.070.
3. A bargaining unit consisting of the employees in the Communications Division is an appropriate bargaining unit under RCW 41.80.070.

ORDERED

1. The bargaining unit issued in *State – Information Services*, Decision 8629 (PSRA, 2004), is modified to remove the employees who meet the following bargaining unit description:

All employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW employed by the Department of Enterprise Services in the Communications Division, excluding supervisors, confidential employees, members of the Washington Management Service, and all other employees.

Processing of this case shall be remanded to the Representation Case Administrator to conduct a representation election under RCW 41.80.911 and Chapter 391-25 WAC, including the possibility of a supplemental hearing to determine the eligibility of any existing employee.

ISSUED at Olympia, Washington, this 25th day of February, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'M. Sellars', written in a cursive style.

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

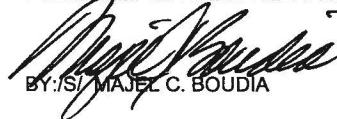
112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 02/25/2013

The attached document identified as: **DECISION 11660 - PSRA** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION



BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 24606-C-12-01489 FILED: 02/27/2012 FILED BY: EMPLOYER
DISPUTE: MISC CLARIF
BAR UNIT: MISCELLANEOUS
DETAILS: DES Communications
COMMENTS:

EMPLOYER: STATE - ENTERPRISE SERVICES
ATTN: RICK HALL
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5540

REP BY: KARA LARSEN
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4167

PARTY 2:
ATTN: WA FED OF STATE EMPLOYEES
GLADYS BURBANK
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
Ph1: 800-562-6002 Ph2: 360-352-7603

REP BY: EDWARD YOUNGLOVE
YOUNGLOVE COKER
1800 COOPER PT RD SW, BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
Ph1: 360-357-7791