

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 8,

For clarification of an existing bargaining unit
of employees of:

WASHINGTON STATE FERRIES

CASE 25029-C-12-1524

DECISION 11467 - MRNE

ORDER OF DISMISSAL

On August 3, 2012, Office and Professional Employees International Union, Local 8 (union/OPEIU 8) 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 Washington State Ferries (employer). The petition was reviewed under WAC 391-35-020, and a deficiency notice issued on August 9, 2012, 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. 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 391-35-020 applies to the timeliness and limitations relative to petitions:

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.

The union must provide more information regarding this petition.

First, the petition states that two Communications Consultants are excluded from the bargaining unit filing the petition—OPEIU 8—and that “historically this work has been performed by members of our bargaining unit.” The petition indicates that the Washington Federation of State Employees (WFSE) claims or may claim to represent the employees involved in this petition. The petition is not clear: If the positions are presently excluded and also claimed or represented by WFSE, the statement that the work has historically been performed by members of OPEIU 8 does not accord with the other information provided.

Based upon the information provided by the union, the following provisions might apply regarding the timeliness of the petition under WAC 391-35-020(1):

- Disputes concerning positions which have been newly created by an employer;

- Disputes concerning the allocation of employees or positions claimed by two or more bargaining units;
- Disputes under WAC 391-35-320 concerning status as a confidential employee.

An amended petition should clarify whether the two Communication Consultant positions are newly created, and if so, when they were created; the nature of the claim on the positions by WFSE; whether the employer claims that the positions are confidential; and the historical background of the positions within OPEIU 8.

Second, under WAC 391-35-020(3) and (4), employees or positions may be removed from or added to an existing bargaining unit if a unit clarification proceeding is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions. There is no information in the petition regarding a change of circumstances altering the community of interest, and the date(s) of any change of circumstances.

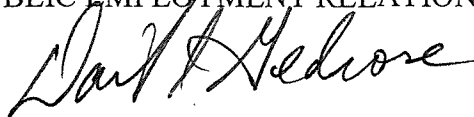
NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit filed in Case 25029-C-12-1524 is DISMISSED as procedurally defective.

ISSUED at Olympia, Washington, this 17th day of September, 2012.

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

BY:  ROBBIE DUFFIELD

CASE NUMBER: 25029-C-12-01524 FILED: 08/03/2012 FILED BY: PARTY 2
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