

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petitions of:

WASHINGTON FEDERATION OF
STATE EMPLOYEES

For clarification of existing bargaining units
of employees of:

EASTERN WASHINGTON UNIVERSITY

CASE 25644-C-13-1550
DECISION 11796 - PSRA

CASE 25645-C-13-1551
DECISION 11797 - PSRA

ORDER OF DISMISSAL

On April 15, 2013, the Washington Federation of State Employees (WFSE) filed two unit clarification petitions concerning two different bargaining units of employees that it represents at Eastern Washington University (employer). WFSE's first petition, Case 25644-C-13-1550, sought removal of the supervisory Campus Police from its supervisory bargaining unit and creation of a new bargaining unit consisting of those employees. That bargaining unit is currently defined as:

Supervisory civil service employees of Eastern Washington University, who supervise civil service employees, excluding confidential employees, internal auditors, non-supervisory employees, employees in other bargaining units, and employees historically excluded by order of the Washington Personnel Resources Board or its predecessors.

Eastern Washington University, Decision 8638 (PSRA, 2004). WFSE's second petition, Case 25645-C-13-1551, sought removal of the non-supervisory Campus Police from its non-supervisory bargaining unit and creation of a new bargaining unit consisting of those employees. That bargaining unit is currently defined as:

All non-supervisory civil service employees of Eastern Washington University, excluding confidential employees, internal auditors, supervisors, and employees included in any other bargaining unit.

Eastern Washington University, Decision 9047 (PSRA, 2005).

The petitions were reviewed under WAC 391-35-020, and on April 24, 2013, deficiency notices were issued indicating that the petitions did not describe a recent change in circumstances that warranted the employees' removal from either bargaining unit. Additionally, WFSE did not allege that any of the police officers had recently become interest arbitration eligible which would require their removal from a bargaining unit containing non-interest arbitration eligible employees. WFSE was given a period of 21 days in which to file and serve amended petitions or face dismissal of the cases. WFSE did not file amended petitions that cured the defects in the original petitions.

DISCUSSION

Applicable Legal Standard

Unit clarification proceedings are controlled by Chapter 391-35 WAC. WAC 391-35-020 described the circumstances for which a unit clarification petition may be filed and states, in part:

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:
...

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.*

(emphasis added).

Interest arbitration eligible employees may not be in the same bargaining unit with non-interest arbitration eligible employees. WAC 391-35-310. Unit clarification petitions seeking separation of these two distinct groups of employees may be filed at any time. WAC 391-35-020(1)(d).

The change in circumstance that triggers a unit clarification petition under WAC 391-35-020(3) must be a meaningful change in an employee's duties and responsibilities. *University of Washington*, Decision 10496-A (PSRA, 2011), *citing City of Richland*, Decision 279-A (PECB, 1978). Types of changes to the workplace environment, such as a reorganization of an employer's workforce, are occurrences that could trigger a unit clarification petition. *See Lewis County*, Decision 6750 (PECB, 1999). Absent a recent change in circumstances, a unit clarification petition will be dismissed as untimely. *See Island County*, Decision 2572 (PECB, 1986). A unit clarification alleging a change in circumstances must be filed within a reasonable time period of the change that creates the need for review of the existing bargaining unit. *See University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013).

Application of Standards

These cases concern employees who have historically been included in existing bargaining units. The non-supervisory Campus Police have been included in WFSE's non-supervisory bargaining unit since at least 1973. *See Eastern Washington University*, Decision 9950-A (PSRA, 2008). The supervisory Campus Police have been included in WFSE's supervisory bargaining unit since at least 1981. *See Eastern Washington University*, Decision 8636 (PSRA, 2004). Although the employees at issue are police officers, they are not uniformed officers eligible for interest arbitration as their impasse resolution mechanism. Rather, both the supervisory and

non-supervisory Campus Police are civil service employees covered by Chapter 41.06 RCW who are not eligible for interest arbitration.

Accordingly, WFSE's petitions are not timely under WAC 391-35-020(1)(d) because no recent change has occurred granting these employees interest arbitration rights.

Additionally, WFSE's petitions do not allege a recent change in circumstances that warrants review of the existing bargaining units. WFSE simply ask that the Campus Police positions be removed from their respective bargaining units. Without an allegation that some material change in circumstance has occurred, this agency has no reason to review either of the existing bargaining units to ensure their continued appropriateness. Therefore, both petitions are dismissed.

ORDERED

The petitions filed by the Washington Federation of State Employees in the above-captioned cases are DISMISSED.

ISSUED at Olympia, Washington, this 21st day of June, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "MPS", with a long horizontal stroke extending to the right.

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 06/21/2013

The attached document identified as: **DECISION 11796 - 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/ DIANE THOVSEN

CASE NUMBER: 25644-C-13-01550 FILED: 04/19/2013 FILED BY: PARTY 2
DISPUTE: SUPERVISORS
BAR UNIT: SUPERVISORS
DETAILS: Campus Police Supervisors
COMMENTS:

EMPLOYER: EASTERN WASHINGTON UNIVERSITY
ATTN: RODOLFO AREVALO
314 SHOWALTER HALL
CHENEY, WA 99004-2444
Ph1: 509-359-2371

REP BY: PATRICIA THOMPSON
OFFICE OF THE ATTORNEY GENERAL
1116 W RIVERSIDE AVE
SPOKANE, WA 99201-1194
Ph1: 509-458-3514 Ph2: 509-456-6190

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



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 06/21/2013

The attached document identified as: **DECISION 11797 - 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/ DIANE THOVSEN

CASE NUMBER: 25645-C-13-01551 FILED: 04/19/2013 FILED BY: PARTY 2
DISPUTE: COMMUNITY INT
BAR UNIT: LAW ENFORCE
DETAILS: Campus Police
COMMENTS:

EMPLOYER: EASTERN WASHINGTON UNIVERSITY
ATTN: RODOLFO AREVALO
314 SHOWALTER HALL
CHENEY, WA 99004-2444
Ph1: 509-359-2371

REP BY: PATRICIA THOMPSON
OFFICE OF THE ATTORNEY GENERAL
1116 W RIVERSIDE AVE
SPOKANE, WA 99201-1194
Ph1: 509-458-3514 Ph2: 509-456-6190

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