STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
UNIVERSITY OF WASHINGTON	CASE 24602-C-12-1488
For clarification of an existing bargaining unit represented by:	DECISION 11590 - PSRA
WASHINGTON FEDERATION OF STATE EMPLOYEES	ORDER OF DISMISSAL

Younglove & Coker, P.L.L.C., by *Edward E. Younglove III*, Attorney at Law, for the Washington Federation of State Employees.

Robert M. McKenna, Attorney General, by *Mark K. Yamashita*, Assistant Attorney General, for the employer.

Douglas Drachler McKee & Gilbrough, L.L.P., by *Martha Barron*, Attorney at Law, for Service Employees International Union, Local 925.

On February 27, 2012, the University of Washington (employer) filed a unit clarification petition involving certain employees working at the Harborview Medical Center (HMC). The employees at issue are specimen processing employees working at HMC and are part of the Harborview bargaining unit represented by the Washington Federation of State Employees (WFSE). The employer recently reallocated the specimen processing employees at HMC from the Specimen Processing Technician job class to the Laboratory Technician job class.

The employer also has specimen processing employees working at the University of Washington Medical Center (UWMC). Those specimen processing employees perform identical work to the specimen processing employees at HMC. The specimen processing employees working at the UWMC belong to the Healthcare Professional and Laboratory Technical (HPLT) bargaining unit represented by the Service Employees International Union, Local 925 (SEIU). Those specimen

processing employees are currently allocated to the Clinical Laboratory Technician job class. The employer regards the Clinical Laboratory Technician job class to reflect work belonging to the HPLT bargaining unit. All specimen processing employees, regardless of location, are in the Specimen Processing Unit of the Specimen Procurement Division of the Department of Laboratory Medicine.

The employer proposes to remove the 33 specimen processing employees at HMC from the Harborview bargaining unit. The employer then intends to reallocate those employees to the Clinical Laboratory Technician job class and place them in the HPLT bargaining unit, where the employer believes the 33 specimen processing employees share a greater community of interest. Because the SEIU is an interested party, the SEIU was granted permission to intervene in and participate in this proceeding.

On June 12 and 13, 2012, Hearing Officer Dario de la Rosa conducted a hearing to take evidence and testimony regarding the appropriateness of the employer's petition. The parties filed briefs to complete the record.

ISSUE PRESENTED

1. Is the employer's petition for unit clarification timely under the standards announced in WAC 391-35-020(3) and (4)?

2. If the employer's petition is timely, do the specimen processing employees in the Harborview bargaining unit share a community of interest with the specimen processing employees in the Healthcare Professional and Laboratory Technical unit? If so should the 33 specimen processing employees be removed from the Harborview bargaining unit and placed in the Healthcare Professional and Laboratory Technical bargaining unit?

The employer's petition is not timely under WAC 391-35-020(3) and (4) and, therefore, dismissed. The facts do not show any change of circumstances that alter the community of interest. The employer's recent reallocation of the specimen processing employees to a new job class did not result in a change to the duties, responsibilities, skills, and working conditions of the employees to constitute a change in circumstances.

BACKGROUND

In order to fully assess whether the standard of WAC 391-35-020(3) and (4) has been met, it is necessary to examine the structure, history and allocation of the work involved and the history of the Harborview and HPLT bargaining units.

Department of Laboratory Medicine

In 1969, the employer created the Department of Laboratory Medicine to integrate the clinical laboratories at HMC and UWMC. The Department of Laboratory Medicine is a separate organizational entity from the UWMC and HMC and is part of the employer's School of Medicine. The Specimen Procurement Division is one of several divisions within the Department of Laboratory Medicine. Within that division is the Specimen Processing Unit. Jennifer Reichert is the manager of that unit. The Specimen Processing Unit is responsible for receiving specimen samples from various sources and ensuring that the samples are properly logged, prepared for testing, and at times performs some qualitative tests on the specimens. Preparation of samples requires the employees in the unit to have a firm understanding of the tests being performed in order to ensure that the specimen is properly handled and prepared based upon the specific needs of the test. Once the sample is prepared, the specimens are delivered to "benches" where clinical technologists work. Regardless of location or bargaining unit, the duties, responsibilities, and procedural requirements for the specimen processing employees is and has always been identical.

The Employer's Job Classification Scheme

The employer utilizes a job classification system to describe, allocate and set compensation levels for the work. Jobs are allocated at the employee level to the appropriate job classification based upon the work performed. RCW 41.80.020 provides that employers are not required to bargain over allocation and reallocation of jobs to job classes. *University of Washington*, Decision 10490-C (PSRA, 2011).

Reallocation is the term used within the state personnel system to describe the reclassification or assignment of a position to a different job class. Reallocation may occur at the individual employee level or it may apply to all employees in a given class. Generally, reallocation occurs

following a determination that the duties the employee(s) is currently performing better fits a different job class or different level of a job class. Reallocation may occur at the individual employee level when the employer determines that the employee has been performing or will be performing work at a different job class. Reallocation also may occur for all employees in a given job class when the employer determines that the current job class no longer fits the work being performed or that the employees are going to take on duties that fit a different job class.

The Classification of Specimen Processing Employees

When the Department of Laboratory Medicine was formed in 1969, the specimen processing employees were allocated to the Central Processing Technician job class. The employees remained in that job class until 2004 when they were reallocated to the Specimen Processing Technician job class. This reallocation was more of a re-titling of the current job class than a move to a different job class. This reallocation affected all employees in the Central Processing Technician job class, regardless of represented or bargaining unit status.

During 2003, the employer initiated a class study of the specimen processing employees to determine whether they more appropriately fit a job class other than the Central Processing Technician or Specimen Processing Technician. The employer ultimately concluded that the work better fit the Clinical Laboratory Technician job class than the Central Processing Technician or Specimen Processing Technician job class. Unlike the reallocation from Central Processing Technician to Specimen Processing Technician, this reallocation was intended to move all the employees in the current job class to another existing job class. In addition to attempting to reallocate all the employees in the Central Processing Technician/Specimen Processing Technician job class to the Clinical Laboratory Technician job class, the employer attempted to move the 33 specimen processing employees in the Harborview bargaining unit into the HPLT bargaining unit. Those efforts, and the ensuing litigation, are explained in greater detail below. The employer again assessed the allocation of the specimen processing employees at HMC in 2011 and determined the Clinical Laboratory Technician job class to be the proper job class for the work and initiated these proceedings. The employer also allocated the specimen processing employees working at HMC to the Laboratory Technician job class, which it characterizes as a non-union job class, as a placeholder while this petition was pending.

Harborview Bargaining Unit

The Harborview bargaining unit was created in 1972 by the Higher Education Personnel Board (HEPB). The WFSE was certified as the exclusive bargaining representative of the Harborview unit in 1973. Exhibit 14, HEPB-RCE1 (1973).[1] The HEPB certified the bargaining unit by job class. The HEPB modified the bargaining unit in 1974 to include employees working in the Central Processing Technician I job class at HMC in the bargaining unit. Exhibit 14, HEPB RM21 (1974). In 1984, the HEPB modified the bargaining unit again to include employees working in the Central Processing Technician II job class at HMC. Exhibit 14, HEPB-RM 86 (1984). The Central Processing Technician I and II's were part of the Specimen Processing Unit in the Specimen Procurement Division of the Department of Laboratory Medicine. In early 2002, the Washington Personnel Resources Board modified the bargaining unit a third time to add an additional classification unrelated to this proceeding to the bargaining unit.

The Personnel System Reform Act (PSRA) of 2002 transferred administration of the collective bargaining laws applicable to state civil service employees to this Commission. RCW 41.80.070(1)(a) and (b) preserved the bargaining units in existence at the time the PSRA was enacted, provided the unit was considered to be an appropriate bargaining unit. For example, an existing bargaining unit would not be appropriate if it contained supervisory and nonsupervisory employees or employees from more than one institution of higher education.

In 2006, the Commission modified the Harborview bargaining unit to include part-time employees performing the same work as full-time employees in the bargaining unit. At that same time, the Executive Director redefined the unit to describe the unit by the work that the employees performed, as opposed to the job classifications in the bargaining unit in order to conform to the Commission's historical practices.[2] *University of Washington*, Decision 9391 (PSRA, 2006). Thus, the Harborview bargaining unit was described as follows:

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1 The HEPB bargaining unit description includes over 60 job classifications. Because this decision only focuses on the classification that eventually becomes the Specimen Processing Technician, it is unnecessary to list all of the classifications that the HEPB certified.

2 *See, e.g., City of Milton*, Decision 5202-B (PECB, 1995)(the Commission has traditionally used generic terms to describe bargaining units because of the potential problems created by the use of specific titles or other terminology).

> All full-time and regular part-time nonsupervisory classified employees of the University of Washington working at Harborview Hospital, excluding members of the governing board, employees excluded from the coverage of Chapter 41.06 RCW, students, employees covered by other collective bargaining agreements, confidential employees, and supervisors.

Although *University of Washington*, Decision 9391 altered the historical description of the Harborview bargaining unit, the decision did not alter the historical work jurisdiction of the unit, including the work performed by the specimen processing employees within the Department of Laboratory Medicine working at HMC.

In 2010, the Commission modified the Harborview bargaining unit a second time to add the Truck Driver Lead classification through the self-determination election process, WAC 391-25-440. *University of Washington*, Decision 10717 (PSRA, 2010). The bargaining unit description is the same description that was certified in *University of Washington*, Decision 9391.

Healthcare Professional and Laboratory Technical Bargaining Unit

On December 2, 2002, the SEIU filed a petition to represent certain unrepresented employees at several hospitals and clinics operated by the employer. *University of Washington*, Decision 8392 (PECB, 2004).[3] The unit as petitioned-for by the SEIU included the unrepresented employees in the Department of Laboratory Medicine, including the specimen processing employees working at the UWMC in the Specimen Procurement Division. Like the specimen processing employees working at HMC, these employees were allocated to the Central Processing Technician job class.

Prior to the election, the employer challenged the appropriateness of the petitioned-for bargaining unit on the basis that certain job classes did not share a community of interest. The employer was specifically concerned that the petitioned-for unit would create a situation where employees in the same job classification would be in two different bargaining units. However, the employer did not specifically reference the specimen processing employees in the Harborview bargaining unit when it made this argument. The employer proposed two bargaining units, with one bargaining

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[3] Administrative Notice is taken of Case 16976-E-02-2794.

unit consisting of all employees in the Central Processing Technician, Clinical Laboratory Technician Phlebotomist and Clinical Technologist job classes.[4]

The Executive Director rejected the employer's arguments and ultimately found that a bargaining unit consisting of all healthcare professional and laboratory technical employees except those included in other bargaining units was an appropriate unit. *University of Washington*, Decision 8392 (PSRA, 2004). Following an election, the SEIU was certified as the exclusive bargaining representative of the HPLT unit which was described using the Commission's historical practice of defining bargaining units in generic terms. Thus, the bargaining unit came to be described as follows:

> All full-time and regular part-time unrepresented non-supervisory laboratory technical employees employed by the University of Washington in hospitals and clinics operated by the University of Washington, excluding confidential employees, supervisors, internal auditors, and employees in other bargaining units.

University of Washington, Decision 8392-B (PSRA, 2004). Accordingly, since 2004 both the WFSE and the SEIU have represented specimen processing employees within the Department of Laboratory Medicine, with WFSE representing the specimen processing employees working at HMC, and the SEIU representing the specimen processing employees at UWMC. The employer did not appeal the Executive Director's decision to the Commission.

In 2009 and 2010, the Commission modified the HPLT unit to include the Ophthalmic Technician 3 and Imaging Technologist-Education/Quality Assurance job classes through the self-determination election process. *University of Washington*, Decision 10559 (PSRA, 2009)(Ophthalmic Technician 3) and *University of Washington*, Decision 10854 (PSRA, 2010)(Imaging Technologist-Education/Quality Assurance).

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[4] The employer's positions in its brief and during the hearing appear to be inconsistent. In its brief, the employer argued for a separate bargaining unit for *all* employees in the Central Processing Technician, Clinical Laboratory Technician Phlebotomist and Clinical Technologist classification. During hearing, the employer's representative stated on the record that the employer desired a bargaining unit of the employees in the aforementioned job classes excluding any employees at HMC.

In 2010, SEIU filed a unit clarification petition to accrete various technical job classes into the unit. *University of Washington*, Decision 11083 (PSRA, 2011). Both the employer and SEIU stipulated that the petitioned-for job classes needed to be included in SEIU's bargaining unit. Because WFSE and SEIU represented employees in the same or similar job classes but in different locations, the Executive Director concluded that the HPLT unit needed to be defined by job classification in order to distinguish the employees in that unit from the employees represented by WFSE, including the specimen processing employees at HMC. The unit definition adopted by the Executive Director specifically *excluded* employees in the Specimen Processing Technician and Specimen Processing Technician Lead job class working at HMC. *University of Washington*, Decision 11083.

Attempts to Remove Specimen Processing Employees from the Harborview Bargaining Unit

Since the passage of the PSRA, the employer has attempted to reallocate the specimen processing employees to a different job classification and remove them from WFSE's bargaining unit. Several of these instances resulted in litigation before this agency.

Following the 2003 class study, the employer allocated the specimen processing employees at HMC to the Clinical Laboratory Technician job class and transferred the employees to the HPLT unit because it believed the employees in the Clinical Laboratory Technician job class to be part of that unit.

On October 10, 2003, WFSE filed a complaint alleging the employer committed an unfair labor practice by unilaterally skimming certain bargaining unit work from the Harborview unit. The employer concluded that the specimen processing employees in the Harborview unit needed to transfer to the HPLT unit because that bargaining unit represented the employees in the Clinical Laboratory Technician classification. The employer made this change without giving notice to WFSE and providing them an opportunity to request bargaining. The Commission affirmed an examiner's decision that the employer committed an unfair labor practice when it unilaterally removed the specimen processing employees from the Harborview bargaining unit without satisfying its bargaining obligations. *University of Washington*, Decision 8878-A (PSRA, 2006). The Commission ordered the employer to return the *status quo ante* and return the specimen

processing employees at HMC to the Harborview bargaining unit. Consistent with the Commission's order, the specimen processing employees at HMC were reallocated back to the Specimen Processing Technician job class.

In 2007, the employer contacted WFSE to discuss reallocating the specimen processing employees at HMC from the Specimen Processing Technician job class to the Clinical Laboratory Technician job class and moving those employees to HPLT bargaining unit. *See University of Washington*, Decision 10490-C.[5] WFSE suggested to the employer that it would agree to the reallocation, but it would not agree to the removal of those positions from its bargaining unit. WFSE instead suggested that the employer create a new job code for the employees it represented in order to differentiate those employees from those represented by SEIU. WFSE also insisted that the employer bargain the reallocation of the specimen processing employees at HMC. The employer declined to adopt WFSE's suggestion because it did not believe it was an efficient use of its classification system.

On February 27, 2008, the specimen processing employees at HMC wrote a letter to the employer expressing their dissatisfaction about "being held hostage by the current classification dispute between WFSE and [the employer]." The employees stated that they would accept nothing less than reallocation into the Clinical Laboratory Technician job class and full back pay. No evidence was presented demonstrating that the employer responded to the employees' demands.

On April 30, 2008, WFSE filed an unfair labor practice complaint alleging the employer was refusing to bargain the reallocation of the Specimen Processing Technician job class. An examiner dismissed the complaint, and the Commission reversed. *University of Washington*, Decision 10490-C. The Commission held that although the reallocation of employees to different job classes is a permissive subject of bargaining, the modification of bargaining units is a matter that the Legislature reserved for this Commission, and the employer was not permitted to bargain

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[5] *University of Washington*, Decision 10490-C, is an unfair labor practice decision that is currently on appeal to the Washington State Court of Appeals. The decision is being discussed in this decision to provide historical context. The Commission's legal conclusions that the employer committed an unfair labor practice by attempting to bargain the scope of WFSE's bargaining unit are neither being relied upon nor relevant to the disposition of this matter.

the scope of the WFSE's bargaining unit. The Commission explained that should a bargaining unit need modification due to a change in circumstances, the appropriate method was to file a timely unit clarification petition.

On November 3, 2008, the employer filed a unit clarification petition asking this Commission to clarify WFSE's bargaining unit by moving the specimen processing employees at HMC to the HPLT bargaining unit. The Unfair Labor Practice Manager reviewed the petition under WAC 391-35-020 and determined that the petition failed to demonstrate a change of circumstances that would warrant moving the case forward for hearing. The employer alleged that its compensation office determined in April 2007 that the Specimen Processing Technicians needed to be reallocated to the Clinical Laboratory Technician job class. However, the Unfair Labor Practice Manager found that the petition was not filed within a reasonable time of the alleged changes of circumstance and the petition was dismissed as untimely. *University of Washington*, Decision 10263 (PSRA, 2008).

In February 2012, the employer once again reviewed the job duties of the specimen processing employees at HMC. The employer determined that those employees should be reallocated to the Clinical Laboratory Technician job class. The employer further believed that the Clinical Laboratory Technician job class belongs to the HPLT bargaining unit. The employer then temporarily reallocated the specimen processing employees at Harborview to the "placeholder" job class of Laboratory Technician. The employees continue to perform the same work that they had previously performed. Based upon this change, the employer then filed the instant petition.

DISCUSSION

Applicable Legal Standard

The determination and modification of bargaining units and the certification of the exclusive bargaining representative of appropriate units is a function delegated to this Commission by the Legislature. RCW 41.80.070; *Central Washington University*, Decision 10215-B (PSRA, 2010). When this Commission certifies a bargaining unit, the work performed by the employees in that bargaining unit becomes the historic work jurisdiction of that unit. *See, e.g., Washington State*

University, Decision 11498 (PSRA, 2012)(bargaining unit work is defined as "work that bargaining unit employees have historically performed"). If an employer assigns new work to employees in a bargaining unit, that work becomes historical bargaining unit work unless there is a prior agreement between the employer and exclusive bargaining representative to make the transfer of work temporary. *City of Snoqualmie*, Decision 9892-A (PECB, 2009); *see also State – Social and Health Services*, Decision 9551-A (PSRA, 2008).

When defining a bargaining unit, this Commission historically describes new bargaining units by the work that the employees in the unit perform, as opposed to the job classes within that unit. In *University of Washington*, Decision 8392, the Executive Director explained that the reason for defining bargaining units by the work the employees performed was to ensure that the duty to bargain is enforced if an attempt is made to transfer the work performed by the employees outside of the bargaining unit. The Executive Director also explained that the use of generic terms also avoids the need to revisit and revise the bargaining unit description should a job title be changed or a new job title added within the occupational type.

Although a historical preference for generic bargaining units has been stated, no hard-and-fast rule exists proscribing how the Commission will describe bargaining units. Where employers are larger and include multiple divisions or work groups, where similar duties are performed by several groups of employees, and where one or more unions represent employees performing the same or similar functions in different bargaining units, defining the bargaining unit by work is not always possible. *Central Washington University*, Decision 10215-A (PSRA, 2009). This is especially true of employers under the jurisdiction of Chapter 41.80 RCW. *Central Washington University*, Decision 10215-A, *citing University of Washington*, Decision 10496 (PSRA, 2009), and *University of Washington*, Decision 10495 (PSRA, 2009). Each unit is examined individually and, based upon the factual situation presented, bargaining units will be described in a manner that clearly provides the parties with a clear understanding of which employees are included in the bargaining unit.

For example, the HPLT bargaining unit could no longer be defined using generic terms because more than one bargaining representative represented the same job class within a specific section of

the employer's workforce. Further, there was a need to clearly identify which employees belonged in which unit. *University of Washington*, Decision 11083.[6] Similarly, in *City of Seattle*, Decision 11413-B (PECB, 2012) and *Skagit County Public Hospital District 1*, Decision 11497 (PECB, 2012), appropriate bargaining units of mixed classes of employees were defined by job classification due to the varied nature of the work performed by the employees in each unit.

However, even where this Commission defines a bargaining unit by job class, the work being performed by the employees in the bargaining unit still becomes the historical work jurisdiction of the bargaining unit. A change in title or reallocation does not presumptively or automatically result in an employee's removal from a bargaining unit if that employee continues to perform the same work. *Central Washington University*, Decision 10215-B; *see also City of Tacoma*, Decision 6780 (PECB, 1999)(an employer's civil service system and classifications cannot overrule this Commission's authority to place employees in appropriate bargaining units). Any attempt to remove historical bargaining unit work is still subject to collective bargaining. *See Snohomish County,* Decision 9540-A (PECB, 2007).

The Reallocation of Job Classifications

When the Legislature enacted Chapter 41.80 RCW, it removed certain subjects from the scope of issues that could be bargained between employers and the exclusive bargaining representatives that represent state civil service employees. *University of Washington*, Decision 10490-C. Under the clear terms of RCW 41.80.020(2)(c), that classification and compensation plan is not subject to bargaining. *University of Washington*, Decision 10490-C.[7]

Regardless of the employer's authority to make modifications to a classification system for employees, the Legislature vested to this Commission the specific authority to modify bargaining units under the provision of RCW 41.80.070. Provided each unit continues to be appropriate under the appropriate statute, nothing in Commission decisions or rules precludes employees in

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6 The same concern applies to WFSE's Harborview unit. As such, when the opportunity presents itself to modify WFSE's bargaining unit, the unit will be redefined by job class in order to properly differentiate the employees in that unit from the employees in the SEIU bargaining unit.

7 The parties did not appeal the Commission's holding that the subjects covered by RCW 41.80.020(2)(c) were not subject to bargaining. See footnote 5, *supra*.

the same job class from being in two different bargaining units. Thus, even where an employee's job class is changed to a job class that is included in a different bargaining unit, a presumption still does not exist that the employee needs to be moved to the other unit.

The Unit Clarification Process

Included with this agency's authority to determine an appropriate bargaining unit is the power to, upon request, modify that unit through a unit clarification proceedings. *See Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of Chapter 391-35 WAC.

The general purpose of the unit clarification process is to provide this agency as well as the parties to a collective bargaining relationship a mechanism to make changes to an appropriate bargaining unit based upon a change in circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981)(outlining the procedures to remove supervisors from existing bargaining units). Because unit clarifications alter the composition of a bargaining unit, the Commission adopted WAC 391-35-020 to govern the time frames during which unit clarifications may be filed so as to minimize the disruptions on the parties as well as the employees. That rule states, in part:

> Time for filing petition — Limitations on results of proceedings.
>
> TIMELINESS OF PETITION
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> (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.*
> (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 . . . .

(emphasis added). In this case, the employer is seeking to remove employees from the Harborview bargaining unit and add them to the HPLT bargaining unit. Therefore, the provisions of WAC 391-35-020(3) and (4) apply, and the appropriate inquiry is whether the employer's petition was filed within a reasonable period from the change in circumstances that altered the community of interest.[8]

The change in circumstance that triggers a unit clarification petition under WAC 391-35-020(3) and (4) 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). A mere change in job titles is not necessarily a material change in working conditions that would qualify under Chapter 391-35 WAC to alter the composition of a bargaining unit through the unit clarification process. *See University of Washington*, Decision 10496-A. Other 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).

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[8] Although SEIU argues that the employees in the Specimen Processing Technician job class share a community of interest with the employees in its bargaining unit, the SEIU has not claimed that the employees should be allocated to its bargaining unit under WAC 391-35-020(1)(b). *See, e.g., City of Vancouver*, Decision 10148 (PECB, 2008), *but see West Valley School District*, Decision 9949-A (PECB, 2008)(the unit clarification process cannot be used to "cherry pick" employees from other bargaining units).

The Commission's rules only state that the clarification petition must be filed within a reasonable time of the changes and do not set forth a particular timeframe in which the change must have occurred. Timeliness is determined by the factual circumstances of each particular case. Reorganization and the reassignment of duties are events that do not occur overnight, and some deference must be granted to allow an employer to changes mid-stream to any reorganization that might be occurring. Furthermore, if employees are being reallocated to a new job classification based upon a recent change in duties, it may be necessary for the reallocation process to be completed so that a proper unit determination can be made. *See University of Washington*, Decision 10263. In sum, the defining event that makes a unit clarification petition timely is not the formal act of reallocating the job class; rather, the defining event is the material change to the duties and responsibilities of the employee that creates the need for the employer to review and possibly reallocate the employee to the new job class.

Application of Standards

The question to be answered is whether there has been a change in circumstances that altered the community of interest of the employees or positions, thereby supporting the removal of the 33 specimen processing employees from the Harborview bargaining unit and placing them in the HPLT bargaining unit. If there has been such a change in circumstances, then the question shifts to whether the filing of the instant petition occurred within a reasonable time of the change in circumstances.

The employer asserts that the timeliness constraints of WAC 391-35-020(3) and (4) should not bar the results of the petition because the work of the 33 specimen processing employees at HMC is a small subset of the specimen processing work in the Department of Laboratory Medicine. The employer further asserts that those 33 specimen processing employees at HMC share a greater community of interest with the specimen processing employees at the UWMC, who are part of the HPLT bargaining unit. In particular, the employees share the same supervisor, follow the same operational procedures and receive the same training. The employer argues that WAC 391-35-020(3) and (4) does not bar this petition because the Harborview bargaining unit has never been clarified to include the Clinical Laboratory Technician job class.

The WFSE asserts that the employer's clarification petition is untimely because the specimen processing employees in the laboratories at HMC and UWMC have historically performed identical work in the same job classifications. The WFSE disagrees that the allocation to the job class by the employer should dictate which bargaining unit the employees belong to. Rather, the WFSE asserts that for forty years the specimen processing work at issue has belonged to the WFSE's Harborview bargaining unit. The only clarification necessary, according to the WFSE, is to specify that the specimen processing work performed by the employees at HMC is part of the WFSE Harborview bargaining unit, regardless of title.

The SEIU takes no position on the issue of whether the employer's clarification petition is timely or on the authority of the employer to reallocate the specimen processing employees at HMC to the Laboratory Technician positions pending in this case. The SEIU asserts that if the unit clarification issues have been appropriately raised then the 33 specimen processing employees at HMC share an "overwhelming community of interest" with the specimen processing employees contained in the HPLT bargaining unit and should be placed in that unit.

By all accounts, the work and responsibilities of the specimen processing employees at HMC is and has always been identical to the work and responsibilities of the specimen processing employees at the UWMC, regardless of representational status. The work was identical in 1969 when the Department of Laboratory Medicine was formed. The work was identical when the specimen processing employees were first added to the Harborview bargaining unit when that unit was created in 1974, and the rest of the specimen processing employees were unrepresented. The work was identical when the SEIU organized the rest of the Department of Laboratory Medicine in 2004. The work has remained identical to this day. While one could articulate a community of interest among all the specimen processing employees, the work of the specimen processing employees working at Harborview has belonged to the Harborview bargaining unit since 1974.

The question is what has changed to alter that community of interest. The answer is – essentially nothing recently. There has not been a reorganization. There has not been a change of duties. All that has recently occurred are job title changes and reallocations without any change to the work, duties or structure.

The employer argues that the Clinical Laboratory Technician work belongs to the HPLT bargaining unit. Since the work of the specimen processing employees is clearly Clinical Laboratory Technician work at both the UWMC and at HMC, the employer asserts the 33 specimen processing employees at HMC must be moved to the HPLT bargaining unit.

The employer's argument ignores its own assertions that the work is and has always been identical. The work was identical when the specimen processing employees were in the Central Processing Technician job class. The work was identical when the specimen processing employees were in the Specimen Processing Technician job class. The work is identical now when the specimen processing employees are in the Clinical Laboratory Technician job class or the Laboratory Technician job class.

It is true that a reallocation can, in some instances, require an employee to move to a different bargaining unit. That move is typically premised on the change of duties involved or the fact that the work being performed that resulted in reallocation belongs to the other bargaining unit. In this case, the work of the specimen processing employees working at Harborview currently belongs to the Harborview bargaining unit. Accordingly, reallocation to the Laboratory Technician job class of a specimen processing employee at HMC does not, by itself, mandate a change in bargaining unit.

In essence, the employer's argument boils down to the premise that the clarification is necessary because the specimen processing employees at HMC share a greater community of interest with the specimen processing employees at UWMC than they do with the rest of the Harborview bargaining unit. While it may be more appropriate for the specimen processing employees to be in the same bargaining unit, this proposition is unattainable. The facts and circumstances that the employer presented as justification for clarification of the unit have essentially existed since the Department of Laboratory Medicine was formed in 1969. One cannot say that there has been a change in circumstances that altered the community of interest. If anything, the issue of the split jurisdiction of work should have been more thoroughly addressed in 2004 when the SEIU filed its

representation petition.[9] It was not and, without a recent change in circumstances that has altered the Harborview specimen processing employees' community of interest with the rest of the Harborview bargaining unit, it would be inappropriate to modify either of those units at this time.

Conclusion

Because no recent change in circumstances has occurred that altered the community of interest, the employer's petition must be dismissed. The employer is not barred from filing a new clarification petition should there be a change in circumstances in the future.

FINDINGS OF FACT

1. The University of Washington is an institution of higher education within the meaning of RCW 41.80.005(10).

2. The Washington Federation of State Employees is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).

3. Service Employees International Union, Local 925 is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).

4. The University of Washington utilizes a job classification system to describe, allocate and set compensation levels for the work. Jobs are allocated at the employee level to the appropriate job classification based upon the work performed.

5. The University of Washington operates two hospitals, Harborview Medical Center and University of Washington Medical Center.

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[9] The argument was raised somewhat by the employer when the SEIU filed its petition for the HPLT bargaining unit. That argument, however, did not address the specimen processing employees at HMC. See Footnote 4. In fact, the employer ultimately appeared to argue for a separate unit of just unrepresented specimen processing employees excluding those at HMC. The decision directing the election for the HPLT bargaining unit makes no reference to the specimen processing employees who belong to the Harborview unit.

6. Since 1969, the University of Washington has operated a Department of Laboratory Medicine to test medical samples on behalf of clinicians employed by the employer's hospitals so that the clinicians can properly diagnose and treat patients.

7. The Specimen Procurement Division is one of several divisions within the Department of Laboratory Medicine. Within that division is the Specimen Processing Unit. The Specimen Processing Unit is responsible for receiving specimen samples from various sources and ensuring that the samples are properly logged, prepared for testing, and at times performs some qualitative tests on the specimens.

8. Employees in the Specimen Processing Unit work at both Harborview and UWMC.

9. Since 1974, WFSE has represented a bargaining unit of employees at Harborview.

10. Since 1984, WFSE's Harborview bargaining unit has included employees in the Central Processing Technician classification. The employees in the Central Processing Technician classification are included in the Specimen Procurement Division of the Department of Laboratory Medicine.

11. On December 2, 2002, SEIU filed a petition to represent certain unrepresented classifications at several hospitals and clinics operated by the employer, including unrepresented employees in the Department of Laboratory Medicine in the Central Processing Technician I, Central Processing Technician II, and Clinical Laboratory Technician II classifications. The aforementioned employees work in the Specimen Procurement Division of the Department of Laboratory Medicine.

12. In 2003, the Compensation Department determined that the employees in the Central Processing Technician were more properly allocated to the Clinical Laboratory Technician classification. Following the reallocation, the employer transferred the employees to SEIU's bargaining unit.

13. On October 10, 2003, WFSE filed a complaint alleging the employer committed an unfair labor by unilaterally skimming bargaining unit work when it reallocated and transferred the Specimen Laboratory Technician classification from its bargaining unit without providing notice and the opportunity for bargaining. The Commission affirmed an examiner's decision that the employer committed an unfair labor practice when it unilaterally reallocated the Central Processing Technician classification and removed them from WFSE's bargaining unit without satisfying its bargaining obligations and ordered the employer to return the *status quo ante*.

14. In 2004, the Central Processing Technician classification was reallocated to the Specimen Processing Technician classification. The reallocation resulted in no changes to the duties or responsibilities of the employees in that job classification.

15. In June 2004, SEIU was certified as the exclusive bargaining representative of certain employees employed at several hospitals and clinics operated by the employer, including employees in the Department of Laboratory Medicine in the Central Processing Technician I, Central Processing Technician II, and Clinical Laboratory Technician II classifications.

16. On November 3, 2008, the employer filed a unit clarification petition asking this Commission to clarify WFSE's bargaining unit by moving the Specimen Processing Technician to the SEIU's bargaining unit. The Unfair Labor Practice Manager reviewed the petition under WAC 391-35-020 and determined that the petition failed to demonstrate a change of circumstances that would warrant moving the case forward for hearing.

17. In February 2012, the Compensation Department once again reviewed the Specimen Processing Technician classification and reallocated the employees to the "placeholder" classification of Laboratory Technician. The employees continue to perform the same work that they had previously performed.

18. Since at least 2004, there has been no material change to the duties and responsibilities of the employees represented by WFSE in the Specimen Processing Technician classification.

19. Since at least 2004, there has been no material change to the working condition of the employees represented by WFSE in the Specimen Processing Technician classification.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.80 RCW and Chapter 391-35 WAC.

2. Based upon Findings of Fact 18 and 19, the unit clarification petition filed by the University of Washington must be dismissed as untimely.

ORDER

The petition filed by the University of Washington in the above-entitled action is hereby DISMISSED.

ISSUED at Olympia, Washington, this 5th day of December, 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

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

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The attached document identified as: DECISION 11590 - 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/ ROBBIE DUFFIELD

CASE NUMBER:	24602-C-12-01488	FILED:	02/24/2012	FILED BY:	EMPLOYER
DISPUTE:	COMMUNITY INT				
BAR UNIT:	TECHNICAL				
DETAILS:	-				
COMMENTS:					

EMPLOYER: UNIVERSITY OF WASHINGTON
ATTN: PETER DENIS
1100 NE CAMPUS PARKWAY
BOX 354555
SEATTLE, WA 98105-6207
Ph1: 206-616-3564 Ph2: 206-841-2872

REP BY: MARK YAMASHITA
OFFICE OF THE ATTORNEY GENERAL
UNIVERSITY OF WASHINGTON
BOX 359475
SEATTLE, WA 98195-9475
Ph1: 206-543-4150 Ph2: 206-616-7935

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

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

PARTY 3:	SEIU LOCAL 925
ATTN:	KAREN HART 1914 N 34TH ST STE 100 SEATTLE, WA 98103 Ph1: 206-322-3010
REP BY:	MARTHA BARRON DOUGLAS DRACHLER MCKEE GILBROUGH SECURITIES BLDG 1904 3RD AVE STE 1030 SEATTLE, WA 98101-1170 Ph1: 206-623-0900
REP BY:	DORNIE MACKENZIE SEIU LOCAL 925 1914 N 34TH ST STE 100 SEATTLE, WA 98103-8003 Ph1: 206-322-3010