

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON ASSOCIATION OF FISH
AND WILDLIFE PROFESSIONALS

For clarification of an existing bargaining
unit of employees of:

STATE – FISH AND WILDLIFE

CASE 25884-C-13-1562

DECISION 12141 - PSRA

ORDER MERGING
BARGAINING UNITS

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Karl Nagel, Labor Negotiator, and *Cynthia Lerch*, Labor Relations Manager, for the employer.

The Washington Association of Fish and Wildlife Professionals (union) represents three bargaining units of employees at the Washington State Department of Fish and Wildlife (employer) who are engaged in fish, wildlife and habitat sciences and resource management activities.¹ The bargaining units are currently described by job class. Two of the three bargaining units were initially certified by the Washington State Personnel Board (Board) and excluded temporary, seasonal, and project employees who performed the same work as the permanent employees in the bargaining units. When this agency assumed jurisdiction over these employees under the Personnel System Reform Act, Chapter 41.80 RCW, the temporary, seasonal, and project employees remained excluded from the bargaining units because RCW 41.80.070(1) presumed that all existing bargaining units transferred to this agency's jurisdiction were appropriate.

¹ The union also represents a fourth bargaining unit, the Biological Data Systems/Quantitative Assessments unit. *State – Fish and Wildlife*, Decision 9797 (PSRA, 2007). Although the employees in that unit are engaged in fish, wildlife and habitat sciences and resource management activities, that unit is not part of this process.

The issue in this matter is whether the three bargaining units may be merged into a single bargaining unit and redefined by the work performed by the employees with the historically unrepresented employees added to the bargaining unit. The parties are in favor of the merger. The bargaining units will be merged because the employees share a community of interest based upon the work that they perform. The merged bargaining unit will be described by the fish, wildlife, and habitat resource management activities performed by the bargaining unit employees. The historically excluded employees performing bargaining unit work will be added to the bargaining unit because the positions logically belong in the merged bargaining unit.

BACKGROUND

The three bargaining units that the union represents at the Department of Fish and Wildlife are Biology Unit 1, Biology Unit 2, and the Miscellaneous Professionals Unit.

Biology Unit 1 –

Biology Unit 1 was created in 1981 under the authority of the Board. When the Washington Public Employees Association (WPEA) was certified as the exclusive bargaining representative of Biology Unit 1, temporary, seasonal, and project employees were excluded from the bargaining unit even though they performed the same work as the permanent employees. RU-179 (1981). Additionally, some of the historically excluded temporary, seasonal, and project positions eventually became permanent positions but were never added to the bargaining unit. Other permanent positions were excluded from the bargaining unit due to an employee being reallocated to a job title that was not in the original bargaining unit description or when the agency reorganized its operation. When the Personnel System Reform Act (Chapter 41.80 RCW) was enacted in 2002, those positions remained excluded from the bargaining unit by the operation of RCW 41.80.070(1), which presumed the appropriateness of all existing bargaining units. The WPEA remained the exclusive bargaining representative of the bargaining unit at the time jurisdiction of state employee collective bargaining transferred to this agency.

In 2008, the union filed a petition with this agency to be certified as the exclusive bargaining representative of Biology Unit 1. Because the union petitioned for an existing bargaining unit

that was deemed appropriate under RCW 41.80.070(1), this agency did not have a reason to question the appropriateness of the unit and had no reason to clarify the status of the historically unrepresented positions. The union was eventually certified as the exclusive bargaining representative of Biology Unit 1. *State – Fish & Wildlife*, Decision 9975-A (PSRA, 2008). In 2009, the Fish Counter/Scientific Technician job class was added to the bargaining unit under WAC 391-25-440. *State – Fish and Wildlife*, Decision 10343 (PSRA, 2009). Again, this agency was not asked to clarify the status of the historically excluded positions at that time. Biology Unit 1 contains approximately 201 employees and is currently described as follows:

All non-supervisory permanent civil service employees of the Department of Fish and Wildlife, as follows: including all permanent employees in the job classes of Environmental Specialist 1, 2, and 3, and Environmental Specialist 4 and 5 in the Fish Program, and Environmental Specialist 4 and 5 in the Technical Applications Program (TAPPS); and including permanent and project seasonal Fish Counters/Scientific Technicians in Regions 3 and 5; Microbiologist 2; Fish and Wildlife Biologist 1, 2, 3, and 4; Fish Biometrician; Fish Research Scientist 1 and 2; Research Analyst 1, 2, and 3; and Scientific Technician 1, 2, 3, and 4, excluding all temporary, seasonal career or permanent employees in the Wildlife Program; in the Fish Program Science Division (Inland Fish Investigations); Fish Program Management Division (Marine Resource Unit, Inland Fish Management Section); Fish Program Regions (Fish and Wildlife Biologist); Habitat Program Environmental Services Division; Habitat Program Major Projects Division; and Habitat Program Regions, as well as confidential employees, internal auditors, supervisors, non-supervisory Washington Management Services Employees (on or after July 1, 2004), and employees included in any other bargaining unit.

Biology Unit 2 –

The union has represented Biology Unit 2 since at least 1992. When the Board certified the union as the exclusive representative of Biology Unit 2, seasonal and project employees were excluded from the bargaining unit even though they performed the same work as the permanent employees. RC-104 (1992). Similar to Bargaining Unit 1, some of the historically excluded temporary, seasonal, and project positions eventually became permanent positions but were never added to the bargaining unit. Other permanent positions were also excluded from the bargaining unit due to an employee being reallocated to a job title that was not in the bargaining unit description or when the agency reorganized its operation. These historical exclusions remained in place at the time Chapter 41.80 RCW was enacted.

In 2009, the Farmer job class was added to the bargaining unit under WAC 391-25-440. *State – Fish and Wildlife*, Decision 10322 (PSRA, 2009). This agency was not asked and had no reason to clarify the status of the historically excluded positions at that time. In 2010, the bargaining unit description was modified administratively under WAC 391-35-085 to reflect a change in the employer's organizational structure. *State – Fish and Wildlife*, Decision 10649 (PSRA, 2010). This modification did not impact the scope of the bargaining unit and there was no reason to clarify or comment upon the status of historically excluded positions through that proceeding. Biology Unit 2 contains approximately 377 employees and is currently described as:

All non-supervisory civil service employees of the Department of Fish and Wildlife:

In the Wildlife Program, all employees in the Biologist 1, Biologist 2, Biologist 3 and Biologist 4 classifications (except positions in the Wildlife Area Manager bargaining unit), all employees in the Farmer 1, Farmer 4 and Farmer 6 classifications, all Research Scientists and Fish and Wildlife Health Specialists, and the Lands Agent in Region 4;

In the Habitat Program, all employees in the Biologist 1, Biologist 2, Biologist 3, and Biologist 4 classifications (except those in Environmental Restoration), all Environmental Specialists in Technical Services and in Region 3 and Region 4, and all Fish and Wildlife Research Scientists in the Science Division;

In the Fish Program, all employees in the Biologist 1, Biologist 2, Biologist 3, and Biologist 4 classifications in the Inland Section of the Management Division, and all Regional Biologists in the Inland Section of the Science Division, all employees in the Biologist 1, Biologist 2, Biologist 3, Biologist 4 classifications, all Scientific Technicians and all Information Technology Application Specialists in the Marine Resources Unit, including those in Region 4 and Region 6 of the Shellfish Section;

Excluding confidential employees, internal auditors, supervisors, non-supervisory Washington Management Service employees (on and after July 1, 2004), and all other employees.

Miscellaneous Professionals Bargaining Unit –

The union also represents the employees in the Miscellaneous Professionals bargaining unit. This agency certified the union as that bargaining unit in 2007. The Miscellaneous Professionals bargaining unit contains 24 employees and is currently described as:

All full-time and regular part-time civil service employees of the Washington State Department of Fish & Wildlife in Habitat Program: Environmental Engineers 1-4; in Wildlife Program-Wildlife Area-Weed Control: Natural Resource Technicians and Scientific Technicians 1-4 and Community Outreach and Environmental Education Specialists 1-4; and in Fish Program-Warmwater Inland: Scientific Technician 4, Community Outreach and Environmental Education Specialists 1-4 and Scientific Technician C/S 1-4 in Region 1, excluding supervisors, confidential employees, Washington Management Service employees and all other employees.

State – Fish and Wildlife, Decision 9761-A (PECB, 2007). Unlike Biology Unit 1 and Biology Unit 2, all civil service employees performing this work, whether full-time or part-time, are included in the bargaining unit by operation of the unit description.

The employees in all three bargaining units share many similarities. The employees in all three bargaining units are engaged in fish, wildlife and habitat sciences and resource management activities. Similar job classes exist in all three units, such as the Biologist, Scientific Technician, and Environmental Specialist job classes. Many of the job classes require the same education and skills set, such as a college degree and knowledge of habitat sciences and management activities. Additionally, these employees share common lines of supervision and are organizationally located in the same programs. There are approximately 100 permanent positions and 144 temporary and seasonal positions that engage in fish, wildlife and habitat sciences and resource management activities, but they are excluded from Biology Unit 1 and Biology Unit 2. The temporary and seasonal positions are filled on an as needed basis, and no set pattern exists for their occupancy.

DISCUSSION

This agency has the authority to define new bargaining units of employees and to modify existing bargaining units to ensure their continued appropriateness. RCW 41.80.070. When this agency 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., Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001)(bargaining unit work is defined as “work that bargaining unit employees have historically performed”).

Defining Bargaining Units –

A bargaining unit description defines the employees that are included or excluded from the bargaining unit and ensures that the duty to bargain is enforced if an attempt is made to transfer that work outside of the bargaining unit. *University of Washington*, Decision 8392 (PSRA, 2004). No hard-and-fast rule exists proscribing how bargaining units should be described. New bargaining units are often described by the work performed by the employees in the unit, as opposed to the job classes within that unit because the use of generic terms 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. *University of Washington*, Decision 8392.

Defining the bargaining unit by work is not always possible 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. *Central Washington University*, Decision 10215-A (PSRA, 2009), *aff'd*, Decision 10215-B. A different type of bargaining unit description may be necessary and appropriate. This is especially true of employers under the jurisdiction of Chapter 41.80 RCW. *University of Washington*, Decision 11883 (PSRA, 2013). 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.

A bargaining representative that represents more than one bargaining unit of state employees may petition this agency to merge those bargaining units into a single unit. RCW 41.80.070(3). If the resulting bargaining unit is appropriate, then this agency shall certify the petitioner as the exclusive representative of the merged unit. This process is accomplished through a unit clarification and may be filed at any time.

Accretions –

Ordinarily, employees are permitted a voice in the selection of an exclusive bargaining representative. RCW 41.80.080. Accretions are the exception to the statutory rule of employee free choice. An accretion may be ordered when unrepresented employees logically belong in

only one existing bargaining unit and the positions can neither stand on their own as a separate unit or be logically accreted to any other existing bargaining unit. *Pierce County*, Decision 6051-A (PECB, 1998), *citing City of Auburn*, Decision 4880-A (PECB, 1995). The employees will be placed in the existing bargaining unit without the benefit of being able to vote on representation. In order for an accretion to be directed, the resulting bargaining unit must be an appropriate unit. The party proposing accretion bears the burden of demonstrating that the conditions for accretion are present. *Pierce County*, Decision 6051-A.

Merging the Three Bargaining Units Results in an Appropriate Bargaining Unit -

The parties agree that the employees in all three bargaining units are engaged in fish, wildlife and habitat sciences and resource management activities. The parties also assert that, aside from the employees in the Biological Data Systems/Quantitative Assessments bargaining unit, no other employees in the employer's workforce are performing this kind of work. *See* Footnote 1, *supra*.

Because the employees in the three bargaining units share common duties, perform the same body of work, and have common working conditions, the employees share a community of interest that would permit them to be in the same single bargaining unit. Accordingly, the RCW 41.80.070(3) conditions have been met and Biology Unit 1, Biology Unit 2, and the Miscellaneous Professional bargaining unit shall be merged into a single bargaining unit. The merged bargaining unit shall be defined by the work being performed by the employees as follows:

All non-supervisory civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW who are employed by the Department of Fish and Wildlife and who are engaged in fish, wildlife and habitat sciences and resource management activities, including information technology positions that gather, interpret and analyze biological and resource management data, excluding confidential employees, supervisors, internal auditor, Washington Management Services employees, Wildlife Area Managers and Assistant Managers, Natural Resource Workers, Maintenance Mechanics, employees in other bargaining units, and all other employees.

Defining the bargaining unit by the work performed by the employees will ensure that the employer and union will be able to identify the scope of the bargaining unit regardless of changes to job or department titles.

Historically Unrepresented Positions should be added to the Bargaining Unit –

The project, seasonal and temporary employees engaged in fish, wildlife and habitat sciences and resource management activities were excluded from the Biology Unit 1 and Biology Unit 2 based upon the historic orders that created those bargaining units. As mentioned above, many of those positions eventually were converted into full-time positions but were not added to their respective bargaining units. When jurisdiction over the collective bargaining relationship between the employer and union transferred to this agency, those bargaining units, with their historic exclusions, were presumed to be appropriate. RCW 41.80.070(1). However, both bargaining units were also flawed because neither contained all of the civil service employees that were performing the same work and shared a community of interest. RCW 41.80.070 and WAC 391-35-356.²

The historically excluded positions logically belong in the union's bargaining unit because work jurisdiction issues would be created if they were either allowed to remain unrepresented or be placed in another bargaining unit. This includes the project, seasonal and temporary employees performing bargaining unit work. Including the historically unrepresented positions in the union's bargaining will not create a question concerning representation, as there are approximately 602 employees in the union's merged bargaining unit, but only 100 historically excluded permanent position and approximately 144 historically excluded temporary and season positions.

Accordingly, any employee of the employer who is covered by Chapter 41.06 RCW and is engaged in fish, wildlife and habitat sciences and resource management activities should be included in the bargaining unit without the need of an election because that this the only logical location for those employees.

² Despite the historical exclusions, all employees covered by Chapter 41.06 RCW may exercise collective bargaining rights. RCW 41.80.005(6). Part-time civil service employees are treated differently than other part-time public employees in the State of Washington when it comes to their eligibility to be included in bargaining units. Most part-time public employees must work at least one-sixth of the hours of their full-time counterparts to be included in a bargaining unit. WAC 391-35-350. For state civil service employees working at state agencies, it is presumed that *all* employees covered by Chapter 41.06 RCW but who work less than full-time are included bargaining units. *Cf.* WAC 391-35-356 and WAC 391-35-350. The Washington Personnel Resources Board retains the authority to define which part-time employees are eligible for civil service at state agencies. RCW 41.06.070(1)(I) and WAC 357-04-055; *see also In re: WAC 391-35-356*, Decision 10510 (2009).

FINDINGS OF FACT

1. The Washington State Department of Fish and Wildlife is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Association of Fish and Wildlife Professionals (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. Since 2008, the union has represented the employees in Biology Unit 1. The bargaining unit currently contains approximately 201 employees and is defined as follows:

All non-supervisory permanent civil service employees of the Department of Fish and Wildlife, as follows: including all permanent employees in the job classes of Environmental Specialist 1, 2, and 3, and Environmental Specialist 4 and 5 in the Fish Program, and Environmental Specialist 4 and 5 in the Technical Applications Program (TAPPS); and including permanent and project seasonal Fish Counters/Scientific Technicians in Regions 3 and 5; Microbiologist 2; Fish and Wildlife Biologist 1, 2, 3, and 4; Fish Biometrician; Fish Research Scientist 1 and 2; Research Analyst 1, 2, and 3; and Scientific Technician 1, 2, 3, and 4, excluding all temporary, seasonal career or permanent employees in the Wildlife Program; in the Fish Program Science Division (Inland Fish Investigations); Fish Program Management Division (Marine Resource Unit, Inland Fish Management Section); Fish Program Regions (Fish and Wildlife Biologist); Habitat Program Environmental Services Division; Habitat Program Major Projects Division; and Habitat Program Regions, as well as confidential employees, internal auditors, supervisors, non-supervisory Washington Management Services Employees (on or after July 1, 2004), and employees included in any other bargaining unit.

4. Since 1994, the union has represented Biology Unit 2. Biology Unit 2 currently contains approximately 377 employees and is described as:

All non-supervisory civil service employees of the Department of Fish and Wildlife:

In the Wildlife Program, all employees in the Biologist 1, Biologist 2, Biologist 3 and Biologist 4 classifications (except positions in the Wildlife

Area Manager bargaining unit), all employees in the Farmer 1, Farmer 4, and Farmer 6 classifications, all Research Scientists and Fish and Wildlife Health Specialists, and the Lands Agent in Region 4;

In the Habitat Program, all employees in the Biologist 1, Biologist 2, Biologist 3, and Biologist 4 classifications (except those in Environmental Restoration), all Environmental Specialists in Technical Services and in Region 3 and Region 4, and all Fish and Wildlife Research Scientists in the Science Division;

In the Fish Program, all employees in the Biologist 1, Biologist 2, Biologist 3, and Biologist 4 classifications in the Inland Section of the Management Division, and all Regional Biologists in the Inland Section of the Science Division, all employees in the Biologist 1, Biologist 2, Biologist 3, Biologist 4 classifications, all Scientific Technicians and all Information Technology Application Specialists in the Marine Resources Unit, including those in Region 4 and Region 6 of the Shellfish Section;

Excluding confidential employees, internal auditors, supervisors, non-supervisory Washington Management Service employees (on and after July 1, 2004), and all other employees.

5. Since 2007, the union has represented the Miscellaneous Professionals bargaining unit. The Miscellaneous Professionals bargaining unit contains 24 employees and is currently described as:

All full-time and regular part-time civil service employees of the Washington State Department of Fish & Wildlife in Habitat Program: Environmental Engineers 1-4; in Wildlife Program-Wildlife Area-Weed Control: Natural Resource Technicians and Scientific Technicians 1-4 and Community Outreach and Environmental Education Specialists 1-4; and in Fish Program-Warmwater Inland: Scientific Technician 4, Community Outreach and Environmental Education Specialists 1-4 and Scientific Technician C/S 1-4 in Region 1, excluding supervisors, confidential employees, Washington Management Service employees and all other employees.

6. The employees in the bargaining units described in Findings of Fact 3, 4, and 5 are engaged in fish, wildlife and habitat sciences and resource management activities. Similar job classes exist in all three units, such as the Biologist, Scientific Technician, and

Environmental Specialist job classes. Many of the job classes require the same education and skills set, such as a college degree and knowledge of habitat sciences and management activities. Additionally, these employees share common lines of supervision and are organizationally located in the same programs.

7. Due to the historic orders of the Washington State Personnel Board, as well as the reallocation of employee job classes and employer initiated reorganizations, certain permanent, part-time, temporary, and seasonal employees who are performing similar duties to the employees described in Findings of Fact 3 and 4 are currently excluded from those bargaining units.
8. The employees described in Finding of Fact 7 are engaged in fish, wildlife and habitat sciences and resource management activities and have working conditions identical to those described in Finding of Fact 6.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-35 WAC.
2. Based upon Finding of Fact 6, the employees in the bargaining units described in Findings of Fact 3, 4, and 5 share a community of interest and could be merged to form a single appropriate bargaining unit under RCW 41.80.070.
3. Based upon Finding of Fact 8, the employees described in Finding of Fact 7 share a community of interest with the employees described in Finding of Fact 6 and should appropriately be included in the merged bargaining unit described in Conclusion of Law 2.

ORDER

1. Biology Unit 1, Biology Unit 2, and the Miscellaneous Professionals bargaining unit are merged to form a single bargaining unit described as follows:

All non-supervisory civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW who are employed by the Department of Fish and Wildlife and who are engaged in fish, wildlife and habitat sciences and resource management activities, including information technology positions that gather, interpret and analyze biological and resource management data, excluding confidential employees, supervisors, internal auditor, Washington Management Services employees, Wildlife Area Managers and Assistant Managers, Natural Resource Workers, Maintenance Mechanics, employees in other bargaining units, and all other employees.

2. The historically unrepresented employees described in Finding of Fact 7 are added to the bargaining unit described in paragraph 1 of this order without the need of an election.

ISSUED at Olympia, Washington, this 22nd day of August, 2014.

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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ MAJEL C. BOUDIA

CASE NUMBER: 25884-C-13-01562 FILED: 08/09/2013 FILED BY: PARTY 2
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