

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petitions of:

STATE – ENTERPRISE SERVICES
(FINANCE)

and

WASHINGTON FEDERATION OF
STATE EMPLOYEES

For clarification of an existing
bargaining unit.

CASE 24631-C-12-1496
DECISION 11670 - PSRA

CASE 24920-C-12-1515
DECISION 11671 - PSRA

ORDER REMANDING CASES

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

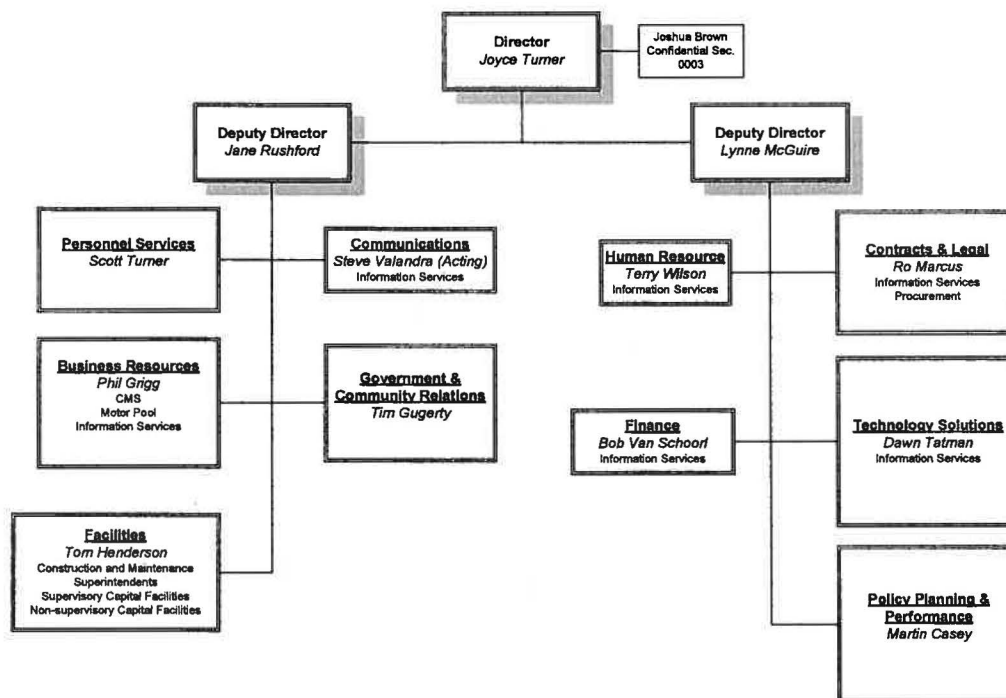
Robert W. Ferguson, Attorney General, by *Kara A. Larsen*, Senior Counsel, for the employer.

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

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

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

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



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

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

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

Both the employer and union filed petitions seeking review of the bargaining units now located in the Finance Division. The Finance Division provides budget and accounting services for Enterprise Services, Consolidated Technology Services, and 45 small state agencies, including payroll services, accounts payable, accounts receivable, and billing. The Finance Division consists of three different sections: Accounting, State Agency Support, and Budget. There is also an administrative section that provides clerical support for the division. Bob Van Schoorl is the Chief Financial Officer and head of the division.

A portion of the employees in the Information Services bargaining unit are located in the Finance Division. Both parties seek to clarify the portion of the Information Services bargaining unit located in the division. The Information Services bargaining unit was described as follows:

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

State – Information Services, Decision 8629 (PSRA, 2004). WFSE's petition seeks a bargaining unit configuration described by position number so that the employees included in the Information Services bargaining unit that are located in the Finance Division would comprise the bargaining unit. WFSE does not seek inclusion of any unrepresented employees into its proposed bargaining unit. The bargaining unit configuration proposed by WFSE would be described as follows:

All employees in the Finance Division in the following positions:

- Position 0119
- Position 0120
- Position 0121
- Position 0143
- Position 0108
- Position 0110
- Position 0111
- Position 0118
- Position 0109
- Position 0112
- Position 0102
- Position 0101
- Position 0117
- Position 0100
- Position 0113

The positions that WFSE seeks to represent are scattered throughout the Accounting Section of the Finance Division. The employer argues that all the eligible employees in the Finance Division share a community of interest. The employer also argues that the bargaining unit configuration proposed by WFSE is inappropriate and asserts that WFSE should file a representation petition if it seeks to represent the employees in this division.

ISSUES PRESENTED

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

The Information Services bargaining unit is not appropriate under RCW 41.80.070 because the employees from that bargaining unit were not placed within the Enterprise Services organizational structure as a distinct, identifiable group. The evidence demonstrates that the employees in the

Information Services bargaining unit located in the Finance Division have been commingled with employees who are not represented for purposes of collective bargaining.

Because the Information Services bargaining unit is not appropriate, the unit must be modified to make it appropriate. Although the evidence in this record demonstrates that the employees in the Accounting Section share a community of interest, this record lacks sufficient evidence to determine whether all of the employees in the Finance Section share a community of interest. Without that evidence, a proper unit determination cannot be made. The case is remanded to the Hearing Officer to take additional evidence concerning the duties, skills, and working conditions of the employees in the Budget and Small Agency Services sections.

DISCUSSION

Applicable Legal Standard

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

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

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

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

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

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

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

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

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

This section provides two ways for this agency to review the appropriateness of any transferred bargaining unit. By January 1, 2012, this agency could, on its own initiative, review the appropriateness of any transferred bargaining unit. Alternatively, both the employer and the certified bargaining representative may petition this agency to review the appropriateness of any transferred bargaining unit. No time limit is placed on this type of review. This specific grant of authority mirrors in many respects the authority generally granted to this agency to determine and modify bargaining units and certify the exclusive bargaining representative of appropriate bargaining units. RCW 41.80.070; *Central Washington University*, Decision 10215-B (PSRA, 2010).

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

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

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

The language in RCW 41.80.911 granting the Commission the authority to order an election without requiring a showing of interest by the employees reflects that the reorganization at issue was imposed by the Legislature, rather than by the employer. Thus, the Legislature did not want the affected employees to automatically suffer a detriment to their collective bargaining rights or existing collective bargaining relationships because of the transfer. Rather, there appears to be a preference to allow the employees to exercise their right of self-determination. Additionally, the

Legislature did not want to hamper the newly created agency's ability to organize its operations in such a manner as to meet the purpose of the consolidation itself.

Application of Standards – Transferred Bargaining Unit

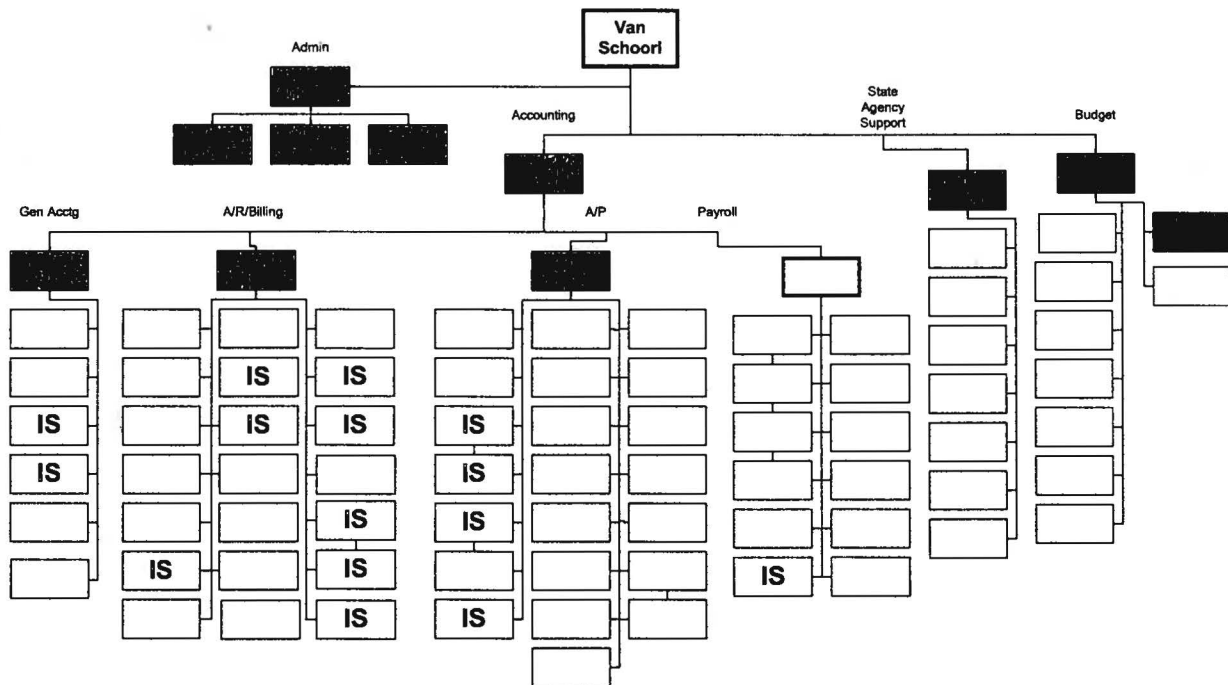
The starting point for the analysis is the transferred bargaining units. Under ESSB 5931, if a bargaining unit that transferred to Enterprise Services continues to be appropriate under RCW 41.80.070, then that bargaining unit shall continue to be an appropriate bargaining unit at Enterprise Services.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

The Information Services bargaining unit is no longer appropriate under RCW 41.80.070. Prior to the creation of Enterprise Services, the Information Services bargaining unit contained approximately 300 employees in a wall-to-wall bargaining unit that encompassed all of the non-supervisory employees of the agency. The fact that all of the bargaining unit's employees were employees of the Department of Information Services established the community of interest of that unit. Following the enactment of ESSB 5931, the employees in the Information Services bargaining unit were dispersed between two different agencies: Enterprise Services and Consolidated Technology Services. Further, the employees assigned to Enterprise Services were dispersed throughout that agency. Applying the "extent of organization" criteria of RCW 41.80.070 requires consideration of the group sought by the union as against the balance of the employer's workforce. *City of Centralia*, Decision 2940.

It is clear that the remaining Information Services bargaining unit at Enterprise Services has no community of interest. Excessive fragmentation and work jurisdiction issues would occur with such a unit. Neither the union nor the employer asserts that the remaining Information Services bargaining unit remains appropriate. Since the Information Services bargaining unit is no longer appropriate, the Commission has the authority to modify the existing unit.

The Finance Division provides financial services to Enterprise Services, Consolidated Technology Services, and 45 small agencies. These financial services include accounting, payroll, payables, receivables and budget. The division consists of three different sections: Accounting, State Agency Support, and Budget. There is also an administrative section that provides clerical support for the division. Bob Van Schoorl is the Director of the division. The division has 77 positions eligible for collective bargaining within the division. Fifteen of those positions were included in the Information Services bargaining unit and reside in the Accounting Section of the division.

The Finance Division is organized as follows:



The positions marked “IS” were included in the Information Services bargaining unit. Positions that are blacked out are supervisory positions, positions to be included in an administrative employees bargaining unit, or positions ineligible for collective bargaining and are not in dispute.³ The positions marked in white are unrepresented positions. WFSE seeks to include only the position marked “IS” in its proposed bargaining unit.

³ For an explanation of the administrative employees bargaining unit, see *State – Enterprise Services (Contracts & Legal Services)*, Decision 11652 (PSRA, 2013).

The Accounting Section provides all accounting services for Enterprise Services, Consolidated Technology Services, and the 45 small agencies served by Enterprise Services. The Accounting Section is divided into four work groups: General Accounting, Accounts Receivable/Billing, Accounts Payable, and Payroll. The General Accounting work group provides oversight for all of the accounting performed by the division to ensure that the accounts are reconciled and balanced. The General Accounting work group also manages state issued credit cards and manages and reconciles account ledgers. The Accounts Receivable/Billing work group provides billing and invoice services for Enterprise Services and Consolidated Technology Services and their programs and services. The Accounts Payable work group ensures that vendor invoices and travel claims are processed and paid for Enterprise Services, Consolidated Technology Services, and the small agencies served by Enterprise Services. The Payroll work group processes payroll, including employee benefits, for Enterprise Services, Consolidated Technology Services, and the 45 small agencies served by Enterprise Services. With the exception of one employee in the Procurement/Supply Specialist job class, the employees in the Accounting Section are in the Fiscal Analyst, Fiscal Technician, and Information Technology Specialist job classes performing similar work.

The Budget Section develops and manages Enterprise Services' budget, including expenditures and assessing the financial risk of the agency. The employees in the Budget Section are in the Budget Analyst job class. The State Agency Support Section assists small agencies with developing and managing their budgets, including preparation of budget requests to the Legislature. The employees in the State Agency Support Section are in the Budget Analyst job class. No represented employees are located in either the Budget or State Agency Support sections. There is no evidence in this record demonstrating the duties, skills, and working conditions of these employees or how they interact with the employees in the Accounting Section.

Application of Standards – Modified Bargaining Unit

In determining the appropriate bargaining unit, RCW 41.80.070 directs that Commission to examine the following: the duties, skills, and working conditions of the employer, the history of collective bargaining, the extent of organization among the employees, the desires of the employees and the avoidance of excessive fragmentation. The application of those criteria

demonstrates that both represented and unrepresented employees within the division share a common supervision structure and working conditions. The represented employees in the Accounting Section share similar duties, skills, and working conditions. There is insufficient evidence to determine to what extent the employees in the Accounting Section share similar duties, skills, and working conditions with the other sections of the Finance Division.

With respect to the extent of bargaining, the union currently represents 15 of the 77 eligible employees in the Finance Division. The 62 unrepresented employees have no history of bargaining, and no appropriate bargaining unit currently exists within the division. The desires of employees are ascertained through the election process. *Central Washington University*, Decision 9963-B (PSRA, 2010). It is inherently inappropriate to ascertain the desire through testimony. *Valley Communications Center*, Decision 4465-A (PECB, 1994).

The bargaining unit based solely on position number as sought by the union would unnecessarily and unduly fragment the employer's workforce and create work jurisdiction issues. The goal of any unit determination is to find employees who share *common* duties so that they may bargain effectively regarding the terms and conditions of their employment. In this case, the employees that WFSE seeks to include in its bargaining unit work side-by-side with unrepresented employees who perform the same work. This scenario would make it impossible for the employer to identify which work should be assigned to bargaining unit employees and which work should be assigned to unrepresented employees because the work assigned to all employees is identical. If the Commission were to create a bargaining unit based solely on position number, the result would require multiple bargaining units that would unnecessarily fragment the employer's workforce. This would also create the potential for work jurisdiction issues where they previously did not exist.

To support its position, WFSE cites to *State – Natural Resources*, Decision 10050 (PSRA, 2008), where this Commission certified a bargaining unit at a different state agency based on employee position numbers. WFSE points out that many of the employees are still using the same computer programs that they previously used and therefore they have a unique community of interest separate and apart from the other employees in the section. WFSE asserts that work being

performed by the employees previously included in the Information Services bargaining unit is unique, and therefore a bargaining unit based on position number would appropriately capture the work being performed by the employees.

WFSE's reliance upon *State – Natural Resources* is misplaced. In that case, two different unions represented employees in the same job classes at the same state agency. In order to clearly define the work jurisdiction of each bargaining unit, all parties, including the employer, stipulated to a bargaining unit description that defined the bargaining units by position number. Here, no such agreement between the parties exists and creating a unit in the manner proposed by WFSE would violate RCW 41.80.070. Furthermore, while the employees in the Accounting Section may be using the legacy computer systems that were utilized at Information Services, the evidence demonstrates that the employer is standardizing the computer systems used throughout the division.

The record indicates that, at a minimum, the employees in the Accounting Section share a community of interest. However, there may also be a community of interest among the eligible employees in the entire division, but the record is insufficient. A bargaining unit that encompasses all of the employees in a vertical structure such as the Finance Division can be an appropriate bargaining unit of bargaining, even where the work performed by the employees is not identical. *See South Central School District, Decision 5670-A (PECB, 1997)*. Without proper evidence demonstrating the duties, skills, and working conditions of the employees in the Budget and Small Agency Services sections, it is impossible to properly apply the RCW 41.80.070 criteria to determine the true community of interest of the employees Accounting Section. If the evidence demonstrates the employees in the Accounting Section share a community of interest with the employees in the Budget and Small Agency Services sections, then those employees should be in the same bargaining unit.

The union does not represent a majority of the unit regardless of whether the appropriate unit is the Accounting Section or the entire Finance Division. It would be inappropriate to accrete the unrepresented employees into the bargaining unit where the incumbent bargaining representative does not represent a majority of the employees in the unit. *See WAC 391-25-020(5)(c)*. The

expressed purpose of ESSB 5931 was to attempt to preserve the collective bargaining relationships that the employees transferred to Enterprise Services enjoyed prior to the consolidation. Nonetheless, the fifteen represented employees in the Finance Division should not have their collective bargaining rights extinguished without due process. Once the appropriate bargaining unit is determined, an election will be directed with the eligible employees in the appropriate bargaining unit. Accordingly, processing of this matter is remanded to the Hearing Officer to take additional evidence necessary to determine the proper community of interest of the employees in the Finance Division.⁴

FINDINGS OF FACT

1. The Department of Enterprise Services is a public employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (WFSE) is a bargaining representative within the meaning of RCW 41.80.005(7).
3. Prior to October 1, 2012, WFSE represented an all employees bargaining unit at the Department of Information Services. That bargaining unit was described in *State – Information Services*, Decision 8629 (PSRA, 2004).
4. Laws of 2011, 1st Spec. Sess., ch. 43 PV (ESSB 5931), eliminated the Public or State Printer, the Department of General Administration, the Department of Information Services, and the Department of Personnel. The employees at the Public Printer became part of Department of Enterprise Services Enterprise Services; the employees at General Administration became part of Enterprise Services; the employees at Information Services were split between Consolidated Technology Services, Enterprise Services, and the Office of Financial Management; and the employees at the Department of Personnel were split between Enterprise Services and the Office of Financial Management. Additionally, a portion of the Office of Financial Management was transferred to Enterprise Services.

⁴ The Hearing Officer should also take evidence concerning the supervisory status of any civil service employee included in the division that would be otherwise eligible to vote in the election.

5. The Finance Division provides budget and accounting services for Enterprise Services, Consolidated Technology Services, and 45 small state agencies, including payroll services, accounts payable, accounts receivable, and billing. The Finance Division consists of three different sections: Accounting, State Agency Support, and Budget. There is also an administrative section that provides clerical support for the division.
6. As a result of the transfer of employees described in Finding of Fact 4, a portion of the employees from the Information Services bargaining unit described in Finding of Fact 3 transferred to the Department of Enterprise Services and are placed in Finance Division described in Finding of Fact 5.
7. The employees in the Accounting Section of the Finance Division that are represented by WFSE work side-by-side with unrepresented employees who perform the same work, have the same management structure, and work under the same conditions.
8. Section 1001 of ESSB 5931 permits the Public Employment Relations Commission to review the appropriateness of any bargaining unit transferred to the Department of Enterprise Services.
9. WFSE does not represent a majority of employees in the Finance Division described in Finding of Fact 5.

CONCLUSION OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW, Laws of 2011, 1st Spec. Sess., ch. 43 PV, and Chapter 391-35 WAC.
2. The bargaining unit described in Finding of Fact 3 is no longer an appropriate bargaining unit under RCW 41.80.070.
3. A bargaining unit of employees in the Finance Division described by position number is not an appropriate bargaining unit under RCW 41.80.070 because the employees to be

included in the proposed unit share a community of interest with the unrepresented employees in the division and creation of such a unit would unnecessarily fragment the employer's workforce.

4. There is insufficient evidence in this record to determine the appropriate scope of an appropriate bargaining unit of employees in the Finance Division.

ORDERED

Processing of these cases shall be REMANDED to the Hearing Officer to take additional evidence.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 02/25/2013

The attached document identified as: **DECISION 11670 - 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

Majel C. Boudia
BY: /S/ MAJEL C. BOUDIA

CASE NUMBER:	24631-C-12-01496	FILED:	03/01/2012	FILED BY:	PARTY 2
DISPUTE:	MISC CLARIF				
BAR UNIT:	TECHNICAL				
DETAILS:	Finance				
COMMENTS:					
EMPLOYER:	STATE - ENTERPRISE SERVICES				
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RECORD OF SERVICE - ISSUED 02/25/2013

The attached document identified as: **DECISION 11671 - 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

Majel C. Boudia
BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 24920-C-12-01515 FILED: 06/22/2012 FILED BY: EMPLOYER

DISPUTE: COMMUNITY INT

BAR UNIT: TECHNICAL

DETAILS: Finance

COMMENTS:

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