

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON FEDERATION OF  
STATE EMPLOYEES

For clarification of an existing bargaining  
unit of employees of:

STATE – TRANSPORTATION

CASE 26702-C-14-1603

DECISION 12200 - PSRA

ORDER CLARIFYING  
BARGAINING UNIT

*Lewis Woods*, Director of PERC Activities, for the union.

*Scott Nicholson*, Labor Negotiator, for the employer.

The Washington State Federation of State Employees (union) represents a bargaining unit of Highway Maintenance employees working at the Washington State Department of Transportation (employer). That bargaining unit, which was created in 1968, had historically excluded non-permanent and temporary positions. Those positions continued to be excluded from the bargaining unit when jurisdiction over state collective bargaining transferred to this agency in 2002. *See, generally*, Chapter 41.80 RCW.

When the bargaining unit was first created, it was described by job title. In 2003, this agency updated the bargaining unit description to describe the unit by the highway maintenance work performed by the employees. *State – Transportation*, Decision 8364 (PSRA, 2003).

On August 25, 2014, the union filed a unit clarification petition under WAC 391-35-020(4)(b) requesting that the non-permanent and temporary employees be included in its Highway Maintenance bargaining unit because those positions logically belonged in that bargaining unit. The union's petition also asserted that certain positions that were once non-permanent or

temporary had become permanent positions. The union also requested that those positions be included in its bargaining unit as well.

During pre-hearing proceedings, the employer was asked its position on the union's requests. The employer agreed with the union that the historically excluded non-permanent and temporary positions were performing the same bargaining unit work as the permanent employees in the union's bargaining unit and that all of these employees shared a community of interest. The employer also stated, given the historical exclusion dating back to 1968, the employees' exercise of their right to self-determination through an election may be appropriate. However, the employer clarified that it would remain neutral with respect to the union's petition.

The issue in this matter is whether the temporary, non-permanent, and permanent employees performing the same work as bargaining unit employees but who have historically been excluded from the Highway Maintenance bargaining unit should be added to that bargaining unit. The historically excluded employees performing bargaining unit work are added to the union's Highway Maintenance bargaining unit because those positions logically belong in that bargaining unit.

## 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”).

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). In that instance, 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.

*Historically Unrepresented Positions Should be Added to the Bargaining Unit –*

The non-permanent, temporary, and permanent employees engaged in highway maintenance activities were excluded from the union's bargaining unit based upon the historic order that created that bargaining unit. Many of those excluded positions eventually were converted into full-time positions but were not added to the Highway Maintenance bargaining unit. When jurisdiction over the collective bargaining relationship between the employer and union transferred to this agency, the bargaining unit, along with its historic exclusions, was presumed to be appropriate by operation of the enabling legislation. RCW 41.80.070(1). Nonetheless, the bargaining unit was also flawed because it did not contain all of the civil service employees that were performing the same work as bargaining units despite the fact all of the permanent, non-permanent, and temporary employees shared a community of interest. RCW 41.80.070 and WAC 391-35-356.

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. Including the historically unrepresented positions in the union's bargaining unit will not create a question concerning representation, as there are approximately 1450 employees in the union's bargaining unit, but only 120 historically excluded non-permanent, temporary, and permanent positions.

Accordingly, any employee of the employer who is covered by Chapter 41.06 RCW and is involved in highway maintenance activities should be included in the bargaining unit without the need of an election because that is the only logical location for those employees.

FINDINGS OF FACT

1. The Washington State Department of Transportation is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. Since 1968, the union has represented a bargaining unit of employees performing highway maintenance work. That bargaining unit is currently described as follows:

All non-supervisory civil service employees of the Department of Transportation performing the functions of highway maintenance, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), employees in other bargaining units and employees historically excluded from the unit by orders of the Washington Personnel Resources Board or its predecessors.

*State – Transportation, Decision 8364 (PSRA, 2003).*

4. Due to the historic orders of the Washington State Personnel Board, as well as the reclassification of positions, certain non-permanent, temporary, and permanent employees performing similar duties to the employees described in Finding of Fact 3 are currently excluded from that bargaining unit.
5. The employees described in Finding of Fact 4 are engaged in highway maintenance activities and have working conditions identical to those described in Finding of Fact 3.

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.

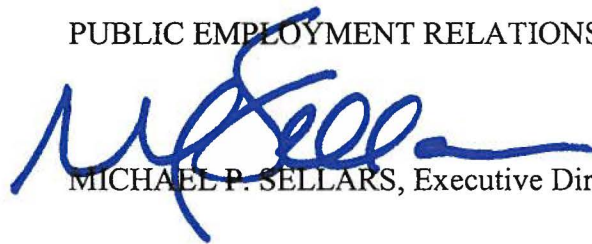
2. Based upon Finding of Fact 5, the employees described in Finding of Fact 4 share a community of interest with the employees described in Finding of Fact 3 and may only be appropriately included that bargaining unit.

ORDER

The historically unrepresented employees described in Finding of Fact 4 are added to the Highway Maintenance bargaining unit represented by the Washington Federation of State Employees without the need of an election.

ISSUED at Olympia, Washington, this 14<sup>th</sup> day of November, 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: 26702-C-14-01603 FILED: 08/25/2014 FILED BY: PARTY 2  
DISPUTE: COMMUNITY INT  
BAR UNIT: OPER/MAINT  
DETAILS: Non-Supervisory Maintenance  
COMMENTS:

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