

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

STATE – FISH AND WILDLIFE

and

WASHINGTON ASSOCIATION OF FISH
AND WILDLIFE PROFESSIONALS

For clarification of an existing
bargaining unit.

CASE 127686-C-15

DECISION 12519 - PSRA

ORDER CLARIFYING BARGAINING
UNIT AND DIRECTION OF
ELECTION

Rhonda J. Fenrich, Attorney at Law, Fenrich & Gallagher, P.C., for the Washington Association of Fish and Wildlife Professionals.

Tanya Chadwick, Labor Negotiator, and *Cynthia Lerch*, Labor Relations Manager, for the Washington State Department of Fish and Wildlife.

On October 26, 2015, the Washington State Department of Fish and Wildlife (employer) and the Washington Association of Fish and Wildlife Professionals (union) jointly filed a petition seeking clarification of the union’s non-supervisory bargaining unit of employees engaged in fish, wildlife, and habitat sciences and resource management activities. *State – Fish and Wildlife*, Decision 12141 (PSRA, 2014). The parties jointly stipulated that seven senior-level positions no longer share a community of interest with the approximately 750 non-supervisory employees in that bargaining unit because the senior-level positions perform policy work and oversee the work of other employees within their sections. The positions are also allocated to the top class in their job series. The parties requested that the seven positions be removed from the bargaining unit and placed in their own bargaining unit. The parties also identified 17 other senior-level positions that share a community of interest with the seven positions because they also perform the same policy work and oversee the work of other employees within their sections.

The issue to be decided is whether the parties’ stipulations should be accepted and the union’s non-supervisory bargaining unit be clarified to remove the senior-level policy positions. The

parties' stipulations are accepted and the union's non-supervisory bargaining unit shall be clarified to remove the seven senior-level policy positions on community of interest grounds. The work performed by the seven senior-level policy employees is substantially different from that of the other employees in the existing bargaining unit and no work jurisdiction issues would be created if these employees were in their own bargaining unit.

Although the union represents seven of the senior-level policy employees, it does not represent a majority of the senior-level policy employees in the employer's workforce. There are 17 historically unrepresented senior-level policy employees who share a community of interest with the seven represented employees. An election is directed to determine the representational status of a bargaining unit comprised of all eligible senior-level policy employees in the employer's workforce.

DISCUSSION

Applicable Legal Standards

The intent and purpose of Chapter 41.80 RCW is to implement the right of employees to join and be represented by labor organizations. The determination of appropriate bargaining units is a function delegated to this agency by the Legislature. RCW 41.80.070; *Central Washington University*, Decision 10215-B (PSRA, 2010). The goal in making bargaining unit determinations is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Central Washington University*, Decision 9963-B (PSRA, 2010), citing *Quincy School District*, Decision 3962-A (PECB, 1993).

In making bargaining unit determinations, RCW 41.80.070(1) directs this agency to consider "[t]he duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; [and] the desires of the employees"¹ The statute

¹ The "desires of the employees" are only significant if two or more appropriate bargaining unit configurations are being proposed by competing labor organizations. There is no competing labor organization for the petitioned-for employees; therefore, the desires of the employees provide no guidance on determining the appropriateness of the proposed bargaining unit.

also directs this agency to avoid excessive fragmentation when making bargaining unit determinations. RCW 41.80.070(1). The criteria are not applied on a strictly mathematical basis. *Central Washington University*, Decision 9963-B. Not all of the factors exist in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Id.* The criteria are applied collectively to discern the existence of a community of interest among the employees of a particular employer, and not one criteria is of greater import than the others. When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *University of Washington*, Decision 8315 (PECB, 2003). Bargaining unit determinations are made on a case-by-case basis. *Washington State University*, Decision 9613-A (PSRA, 2007).

Application of Standards

The parties stipulate that seven senior-level policy positions should be removed from the existing bargaining unit because those positions no longer share a community of interest with the non-supervisory employees in that bargaining unit. For example, the parties agree that the seven positions are all involved in formulating agency policies and directing employees to carry out those policies based upon biological and resource management data gathered by non-supervisory employees in the employer's workforce. The senior-level policy positions are also functionally in charge of a section of bargaining unit positions and direct the work of those employees. Finally, the positions are all allocated to the top class in their respective job series.

The parties' stipulations are accepted and demonstrate that the seven senior-level policy positions no longer share a community of interest with the existing non-supervisory bargaining unit because their duties are substantially different and these employees share their own community of interest. A bargaining unit consisting of all the senior-level policy positions in the employer's workforce is an appropriate bargaining unit under RCW 41.80.070. Those employees share similar duties and no work jurisdiction issues would be created if they were included in a single bargaining unit consisting of all eligible employees. The evidence demonstrates, however, that the union represents only seven of the approximately 24 employees who are similarly situated. The other 17 senior-level policy positions have historically been excluded from the union's bargaining unit.

The union does not represent a majority of the senior-level policy positions in the employer's workforce, and it would be inappropriate to accrete the unrepresented employees into a bargaining unit where the incumbent bargaining representative does not represent a majority of the employees. *See WAC 391-35-020(5)(c); see also State – Enterprise Services (Technology Solutions), Decision 11663 (PSRA, 2013).* Because the seven represented employees should not have their collective bargaining rights extinguished without due process, an election is directed for all of the employees in senior-level policy positions to determine their representational status. The bargaining unit of employees shall be described as follows:

All supervisory civil service employees defined by Chapter 41.80 RCW who are employed by the Department of Fish and Wildlife and who are engaged in setting agency policies regarding 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, internal auditors, Washington Management Service employees, and employees in other bargaining units.

Processing of this matter is remanded to the Representation Case Administrator to conduct a representation election consistent with this decision.

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. The union currently represents a non-supervisory bargaining of employees described as:

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 auditors, Washington Management Services employees, Wildlife Area Managers and Assistant Managers, Natural Resource Workers, Maintenance Mechanics, employees in other bargaining units, and all other employees.

4. The bargaining unit described in Finding of Fact 3 currently includes seven senior-level policy positions who are involved in formulating agency policies and directing employees to carry out those policies based upon biological and resource management data gathered by non-supervisory employees in the employer's workforce. The senior level policy positions are also functionally in charge of a section of bargaining unit positions, direct the work of those employees, and are all allocated to the top class in their respective job series.
5. There are 17 other senior-level policy positions similar to those described in Finding of Fact 4 who have historically been unrepresented and not included in any bargaining unit.
6. None of the employees in the bargaining unit described in Finding of Fact 3 perform the same work as the employees described in Findings of Fact 4 and 5, so no work jurisdiction issues would be created if the employees described in Findings of Fact 4 and 5 were included in a separate bargaining unit.

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 Findings of Fact 3 through 6, the employees in the bargaining unit described in Finding of Fact 3 do not share a community of interest with the employees described in Findings of Fact 4 and 5.
3. Based upon Findings of Fact 3 through 6, the employees described in Findings of Fact 4 and 5 could form a single appropriate bargaining unit under RCW 41.80.070.

4. Based upon Findings of Fact 4 and 5, the union does not represent a majority of senior-level policy positions in the employer's workforce.

ORDER

1. The senior-level policy positions described in Finding of Fact 4 shall be removed from the bargaining unit described in Finding of Fact 3.
2. Processing of this matter is remanded to the Representation Case Administrator to conduct a representation for the following bargaining unit:

All supervisory civil service employees defined by Chapter 41.80 RCW who are employed by the Department of Fish and Wildlife and who are engaged in setting agency policies regarding 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, internal auditors, Washington Management Service employees, and employees in other bargaining units.

The eligible employees shall be those described in Findings of Fact 4 and 5.

ISSUED at Olympia, Washington, this 23rd day of December, 2015.

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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RECORD OF SERVICE - ISSUED 12/23/2015

DECISION 12519 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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