University of Washington, Decision 10496-A (PSRA, 2011)

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: UNIVERSITY OF WASHINGTON	CASE 21835-C-08-1361 DECISION 10496-A - PSRA DECISION OF COMMISSION

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

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

On July 2, 2008, the Washington Federation of State Employees (union) filed a petition under Chapter 391-35 WAC seeking to clarify an existing bargaining unit of nonsupervisory library employees that it currently represents at the University of Washington (employer) by including certain Library and Archive Paraprofessional (LAP) positions that had been historically excluded from the unit. The petition also asked that the existing bargaining unit description be modified to describe the bargaining unit by the work the employees performed, as opposed to by classification.

Executive Director Cathleen Callahan directed a hearing be held and, based upon the record developed, held that no change of circumstances existed to accrete the LAP employees into the existing unit and dismissed that portion of the union's petition as untimely.[1] The Executive Director also declined to describe the bargaining unit by work performed, but did issue an amended certification to properly reflect recent administrative changes to the job titles.

---

[1] *University of Washington*, Decision 10496 (PSRA, 2009).

The union filed a timely appeal that raises three points of contention with the Executive Director's decision. First, the union asserts that the work being performed by the LAP employees is work that has historically been performed by employees in its bargaining unit. Therefore, according to the union, the LAP employees should have always been included in the existing nonsupervisory bargaining unit. In the event the employees are not part of the historic bargaining unit, the union nevertheless argues that a change of circumstance exists that would render its petition timely under WAC 391-35-020(4). Finally, the union argues that the Executive Director's decision to describe the unit by job class contravenes historical agency practice of describing bargaining units by the work performed.

ISSUES PRESENTED

1. Should the LAP employees have been included in the union's historical existing bargaining unit?

2. If the employees are not represented, is the union's petition timely?

3. Should the bargaining unit description be changed to reflect the work performed by the employees as opposed to job classifications?

For the reasons set forth below, we affirm the Executive Director's decision that the LAP employees were not part of the union's historical bargaining unit. No evidence exists in the record to suggest that the LAP positions were included in the original bargaining unit certification issued by the Higher Education Personnel Board (HEPB).

We also affirm the Executive Director's decision that the petition is not timely. Substantial evidence supports the factual conclusion that no change of circumstances occurred in the working conditions of the LAP employees as to render the union's petition timely under WAC 391-35-020(4). Furthermore, we reject the union's argument that the LAP positions should have always been included in the union's existing bargaining unit.

Finally, we affirm the Executive Director's description of the bargaining unit. Although the description used by the Executive Director does not follow historical agency practice of describing bargaining units by work jurisdiction, the description accurately reflects an appropriate unit that does not run contrary to Chapter 41.80 RCW.

DISCUSSION

ISSUE 1 – Should the LAP Positions Be Included in the Historical Unit?

The first question that must be answered is whether the LAP positions at issue should have been included in the historical bargaining unit. These positions work in the small departmental and research libraries that operate independently from the employer's central library and, for the most part, have their own operational policies and systems. For purposes of this decision, these libraries will collectively be known as the independent libraries. The libraries at issue are the Rey Library in the Department of Germanics, the Miller Library in the College of Forest Resources, the Alcohol and Drug Abuse Institute Library, the Center for Studies in Demography and Ecology Library, and the Applied Physics Laboratory Library. Evidence and testimony in the record demonstrate that at least the Applied Physics Laboratory Library and the Rey Library in the Department of Germanics were in existence in 1973. Tr. Vol. II, pg. 185 lines 5 through 20 (Rey Library), Tr. Vol. IV, pg. 598 lines 3 through 13 (Applied Physics Library). However, the Miller Library was not created until 1985. Tr. Vol. II, pg. 166 lines 1 through 2.

The nonsupervisory bargaining unit was created by the HEPB in 1972 on a petition from the "Classified Staff Association." Exhibit 135. Under the rules of procedure of the HEPB, a bargaining unit was first created, and then a labor organization petitioned to represent the employees in the newly created unit. See Exhibits 14, 138. The union was certified as the exclusive bargaining representative of the employees in 1973. Exhibits 14, 138. It is important to stress that paragraph "V" of the 1972 order creating the bargaining unit reflects that "[t]here is one main Library, eighteen branches, and a Law Library with classified employees to be included in this bargaining unit." Exhibit 135. The unit was last modified by the HEPB in 1974 to reflect a conversion by the HEPB to a standardized system of job classes and also added the class of "Library Assistant" to the unit. Exhibits 14, 138.

The union argues that its nonsupervisory bargaining unit always included the LAP employees at the independent libraries. To support its argument, the union points out that the LAP employees performed the same work and held the same job classifications as the employees in the union's bargaining unit. The union also asserts that the 1974 amended certification does not limit the sphere of libraries covered to just those listed on the certification, and had the HEPB intended to exclude the independent libraries, it would have done so. The union claims that it would not be proper to exclude the independent libraries from the historical unit since neither the union nor the HEPB knew of the existence of the independent libraries. We disagree.

A plain reading of the 1972 order creating the bargaining unit clearly indicates that the bargaining unit of employees that the petitioners and the HEPB envisioned included only those employees at the main library, the eighteen branches, and the law library. Furthermore, the 1974 amendment refers to the 1972 order, which limited the scope of the unit. The union submitted no evidence to suggest that the HEPB intended to include the independent libraries, and the union readily admits that it and the HEPB were unaware of the independent libraries' existence until 2006. Union's Appeal Brief at 6-7. Thus, it cannot be said that the 1974 amendment demonstrated clear intention on the part of the HEPB to amend the language in the 1972 certification to include the employees in the independent libraries.

Because the language in the 1972 order creating the bargaining unit is clear and unambiguous, we decline to interpret the 1972 certification as including the employees at the independent libraries. Having determined that the petitioned-for employees were not part of the historical unit, the next question is to determine whether the union's unit clarification petition was timely.

ISSUE 2 – Was the Union's Petition Timely?

Applicable Legal Standard

Under the Personnel System Reform Act of 2002, this Commission is charged with determining appropriate bargaining units. RCW 41.80.070(1). In order to carry out this duty, the Legislature granted this Commission the authority to adopt rules necessary to achieve a more efficient and expert administration of the states' public labor relations statutes. *See* RCW 41.58.005 and .050.

Under long-standing Commission policy, a mid-term unit clarification is available to include individuals previously excluded from a bargaining unit covered by an existing collective bargaining agreement if: a) the petitioner can offer specific evidence of a recent substantial change in circumstances that would warrant such inclusion; or b) where the petitioner can demonstrate that the existing bargaining unit is the only appropriate unit for the employees or positions. WAC 391-35-020(4). This policy reflects this Commission's concern about the destabilizing effects of an attempt by one party to obtain a unit clarification ruling that upsets bargaining unit agreements. *See Yakima School District*, Decision 9020-A (PECB, 2007).

Application of Standard

The Executive Director found that no change of circumstances existed to make the union's petition timely under WAC 391-35-020(4)(a). The Executive Director also held that the record did not support a finding that the union's nonsupervisory bargaining unit is the only appropriate bargaining unit for the employees as required under WAC 391-35-040(4)(b).

The union asserts that a change of circumstances does in fact exist, and points to the employer's decision to change employees' job classifications to the LAP class. The union also takes the position that its discovery of these employees is a second change in circumstances. Finally, the union claims that its bargaining unit is the only appropriate unit for the employees.

We reject the union's assertion that the employer's decision to change the employees' job classifications constitutes a change in circumstances. This Commission has previously held that a change in circumstances must be a meaningful change in the duties and responsibilities of employees. *City of Richland*, Decision 279-A (PECB, 1978). The mere change of job titles is not a material change to working conditions that would fully qualify under Chapter 391-35 WAC to alter the composition of the underlying unit.[2]

---

[2] In 2008, the Commission enacted WAC 391-35-085 to allow amendment to an existing certification to reflect change in circumstances other than the modification of employees' duties and responsibilities, such as the name of a labor organization or the name of an employer. Nothing would preclude parties from filing a petition under this rule to amend a certification to reflect a change in job title.

With respect to the argument that the discovery of the existence of the employees at issue constitutes a change in circumstances, the discovery of a group of employees that may, but not necessarily should, have been included in a bargaining unit at the time it was formed does not constitute a change in circumstance. *See, e.g., Deer Park School District*, Decision 9288 (PECB, 2006)(a failure on the part of a party to include a position in a unit does not equate to a change in circumstances).

Turning to the Executive Director's findings that the union's bargaining unit is not the only unit that the LAP employees could appropriately belong to, it is only necessary to determine whether the employees could be in an appropriate unit that co-exists with the union's existing bargaining unit under the appropriate statutory criteria. Although the LAP employees share many general duties and skills with the library employees in the union's nonsupervisory bargaining unit, other working conditions of the LAP employees, such as location of work and supervision, are not similar. Furthermore, no history of bargaining exists for the LAP employees at the independent library. Finally, the record appears to demonstrate that placing the LAP employees in a separate bargaining unit would not create a conflict in work jurisdiction as there is no evidence that the employees in the independent libraries interact with the employees in the existing historical unit. Thus, the independent library employees could likely be organized in a separate appropriate bargaining unit. Therefore, the petition is not appropriate under WAC 391-35-020(4)(b).

ISSUE 3 – Did the Executive Director Properly Identify the Bargaining Unit?

Applicable Legal Standard

Historically, this Commission uses generic work descriptions to describe bargaining units. *See City of Milton*, Decision 5202-B (PECB, 1995)(discussing the hazards of describing work by job titles). In contrast, the HEPB and its successor, the Washington Personnel Resources Board (WPRB), described bargaining units by job duties. *See State – Agriculture*, Decision 9390-A (PSRA, 2007). However, the RCW 41.80.070(1) legislative directive requiring state employee bargaining units to be deemed appropriate has necessitated certain circumstances where this agency's convention of describing unit by the work performed has been set aside. In *State – Natural Resources*, Decision 10050 (PSRA, 2008), the Executive Director described two

bargaining units by job class and position because the facts demonstrated that the "two unions have bargaining units that are intertwined classification by classification."

Application of Standard

The Executive Director found other employees working within the employer's library who are represented by Service Employees International Union, Local 925 (SEIU 925) and hold classifications that perform similar duties to the duties being performed by the employees in the union's bargaining unit. SEIU 925's bargaining unit is described by job class.

The Executive Director stated a concern that if the union's bargaining unit were described generically by the work it performed, it would create ambiguity regarding which employees are included in each unit as well as the work performed by each bargaining unit. Accordingly, the Executive Director decided that it was more appropriate to describe the union's bargaining unit by job class, and because the job titles used in the 1974 certification were out of date, the certification was amended to reflect the most recently adopted job titles.

The issuance of a bargaining unit certification that most properly describes the employees included in that unit is one of, if not the, most important functions performed by this agency. An ambiguous or vaguely defined bargaining unit description will likely cause future problems for the parties, and ultimately this Commission, because neither party will be able to know with certainty which employees and work are included within a bargaining unit. Additionally, bargaining unit descriptions must be clear and unambiguous because employees are entitled to know whether they are included in a bargaining unit.

While this agency has historically preferred to describe a bargaining unit in terms of the work performed by employees, the factual situation supports the Executive Director's conclusion that a unit description that differs in structure from what is historically used was necessary. A unit described by job class that is certified by this agency inherently includes the work historically performed by the employees in the listed job classes, even if the job titles change. Because we find no error in the description of this particular bargaining unit by job class, the union's challenge to the bargaining unit description is rejected.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Executive Director Cathleen Callahan are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 15th day of July, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

RECORD OF SERVICE - ISSUED 07/15/2011

The attached document identified as: DECISION 10496-A - 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:	21835-C-08-01361	FILED:	07/02/2008	FILED BY:	PARTY 2
DISPUTE:	MISC CLARIF				
BAR UNIT:	LIBRARIANS				
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
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