

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON

For clarification of an existing bargaining
unit of employees of:

CENTRAL WASHINGTON UNIVERSITY

CASE 21920-C-08-1382
DECISION 10215-A - PSRA

CASE 22013-C-08-1385
DECISION 10216-A - PSRA

ORDER REMANDING HEARING

Eric Nordlof, Attorney at Law, for the union.

Rob McKenna, Attorney General, by *Lawson Dumbeck*, Assistant Attorney General, for the employer.

On August 13, 2008, and October 2, 2008, the Public School Employees of Washington (union) filed two unit clarification petitions concerning two Secretary Senior positions and one Office Assistant 2 position which Central Washington University (employer) reallocated as Program Coordinators and removed from the union's bargaining unit. The union seeks to return the three reallocated positions to its bargaining unit. The union also requests that the bargaining unit description be modified to include all program coordinator positions employed in the same departments where other bargaining unit employees work. The two petitions were consolidated and a hearing was held before Hearing Officer Terry Wilson on January 28, 2009.

ISSUES

1. Should the bargaining unit retain three positions which the employer reallocated as Program Coordinators?
2. Should the bargaining unit be clarified to include all Program Coordinators who work in the same departments as bargaining unit employees?

APPLICABLE LAW

The employer has a bargaining relationship with the union under the Personnel System Reform Act, Chapter 41.80 RCW. The determination and modification of appropriate bargaining units is a function delegated to the Commission by the Legislature. See RCW 41.06.340 and 41.80.070.

UNDERLYING REPRESENTATION CASE – Case 21290-E-07-3304

In Central Washington University, Decision 9963 (PRSA, 2008), the union was certified as exclusive bargaining representative of certain classified employees of various academic departments at Central Washington University. The interim certification described the bargaining unit as:

ALL FULL-TIME AND REGULAR PART-TIME EMPLOYEES PERFORMING CLERICAL OR TECHNICAL WORK EMPLOYED BY CENTRAL WASHINGTON UNIVERSITY WITHIN THE DEPARTMENTS OF FACILITIES MANAGEMENT, LIBRARY, TESTING AND ASSESSMENT, INTERNATIONAL STUDIES, CAREER SERVICES, COLLEGE OF PROFESSIONAL STUDIES, COLLEGE OF SCIENCES, COLLEGE OF ARTS & HUMANITIES, COLLEGE OF BUSINESS, AND WILLIAM DOUGLAS HONORS COLLEGE IN THE FOLLOWING CLASSIFICATIONS:

CUSTOMER SERVICE (WORKING TITLE)
ENGINEERING ASSISTANT 1
ENGINEERING TECHNICIAN 1, 2, 3
FISCAL SPECIALIST 1
FISCAL TECHNICIAN 2, 3
INSTRUCTION & CLASSROOM SUPPORT TECH 2, 3, 4
LIBRARY & ARCHIVES PARAPROFESSIONAL 1, 2, 3, 4
MEDIA ASSISTANT 3
MEDIA TECHNICIAN
OFFICE ASSISTANT 2, 3
PIANO TECHNICIAN
PROGRAM ASSISTANT
RESEARCH TECHNOLOGIST 1
SCIENTIFIC TECHNICIAN
SECRETARY

SECRETARY LEAD
SECRETARY SENIOR

EXCLUDING: EMPLOYEES ASSIGNED TO THE DEANS OFFICE, SUPERVISORS, CONFIDENTIAL EMPLOYEES, EXEMPT EMPLOYEES, INFORMATION TECHNOLOGY EMPLOYEES, AND EMPLOYEES IN THE FOLLOWING CLASSIFICATIONS:

CONSTRUCTION PROJECT COORDINATOR 2
FIRE ALARM INSPECTOR (WORKING TITLE)
FISCAL ANALYST 3
FORMS & RECORDS ANALYST 2
COMMUNITY OUTREACH & ENVIRONMENTAL EDUCATION
SPECIALIST 2
PROCURE & SUPPLY SPECIALIST 1
PROGRAM COORDINATOR
PROGRAM MANAGER A
RECREATION & ATHLETIC SPECIALIST 4
STAGE MANAGER
TOUR & INFORMATION SERVICES COORDINATOR 3
AND ALL OTHER EMPLOYEES OF THE EMPLOYER

Following the issuance of the interim certification,¹ the employer began a reallocation process. The employer reviewed two Secretary Senior positions occupied by Kendra Sterkel and Nancy Graham and an Office Assistant 2 position occupied by Sandra Stewart. After determining that the duties of the incumbents were closely related to that of a program coordinator, the employer reclassified Sterkel, Graham, and Stewart's positions as Program Coordinators and removed them from the bargaining unit. The employer's reallocation process gave rise to the union's unit clarification petitions at issue.

ANALYSIS

The union spends considerable time on the record disputing the agreed-upon unit description in the underlying representation case (Case 21290-E-07-3304) and argues that the position of

¹ Final certification has not issued in this case due to the fact that the union has filed an appeal of the Executive Director's decision in which she found that the Preservation Museum Specialist 5 position did not share a community of interest with unit employees. *Central Washington University, Decision 9963-A (PSRA, 2008)*. That appeal, involving only one employee, does not preclude proceeding of the instant unit clarification case.

program coordinator should have been included in the bargaining unit. This argument is contrary to the union's position during the processing of the representation case. Exhibit 12, an e-mail from the union's counsel, proposes including certain classifications in the bargaining unit and excluding others. The program coordinator classification is on the union's list of exclusions.

The union further asserts that the instant litigation is necessary because of the Executive Director's unwillingness to describe the unit in terms of work, rather than by classification. It should be noted that when these same parties agreed to a unit description that did not list job classifications (Case 21546-E-08-3337), litigation was still necessary to determine whether the program coordinator was included in the unit. Although the parties ultimately agreed in that case that the position at issue would be included in the bargaining unit, their agreement was reached after record evidence was developed at hearing. Obviously, the lack of classifications in the unit definition did nothing to obviate the need for a hearing on eligibility issues. *Central Washington University*, Decision 9963-A (PSRA, 2008).

This Commission and its Executive Director vigorously endeavor to discharge their statutory obligations to define bargaining units according to criteria set forth by the Legislature in RCW 41.80.070. It is important for the parties to understand that, depending upon the particular circumstances of each case, it may not always be possible to adhere to the agency's historical practices regarding unit descriptions. For example, in traditional units found in school districts, cities, or counties, it is not difficult to define units in terms of work, *e.g.*, all grounds and maintenance employees, all bus drivers, all public works employees, all fire fighters, or all corrections officers. However, where employers are larger and include multiple divisions or work groups, where similar duties are performed by several groups of employees, and when one or more unions represent employees performing the same or similar functions in different bargaining units, defining the bargaining unit by work is not always possible. This is especially true of employers under the jurisdiction of Chapter 41.80 RCW. *See University of Washington*, Decision 10496 (PSRA, 2009), and *University of Washington*, Decision 10495 (PSRA, 2009).

Bargaining unit descriptions must be unambiguous. It must be obvious to all parties, and especially to employees, which employees are included in the unit and which are excluded. Excluding or including employees by vague reference to historical or other bargaining units that may or may not exist, describing units as "residual units," or referring to outdated or superseded certifications issued by other jurisdictions only serve to confuse, rather than define. Absent a decertification, change of representation, or a modification, certifications live forever, beyond the working life of the Executive Director, the employer's human resources manager, or the union's organizer. Accordingly, it is of paramount importance that all parties, including this agency, exercise care when defining and agreeing to the composition and description of a bargaining unit.

In the initial phase of processing the underlying representation case, the parties disagreed as to which employees should be included in the proposed unit of clerical and technical employees. The disagreement was resolved by the parties in conjunction with Sally Iverson, the agency's representation coordinator. Hence, the unit was defined generally as "clerical and technical" employees, and further described by listing specific classifications that perform clerical and technical work. Each party had ample opportunity to raise issues during the investigation process. Objections could have been raised concerning the status of individuals or groups and whether they should be included in, or excluded from, the unit. The appropriateness of the unit was wide open for debate.

Instead of initiating any debate, the parties, of their own volition, agreed that an election be conducted in the agreed-upon unit. The interim certification resulted from that election. The parties also agreed that the unit was appropriate and the agency relied in good faith on the parties' representations. It is now disingenuous to claim that the instant proceeding was caused by the agency or its staff when both the employer and the union fully participated in the investigation process that ultimately led to the election in the agreed-upon unit.

Had the parties raised issues, had they not agreed to the unit composition, or had their agreement been facially contrary to statutory requirements or precedent, a hearing would have been held, a

record developed, and the Executive Director would have reached a decision based upon the evidence. No issues were raised by the parties that required a hearing, so no hearing was held and no determination was made by the agency with respect to unit issues such as community of interest. Absent a hearing, the agency must rely on the parties who have access to the facts concerning the employees at issue and the duties they perform.

Issue 1 - Should the Bargaining Unit Retain the Three Reallocated Positions?

Generally, once a bargaining unit is certified, bargaining unit work remains within the bargaining unit. See *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001), which held that work becomes attached to the bargaining unit once the unit is certified. A change in title, or reallocation, does not presumptively or automatically result in an employee's removal from a bargaining unit if the employee continues to perform the same work. Further, needless and unwarranted manipulation of titles and allocations designed to alter the configuration or composition of a bargaining unit will not be accepted. The Commission looks at actual duties to ascertain bargaining unit status. See *Everett Community College*, Decision 10392 (PECB, 2009). While the employer asserts in its brief that the employees at issue performed the duties of Program Coordinators prior to the election and resulting certification of the bargaining unit, it is uncertain if those duties are similar to Secretary Seniors, Office Assistant 2, or other positions in the bargaining unit. The union raises a valid concern that multiple interchangeable titles are used by employees who perform bargaining unit work.

Although the Hearing Officer allowed the parties to present their cases, the record reflects merely their arguments, rather than reliable evidence that could resolve the status of the employees at issue. The union's witnesses included only its field representative, its organizer, and the president of its local chapter. While the latter held a position similar to the program coordinator positions at one time, she did not hold any of the positions at issue. The employer's sole witness was its manager of employment and labor relations who did not offer any dispositive information concerning the duties of the individuals at issue. In fact, no employees or supervisors of employees involved in the matter were called upon to testify or provide evidence concerning their duties.

Because there was no testimony from any of the individuals in question, their supervisors or other employees who are clearly included in the bargaining unit, it cannot be determined whether the positions at issue share a community of interest with clerical and technical employees in the unit, or whether the duties of the positions at issue have changed since the agreed-upon bargaining unit was certified. Therefore, the hearing is remanded to elicit testimony from employees at issue and from employees who are included in the bargaining unit.

Issue 2 - Should the Bargaining Unit be Clarified to Include All Program Coordinators Who Work in the Same Departments as Bargaining Unit Employees?

The union agreed to exclude Program Coordinators from the bargaining unit prior to the election in the underlying representation case.² The union may not now use a limited unit clarification petition to add a group of 20 employees it agreed to exclude from the bargaining unit. Unit clarification proceedings are not intended for use as vehicles for seeking representation of employees that could not be organized. Depending upon the circumstances, such employees may be organized as a separate bargaining unit or added to an existing bargaining unit under WAC 391-25-440. Unit clarifications may be pursued only under the conditions set forth in WAC 391-35-020. Accretions are generally disfavored because they do not allow employees the right to vote for representation. *Kitsap Transit Authority*, Decision 3104 (PECB, 1989).

A unit clarification proceeding may not be used to obtain remedies for alleged unfair labor practices. If the union, as stated by one of its witnesses, believed that the employer “skimmed” bargaining unit work in this matter, it could have filed an unfair labor practice complaint within six months of the alleged removal of bargaining unit work. It is not appropriate, regardless of the outcome of this case, to grant a “remedy” that would add 20 or more positions to the union’s bargaining unit. The purpose of a unit clarification proceeding is to correctly ascertain the placement of particular positions with respect to bargaining units. It would not be appropriate to

2 Although Ms. Liddle, the union’s organizer, was allowed to testify concerning her organizing notes and the sentiments of employees concerning the union, this testimony and exhibit were admitted in error. The desires of employees is not an appropriate subject for litigation and this evidence will not be considered in the final decision. See *Western Washington University*, Decision 9903-A (PSRA, 2007), and *Western Washington University*, Decision 9903-B (PSRA, 2008).

“gift” employees’ collective bargaining rights to a union as a remedy for the employer’s reallocation, even if reallocation is deemed improper.

ORDER

This hearing is remanded to the Hearing Officer for the purpose of developing a record based upon evidence provided, in large part, by employees who occupy the disputed positions and employees who currently occupy positions in the bargaining unit. In developing the record, particular attention should be given to traditional community of interest factors.

ISSUED at Olympia, Washington, this 1st day of September, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Cathleen Callahan".

CATHLEEN CALLAHAN, Executive Director



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The attached document identified as: **DECISION 10215-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

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

CASE NUMBER: 21920-C-08-01382 FILED: 08/14/2008 FILED BY: PARTY 2
DISPUTE: COMMUNITY INT
BAR UNIT: CLERICAL
DETAILS: -
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 22013-C-08-01385 FILED: 10/02/2008 FILED BY: PARTY 2
DISPUTE: MISC CLARIF
BAR UNIT: CLERICAL
DETAILS: WA Sensory Disabilities Services
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