

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petitions of:

STATE – ENTERPRISE SERVICES
(FACILITIES DIVISION)

and

WASHINGTON FEDERATION OF
STATE EMPLOYEES

For clarification of existing bargaining units.

CASE 24598-C-12-1484
DECISION 11665-C - PSRA

CASE 24629-C-12-1494
DECISION 11666-C - PSRA

CASE 24594-C-12-1480
DECISION 11667-C - PSRA

CASE 24599-C-12-1485
DECISION 11668-C - PSRA

CASE 24635-C-12-1499
DECISION 11669-C - PSRA

ORDERS CLARIFYING
BARGAINING UNITS

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.

These matters return to the Executive Director as result of an order issued by the Commission concerning certain employees who were subject to the creation of the Department of Enterprise Services (DES or employer). In *State – Enterprise Services (Facilities Division)*, Decision 11665, new bargaining units were created and certain positions were deemed to be supervisory or non-supervisory and were assigned to existing or potential bargaining units. The employer appealed certain eligibility challenges, and the Commission remanded these matters for additional proceedings on the eligibility issues.

Prior to any additional hearing, the employer and the Washington Federation of State Employees (WFSE) submitted a joint statement of facts asking that the matter to be resolved without the need of a hearing. Specifically, the pending stipulation that Construction Maintenance Superintendent 3 John Wiggins (Wiggins) be included in the Facilities Maintenance & Operations Supervisory bargaining unit and that Administrative Assistant Judy Torfin (Torfin) be included in the Facilities Maintenance & Operations Non-supervisory bargaining unit.

The only issue to be determined is whether the parties' stipulated facts demonstrate that Wiggins belongs in the Facilities Maintenance & Operations Supervisory bargaining unit and whether Torfin belongs in the Facilities Maintenance & Operations Non-supervisory bargaining unit.

Based upon the parties' stipulated facts, Wiggins belongs in the Facilities Maintenance & Operations Supervisory bargaining unit and Torfin belongs in the Facilities Maintenance & Operations Non-supervisory bargaining unit.

BACKGROUND

In 2011, the Legislature created the DES. The legislation that created the agency also provided the parties and this agency a mechanism to review any bargaining unit of employees transferred to DES for the continued appropriateness of each bargaining unit. The WFSE represented multiple bargaining units of employees that were transferred to DES and both the WFSE and the employer petitioned this agency to review those bargaining units.

The bargaining units of employees that transferred to the DES Facilities Division were one group of employees that were the subject of a hearing. Following the hearing, an order was issued creating two new bargaining units and two potential bargaining units of employees within the Facilities Division. *State – Enterprise Services (Facilities Division)*, Decision 11665. The two bargaining units created were a Facilities Maintenance & Operations Non-supervisory bargaining unit and a Facilities Maintenance and Operations Supervisory bargaining unit. The WFSE was certified as the exclusive bargaining representative of these units without the need of an election.

One of the potential bargaining units that could have been created was a Facilities Professional Non-supervisory bargaining unit. The order directed an election for the employees in the Facilities Professional Non-supervisory bargaining unit and the WFSE would appear on the ballot for that election because it had previously represented employees who would be included in that potential bargaining unit.

The other potential bargaining unit that was created consisted of all of the administrative employees within the agency. These employees were spread throughout the DES headquarters, and were not included in any specific division. *See, e.g., State – Enterprise Services (Contracts & Legal Services)*, Decision 11652 (PSRA, 2013).

Prior to the election, the Department of Enterprise Services (employer) filed a timely appeal concerning eligibility of certain employees. The employer challenged the placement of Nick Cockrell (Cockrell) in the proposed Facilities Professional Non-supervisory bargaining unit. Cockrell is included in the employer's Property Management Section and is in the Facility Senior Planner job class. The employer also challenged the placement of Wiggins in the Facilities Maintenance & Operations Non-supervisory bargaining unit.¹ Wiggins oversees the North Cascades Gateway Center and is in the Construction Maintenance Superintendent 3 job class. The Commission affirmed the previous eligibility determinations and dismissed the appeal. *State – Enterprise Services (Facilities Division)*, Decision 11665-A (PSRA, 2013).

The employer then asked the Commission to reconsider its ruling with respect to Cockrell and Wiggins. On reconsideration, the Commission remanded these cases for further proceedings. *State – Enterprise Services (Facilities Division)*, Decision 11665-B (PSRA, 2013).

Hearing Officer Dario de la Rosa contacted the parties to discuss the types of evidence and testimony needed on remand. The parties informed the Hearing Officer that they were discussing a possible settlement. On January 29, 2014, the parties submitted stipulated facts to the agency

¹ The employer also challenged the placement of the Maintenance Superintendent 3 positions who work at the Seattle, Tacoma, Yakima and Kelso facilities in the Facilities Maintenance & Operations Non-supervisory bargaining unit. The employer has subsequently dropped these challenges.

for consideration. The stipulated facts demonstrate that the WFSE is disclaiming any interest in the Facilities Professional Non-supervisory bargaining unit. Because the WFSE has disclaimed interest, the ordered election is not needed and therefore it is no longer necessary to determine Cockrell's supervisory status.

The parties also stipulated that Wiggins meets the RCW 41.80.005(13) statutory requirements to be considered a supervisory employee. The parties' facts state that Wiggins, as the head of the North Cascade Gateway Center, supervises the operation of that facility, including the nine full-time and three part-time trades employees who perform maintenance on that site on a regular and on-going basis. Those employees are included in the Facilities Maintenance & Operations Non-supervisory bargaining unit. *State – Enterprise Services (Facilities Division)*, Decision 11665. The parties also agree that Wiggins is responsible for and has the independent authority to direct all work of the non-supervisory employees, issue oral and written discipline, discipline that could affect pay, evaluate employees, and hiring employees.

Finally, the parties submitted stipulated facts regarding Torfin, the Administrative Assistant at the North Cascade Gateway Center. Torfin's position has not been the subject of the previous appeal and was not a position that was specifically litigated at the first hearing. The parties assert that Torfin is the only administrative assistant employed outside of the agency's headquarters. The parties also stipulate that she regularly interacts with the employees at the North Cascade Gateway Center and her duties are specific to the facility itself. Finally, the parties state that Torfin's position had been included in a WFSE bargaining unit up until the previous order.

DISCUSSION

Applicable Legal Standards

The law and specific legislation that controls the unit determination standards have already been outlined in *State – Enterprise Services (Facilities Division)*, Decision 11665. It is worth mentioning once again that RCW 41.80.070 and the legislation that created DES grant this agency the authority to determine the continued appropriateness of any transferred bargaining unit. Included with this authority is the authority to make supervisory and confidential eligibility

determinations. Because unit determination authority is vested with this agency, any stipulations regarding bargaining units that run counter to the statutory unit determination criteria may not be accepted. *See State – Natural Resources*, Decision 9388-A (PSRA, 2006).

Supervisors –

Chapter 41.80 RCW excludes supervisors from bargaining units containing their subordinates. RCW 41.80.070(1)(a). The purpose behind the exclusion is to limit or prevent conflicts of interest.

When looking at the types of supervisory indicia, it is important to determine whether a disputed individual has independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. *State – Corrections*, Decision 9024-A, *citing Grant County*, Decision 4501 (PECB, 1993). If an employee merely executes the instructions of a higher ranking employee when making meaningful changes to the workplace, that employee has not exercised independent judgment. *See City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006).

Application of Standards

Cockrell –

The WFSE's disclaimer of interest of the employees in the Facilities Professional Non-supervisory bargaining unit is accepted. As such, there is no reason as to determine Cockrell's status.

Wiggins –

The parties' stipulations regarding Wiggins are also accepted. The stipulated facts demonstrate that Wiggins spends a preponderance of his time performing supervisory duties and that Wiggins has the independent authority to make meaningful changes to the non-supervisory employees' working environment.

Torfin –

Although Torfin's position has not been the subject of the previous litigation or appeals, the parties' stipulations nevertheless demonstrate that her position shares a community of interest with

the other non-supervisory employees at the North Cascades Gateway Center. Torfin's position regularly interacts with the other non-supervisory employees at the facility and all of her work supports the North Cascades Gateway Center and the employees at the facility. Torfin's position has little if any interaction with the other administrative employees' at the DES headquarters.

The previous orders directing a bargaining unit of administrative employees at the DES headquarters did so because the facts demonstrated that those employees were a shared resource for all of DES. Torfin's position is not part of that same resource pool. Furthermore, the history of bargaining demonstrates that the WFSE has been able to successfully negotiate on her behalf in a bargaining unit that included the other non-supervisory employees at the North Cascades Gateway Center. Accordingly, the parties' stipulations to include Torfin's position in the Facilities Maintenance & Operations Non-supervisory bargaining unit are accepted.

NOW, THEREFORE, it is

ORDERED

1. The bargaining unit description issued in *State – Enterprise Services (Facilities Division)*, Decision 11668 (PSRA, 2013), is clarified to include the Administrative Assistant position at the North Cascades Gateway Center.
2. The bargaining unit description issued in *State – Enterprise Services (Facilities Division)*, Decision 11669 (PSRA, 2013), is clarified to include the Construction Maintenance Superintendent 3 position at the North Cascades Gateway Center.

ISSUED at Olympia, Washington, this 13th day of March, 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

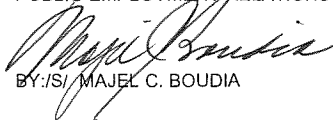
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OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 03/13/2014

The attached document identified as: DECISION 11665-C - 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/ MAJEL C. BOUDIA

CASE NUMBER: 24598-C-12-01484 FILED: 02/24/2012 FILED BY: EMPLOYER
DISPUTE: MISC CLARIF
BAR UNIT: SUPERVISORS
DETAILS: Capital Facilities Supervisors
COMMENTS:

EMPLOYER: STATE - ENTERPRISE SERVICES
ATTN: GLEN CHRISTOPHERSON
210 11TH AVE SW STE 331
OLYMPIA, WA 98504-3113
Ph1: 360-902-7316

REP BY: KARA LARSEN
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4167

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
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PO BOX 7846
OLYMPIA, WA 98507-7846
Ph1: 360-357-7791



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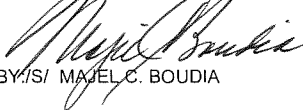
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 24629-C-12-01494 FILED: 03/01/2012 FILED BY: PARTY 2
DISPUTE: MISC CLARIF
BAR UNIT: ALL EMPLOYEES
DETAILS: Facilities
COMMENTS:

EMPLOYER: STATE - ENTERPRISE SERVICES
ATTN: GLEN CHRISTOPHERSON
210 11TH AVE SW STE 331
OLYMPIA, WA 98504-3113
Ph1: 360-902-7316

REP BY: KARA LARSEN
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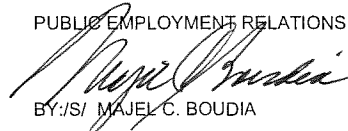
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The attached document identified as: DECISION 11667-C - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 24594-C-12-01480 FILED: 02/24/2012 FILED BY: EMPLOYER
DISPUTE: MISC CLARIF
BAR UNIT: SUPERVISORS
DETAILS: Construction and Maintenance
COMMENTS:

EMPLOYER: STATE - ENTERPRISE SERVICES
ATTN: GLEN CHRISTOPHERSON
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Ph1: 360-902-7316

REP BY: KARA LARSEN
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 24599-C-12-01485 FILED: 02/24/2012 FILED BY: EMPLOYER
DISPUTE: MISC CLARIF
BAR UNIT: CUSTOD/MAINT
DETAILS: Facilities
COMMENTS:

EMPLOYER: STATE - ENTERPRISE SERVICES
ATTN: GLEN CHRISTOPHERSON
210 11TH AVE SW STE 331
OLYMPIA, WA 98504-3113
Ph1: 360-902-7316

REP BY: KARA LARSEN
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 24635-C-12-01499 FILED: 03/02/2012 FILED BY: PARTY 2
DISPUTE: MISC CLARIF
BAR UNIT: SUPERVISORS
DETAILS: Facilities - Supervisors
COMMENTS:

EMPLOYER: STATE - ENTERPRISE SERVICES
ATTN: GLEN CHRISTOPHERSON
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OLYMPIA, WA 98504-3113
Ph1: 360-902-7316

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