

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 – AGRICULTURE

CASE 128230-C-16

DECISION 12627 - PSRA

ORDER CLARIFYING
BARGAINING UNIT

Herb Harris, PERC Specialist, for the Washington Federation of State Employees.

*Ohad M. Lowy, Assistant Attorney General, Attorney General Robert W. Ferguson,
for the Washington State Department of Agriculture.*

The Washington Federation of State Employees (union) is the exclusive bargaining representative of a mixed-class bargaining unit of employees at the Washington State Department of Agriculture (employer). *State – Agriculture, Decision 12375 (PSRA, 2015)*. That bargaining unit currently includes full-time employees performing Brand Inspector and Brand Clerk work.¹ The employer's non-permanent Brand Inspectors and Brand Clerks have historically been excluded from the bargaining unit.

On June 6, 2016, the union filed a unit clarification petition under Chapter 391-35 WAC requesting that the non-permanent Brand Inspectors and Brand Clerks be included in the bargaining unit. On September 16, 2016, Hearing Officer Dario de la Rosa conducted a prehearing conference to determine if the parties would stipulate to certain matters and resolve the matter without the need for a hearing. The parties agreed that, consistent with WAC 391-35-356, the non-permanent Brand Inspectors and Brand Clerks who perform the same work as the full-time employees in the existing bargaining unit should also be included in that unit. On October 7, 2016, the Hearing Officer issued a statement of results detailing the stipulations made during the prehearing

¹ The Brand Inspectors are in the Brand Inspector job class. The Brand Clerks are in the Office Assistant job class.

conference and providing a 14-day period to file objections to those results. No objections to the statement of results were filed. Based upon the stipulations of the parties, it is appropriate to clarify the bargaining unit at issue in this matter.

DISCUSSION

Applicable Legal Standards

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 a group of unrepresented employees logically belongs in only one existing bargaining unit and the positions can neither stand alone in a separate bargaining unit nor logically be placed in another unit configuration. *Pierce County, Decision 6051-A (PECB, 1998), citing City of Auburn, Decision 4880-A (PECB, 1995)*. Under those circumstances, the employees will be added or accreted to the existing bargaining unit without a vote of the employees. 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*.

Application of Standards

The non-permanent Brand Inspectors and Brand Clerks are added to the union’s mixed-class bargaining unit without the need for an election. These positions logically belong in the bargaining unit because work jurisdiction issues would be created if they were either allowed to remain unrepresented or placed in another bargaining unit. Including these positions in the

bargaining unit will not raise questions concerning representation, as there are approximately 370 employees in the bargaining unit but only 14 historically excluded non-permanent positions.

FINDINGS OF FACT

1. The Washington State Department of Agriculture is a public employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (union) is a bargaining representative within the meaning of RCW 41.80.005(7).
3. The union represents a bargaining unit of employees in the employer's workforce that is currently described as follows:

All non-supervisory employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW employed by the Washington State Department of Agriculture in the Grain Branch of the Grain and Chemical Division, the Fruit and Vegetable Inspection Program, the following classifications in the Commission Merchants Program, Livestock Identification Program, and Weights and Measures Program: Administrative Assistant 1, 2, 3, 4; Brand Control Specialists; Brand Inspectors (excluding temporary Brand Inspectors); Commission Merchant Investigators 1 and 2; Office Assistants (excluding temporary Office Assistant 2 - Brand Clerks); Secretary Seniors; Weights and Measures Supervisors; and Weights and Measures Inspectors, and all employees in the Plant Services Program, excluding the Plant Protection Program Manager; Plant Certification Program Manager; Plant Pathology Program Manager; Plant Services Field Supervisor; Plant Services Inspector 3; Entomologist, Chief; Weed Specialist 2; Seed Analysis Laboratory Supervisor; Seed Inspection Supervisor; Administrative Assistant 3 (only that position that functions as the principal assistant to the Assistant Director of Plant Services), and excluding supervisors, confidential employees, Washington Management Service employees, and all other employees.

4. On June 6, 2016, the union filed a unit clarification petition to include the non-permanent Brand Inspectors and Brand Clerks in the existing bargaining unit described in Finding of Fact 3.

5. On September 16, 2016, the parties agreed that, consistent with WAC 391-35-356, the non-permanent Brand Inspectors and Brand Clerks who perform the same work as the full-time employees in the existing bargaining unit should also be included in that unit.
6. On October 7, 2016, a statement of results was sent to the parties detailing the stipulations made during the September 16, 2016, prehearing conference. The parties had 14 days to file objections to those results. No objections to the statement of results were filed.
7. The petition did not raise questions concerning representation.
8. The parties waived their right to a hearing under Chapter 391-35 WAC.
9. The parties waived their right to appeal under WAC 391-35-210.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-35 WAC.
2. The bargaining unit described in Finding of Fact 3 is an appropriate bargaining unit under RCW 41.80.070.

ORDER

The bargaining unit described in Finding of Fact 3 shall be clarified to include the non-permanent Brand Inspectors and Brand Clerks. The unit description shall be modified as follows:

All non-supervisory employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW employed by the Washington State Department of Agriculture in the Grain Branch of the Grain and Chemical Division, the Fruit and Vegetable Inspection Program, the following classifications in the Commission Merchants Program, Livestock Identification Program, and Weights and Measures Program: Administrative Assistant 1, 2, 3, 4; Brand Control Specialists; Brand Inspectors;

Commission Merchant Investigators 1 and 2; Office Assistants; Secretary Seniors; Weights and Measures Supervisors; and Weights and Measures Inspectors, and all employees in the Plant Services Program, excluding the Plant Protection Program Manager; Plant Certification Program Manager; Plant Pathology Program Manager; Plant Services Field Supervisor; Plant Services Inspector 3; Entomologist, Chief; Weed Specialist 2; Seed Analysis Laboratory Supervisor; Seed Inspection Supervisor; Administrative Assistant 3 (only that position that functions as the principal assistant to the Assistant Director of Plant Services), and excluding supervisors, confidential employees, Washington Management Service employees, and all other employees.

ISSUED at Olympia, Washington, this 31st day of October, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'M. Sellars', written over a horizontal line.

MICHAEL P. SELLARS, Executive Director



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DECISION 12627 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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