

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 25629-C-13
DECISION 12650 - PSRA

CASE 27038-C-15
DECISION 12651 - PECB

ORDER CLARIFYING
BARGAINING UNIT

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On May 16, 2013, Public School Employees of Washington (union) filed a unit clarification petition concerning the unit placement of one Procurement and Supply Specialist 1 (Supply Specialist) position working in the Central Washington University's (employer) Facilities Management Department. Case 25629-C-13. The at-issue position was originally in the Program Assistant job class and included in the union's bargaining unit, Bargaining Unit 4. *Central Washington University*, Decision 10215-B (PSRA, 2010). Bargaining Unit 4 is a mixed-class bargaining unit whose inclusions and exclusions are described by job class and department.

In March 2013, the employer informed the union that it intended on reallocating the Program Assistant position to the Supply Specialist job class. The employer also informed the union that it intended on removing the position from the bargaining unit since the Supply Specialist job class had historically been excluded from Bargaining Unit 4. The union claimed that although the position's job title changed, the position's duties did not and the position still belonged in Bargaining Unit 4. Although a hearing was scheduled for this matter, the parties agreed to postpone the hearing to engage in discussions concerning the disputed position.

On February, 24, 2015, the union filed a second unit clarification petition concerning a second position in Bargaining Unit 4. Case 27038-C-15. The second petition concerned an employee in the Secretary Senior job class that was reallocated to the Secretary Supervisor job class. When the position was reallocated, the employer once again informed the union it was going to remove the position from the bargaining unit since the Secretary Supervisor job class had historically been excluded from Bargaining Unit 4. The union once again claimed that although the position's job title changed, the duties did not and the position still belonged in Bargaining Unit 4. The parties agreed to include this position as a subject in its discussions.

The parties ultimately concluded that the current bargaining unit structure and description for Bargaining Unit 4 was difficult to manage due to the changing nature of the positions as well as the University's workforce needs. The parties jointly presented a stipulated plan to the Executive Director to restructure and redefine the bargaining unit. The parties suggest defining the bargaining unit by the clerical and technical work functions, as opposed to job class to minimize issues when positions are reallocated to a new job class. They also agreed that the bargaining unit will be limited to a single division, Academic Affairs, to ensure that the all of the employees shared a common line of supervision. To accomplish the parties' plan, 12 unrepresented positions in the Academic Affairs Division would be added to the bargaining unit of 93 employees while 11 represented position in the Facilities Management and Student Financial Affairs Departments of the Business and Financial Affairs Division would be removed from the bargaining unit and made unrepresented. The resulting bargaining unit would ensure that all bargaining unit members perform the same kinds of work and share a common line of supervision.

The parties' stipulations to restructure and redefine the bargaining unit are accepted. The restructured bargaining unit is an appropriate bargaining unit under RCW 41.80.070. Additionally, the parties have presented credible arguments that restructuring and redefining the bargaining unit will minimize disruptions to bargaining unit structure in the future. The 12 unrepresented positions in the Academic Affairs Division would be added to the existing bargaining unit without the need of an election. Additionally, the 11 represented positions in the Facilities Management and Student Financial Affairs Departments of the Business and Financial

Affairs Division will be removed from the bargaining unit. Finally, the bargaining unit will be redefined by work functions within the Academic Affairs Division.

BACKGROUND

This agency certified the union's Bargaining Unit 4 as appropriate in 2008 based upon the stipulations of the parties. *Central Washington University, Decision 9963 (PSRA, 2008)*. The bargaining unit was described, in part, as follows:

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[.]

Although this part of the unit description identifies employees performing clerical or technical work in the various departments as being included in the bargaining unit, the unit description also explicitly lists specific job classes that are included in the bargaining unit. The definition also excludes specific job classes that perform clerical or technical work from the bargaining unit. The description of the bargaining unit by general work function was negated by listing the specific job classes to be included.

In 2010, the employer made a personnel decision that exposed problems with the existing bargaining unit description and structure. The employer decided to reallocate three bargaining unit positions, two positions in the Secretary Senior job class and one position in the Office Assistant job class, to the Program Manager job class. Because the Program Manager job class was a job classification that was specifically excluded from the bargaining unit, the employer removed the positions from the bargaining unit.

In 2010, the employer reallocated three bargaining unit positions to new job classes that were not listed on the bargaining unit description and informed the union that those position were being

removed from the bargaining unit. Shortly thereafter, the union filed a petition asking for clarification of the bargaining unit status of the three positions. The union asserted that the positions should remain in the bargaining unit because the actual duties of the three positions had not changed regardless of the reallocation to a job class that was excluded from the unit and therefore the positions should remain in the bargaining unit. The employer asserted that it exercised its authority to reallocate the positions to the program coordinator job class to more accurately reflect the work being performed by the employees. The employer also asserted that the positions had been performing program coordinator work at the time the unit was certified and should have been excluded at that time.

The Executive Director issued an order returning the positions to the bargaining unit. *Central Washington University*, Decision 10215-B. In reaching that conclusion, the Executive Director first held that the parties agreed to include the disputed positions in the bargaining unit when that unit was created, and therefore the positions work became bargaining unit work. *Id.* The Executive Director then held that an employer's authority to reallocate a position to a new job class does not at the same time allow that employer to unilaterally alter the structure of a bargaining unit based upon the personnel action. *Id.* Absent a change in circumstance, the mere act of reallocating a position to a new job class did not allow the employer to exclude the positions from the bargaining unit based on mere title changes. *Id.* Although the Executive Director ordered the disputed positions returned to the bargaining unit, the Executive Director declined to redefine the bargaining unit description. *Id.*

Subsequently, the parties continued to experience problems concerning bargaining unit positions that had recently been reallocated, including the two situations that gave rise to the instant proceeding.

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”).

Defining Bargaining Units –

A bargaining unit description defines the employees that are included or excluded from the bargaining unit and ensures that the duty to bargain is enforced if an attempt is made to transfer that work outside of the bargaining unit. *University of Washington, Decision 8392 (PSRA, 2004)*. No hard-and-fast rule exists proscribing how bargaining units should be described. New bargaining units are often described by the work performed by the employees in the unit, as opposed to the job classes within that unit because the use of generic terms avoids the need to revisit and revise the bargaining unit description should a job title be changed or a new job title added within the occupational type. *University of Washington, Decision 8392*.

Defining the bargaining unit by work is not always possible where employers are larger and include multiple divisions or work groups, where similar duties are performed by several groups of employees, and where one or more unions represent employees performing the same or similar functions in different bargaining units. *Central Washington University, Decision 10215-A (PSRA, 2009), aff'd, Decision 10215-B*. A different type of bargaining unit description may be necessary and appropriate. This is especially true of employers under the jurisdiction of Chapter 41.80 RCW. *University of Washington, Decision 11883 (PSRA, 2013)*. Each unit is examined individually and based upon the factual situation presented. Bargaining units will be described in a manner that provides the parties with a clear understanding of which employees are included in the bargaining unit.

A bargaining representative that represents more than one bargaining unit of state employees may petition this agency to merge those bargaining units into a single unit. RCW 41.80.070(3). If the resulting bargaining unit is appropriate, then this agency shall certify the petitioner as the

exclusive representative of the merged unit.

Accretions –

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 unrepresented employees logically belong in only one existing bargaining unit and the positions can neither stand on their own as a separate unit or be logically accreted to any other existing bargaining unit. *Pierce County*, Decision 6051-A (PECB, 1998), *citing City of Auburn*, Decision 4880-A (PECB, 1995). The employees will be placed in the existing bargaining unit without the benefit of being able to vote on representation. 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

In order to minimize future impacts on the bargaining unit, the parties suggest that the existing bargaining unit be restructured into a bargaining unit of clerical and technical employees working in the employer's Academic Affairs Division which report up through the University Provost. This new structure would include employees in the Department of Library, Testing and Assessment, International Studies, Career Services, College of Professional Studies, College of Sciences, College of Arts & Humanities, College of Business, and the William Douglas Honors College. This new structure would remove 11 bargaining unit employees in the Facilities Management and Student Services Departments from the bargaining unit because those employees do not report to the University Provost and have a different line of supervision. This change places all bargaining unit members under a common line of supervision.

The parties also suggest that the bargaining unit be redefined and described by the clerical and technical work performed by the employees and that all references to job titles be eliminated from the unit description. Removing reference to the specific job classifications and describing the bargaining unit by the work performed by the employees provides more certainty to a position's

bargaining unit status if the employer reallocates the position to a different job class or makes other necessary and lawful employment actions. Twelve clerical and technical employees working in the Academic Affairs Division would be added to the bargaining unit to properly capture all of the clerical and technical employees in that division. The parties agree that the 12 clerical and technical employees in the Academic Affairs Division share a community of interest only with the union's bargaining unit because all of those employees share common duties, working conditions, and supervision. The parties also agree that to exclude those employees from the bargaining unit would fragment the employer's workforce and create work jurisdiction issues because it would potentially allow for some, but not all, of the clerical and technical employees in the Academic Affairs Department to be in different bargaining units.

The parties request to redefine the bargaining unit by the work performed by the bargaining unit employees and can only be granted if the resulting unit is described in a manner that is clear and unambiguous so the parties and the affected employees understand who is included and excluded from the bargaining unit. *University of Washington*, Decision 10496-A (PSRA, 2011). While this agency historically uses generic work descriptions to describe bargaining units, instances occur where defining the bargaining unit by work is not always possible and this agency must resort to defining the bargaining unit by job class. *Cf. City of Milton*, Decision 5202-B (PECB, 1995) (discussing the hazards of describing work by job titles) and *Central Washington University*, Decision 10215-A (PSRA, 2009) (discussing defining bargaining unit by job titles). This is particularly true for larger employers that 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. *Central Washington University*, Decision 10215-A. However, the risk in doing so is that knowing who is and is not in a bargaining unit becomes an issue should those positions change title or job class.

Bargaining Unit 4 was described by job class in order to accurately capture the employees included in the bargaining unit. Although the bargaining unit was deemed appropriate at the time of its creation, the continued appropriateness is now questionable based upon the issues that have arisen whenever the employer makes an employment action, such as the reallocation of a position to a

new job class. Additionally, all of the bargaining unit employees are included in the Academic Affairs Division and report up through the University Provost except for the 11 positions in the Facilities Management and Student Services Departments, which are part of the Business and Financial Affairs Division. Removing the Facilities Management and Student Services Departments preserves the vertical structure of the bargaining unit and ensures the units continued appropriateness under the statute.

The parties request to redefine and restructure the bargaining unit as explained above is granted, including its request to add the historically excluded clerical and technical positions in the Academic Affairs Division to the unit without the need of an election. The union's bargaining unit currently includes 93 positions, but 11 of those positions would be removed if the Facilities Management and Student Services Departments were removed from the bargaining unit structure. Including the historically unrepresented positions in the redefined bargaining unit will not create a question concerning representation, as there are approximately 82 employees in the bargaining unit but only 12 historically excluded permanent positions will be added.

FINDINGS OF FACT

1. Central Washington University is an employer within the meaning of RCW 41.80.005(8).
2. Public School Employees of Washington (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. Since 2008, the union has represented a bargaining unit of clerical and technical employees. The bargaining unit currently contains approximately 93 employees and is described as follows:

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.

4. In 2010, the employer made a personnel decision that exposed problems with the existing bargaining unit description and structure. The employer decided to reallocate three bargaining unit positions, two positions in the Secretary Senior job class and one position in the Office Assistant job class, to the Program Manager job class. Because the Program Manager job class was a job classification that was specifically excluded from the bargaining unit, the employer removed the positions from the bargaining unit.

5. The union filed a petition asking for clarification of the bargaining unit status of the three positions. The union asserted that, even if the positions had been reallocated to a job class that was excluded from the bargaining unit, the actual duties of the three positions had not changed and therefore the positions should remain in the bargaining unit. The employer asserted that it exercised its authority to reallocate the positions to the Program Coordinator job class to more accurately reflect the work being performed by the employees. The Executive Director issued an order returning the positions to the bargaining unit.

6. In March 2013, the employer provided the union notice that it intended on reallocating a position to the Supply Specialist job class. The employer also informed the union that it intended on removing the position from the bargaining unit since the Supply Specialist job class has historically been excluded from Bargaining Unit 4. The union claimed that although the position's job title changed the duties did not and the position still belonged in Bargaining Unit 4. Although a hearing was scheduled for this matter, the parties agreed to postpone the hearing to engage in settlement talks concerning the disputed position.

7. On February, 24, 2015, the union filed a second unit clarification petition concerning a second position in Bargaining Unit 4. Case 27038-C-15. The second petition concerned the placement of a position in the Secretary Senior job class that was reallocated to the Secretary Supervisor job class. When the position was reallocated to the new job class, the employer informed the union it was going to remove the position from the bargaining unit since the Secretary Supervisor job class has historically been excluded from Bargaining Unit 4. The union once again claimed that although the position's job title changed the duties did not and the position still belonged in Bargaining Unit 4. The parties agreed to include this position as a subject for the settlement talks.

8. The parties jointly presented a stipulated plan to the Executive Director to restructure and redefine the bargaining unit. The parties suggest defining the bargaining unit by the clerical and technical work functions, as opposed to job class to minimize issues when positions are reallocated to a new job class. They also agree that the bargaining unit will be limited to a single division,

Academic Affairs.

9. To accomplish the parties' plan described in Findings of Fact 8, 12 unrepresented clerical and technical positions in the Academic Affairs Division would be added to the bargaining unit of 82 employees. These 12 positions share a community of interest with the bargaining unit described in Findings of Fact 3.

10. To accomplish the parties' plan described in Findings of Fact 8, 11 represented positions in the Facilities Management and Student Financial Affairs Departments would be removed from the bargaining unit and made unrepresented.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-25 WAC.

2. Based upon Findings of Fact 4 through 8, the bargaining units described in Findings of Fact 3 should be restructured and redefined to include only those clerical and technical positions in the Academic Affairs Division that report up through the University Provost in order to remain an appropriate bargaining unit under RCW 41.80.070.

ORDER

1. The bargaining units described in Findings of Fact 3 is restructured and redefined to bargaining unit described as follows:

All full-time and regular part-time employees performing clerical or technical work employed by Central Washington University within the Departments of Library, Testing Services, Office of International Studies and Programs, Career Services, College of Education and Professional Studies, College of the Sciences, College of Arts & Humanities, College of Business, Academic Achievement Programs, College Assistance Migrant

Program (CAMP), Washington Sensory Disability Services, and William Douglas Honors College and the School of Graduate Studies and Research Studies.

Excluding: Employees assigned to the Dean’s office, supervisors, confidential employees, exempt employees, information technology employees, and all other employees of the employer.

2. The 12 historically unrepresented clerical and technical employees described in Findings of Fact 8 are added to the bargaining unit described in paragraph 1 of this order without the need of an election.

3. The 11 historically represented employees in the Facilities Management and Student Financial Services Departments described in Findings of Fact 8 are removed from the bargaining unit without the need of an election and are now unrepresented employees.

ISSUED at Olympia, Washington, this 11th day of January, 2017.

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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DECISION 12650 – PSRA AND 12651 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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