

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE NURSES
ASSOCIATION

For clarification of an existing bargaining
unit of employees of:

UNIVERSITY OF WASHINGTON

CASE 129505-C-17

DECISION 12810 - PSRA

ORDER CLARIFYING BARGAINING
UNIT

Timothy Sears, General Counsel, for the Washington State Nurses Association.

Robert W. Kosin, Assistant Attorney General, Attorney General Robert W. Ferguson, for the University of Washington.

On July 3, 2017, the Washington State Nurses Association (union) filed a unit clarification petition seeking to include approximately 140 per diem Registered Nurses at the University of Washington Medical Center (employer) to its full-time and regular part-time Registered Nurses bargaining unit. The per diem Registered Nurses have historically been excluded from the bargaining unit.

The petition is granted. It is presumptively appropriate to include the per diem Registered Nurses who work more than 350 hours in a year in its bargaining unit because those employees share a community of interest with the employees in the bargaining unit. Accreting these employees into the existing bargaining unit is required because these employees logically belong only in this bargaining unit and cannot stand alone in a separate bargaining unit.

BACKGROUND

The union represents a bargaining unit of nurses working at the University of Washington Medical Center. The bargaining unit was created in 1969 and originally included employees in the Resident Staff Nurse, Staff Nurse, Specialist Nurse, Team Leader Nurse, Assistant Head Nurse, Head Nurse I, and Head Nurse II job classes. HEPB-RM #75 (1982). The Higher Education Personnel Board modified the bargaining unit in 1975 to add the employees in the Resident Nurse Practitioner, Nurse Practitioner I, Nurse Practitioner II, Nurse Practitioner III, Nurse Coordinator I,

and Nurse Coordinator II job classes. *Id.* The board modified the bargaining unit again in 1982 to remove the Nurse Coordinator I and Nurse Coordinator II job classes. *Id.* The board never discussed the status of the per diem employees in the job classes included in the bargaining unit.

The bargaining unit contains all full-time and most part-time nurses. According to the parties' 2013-2015 collective bargaining agreement, those nurses are considered classified staff nurses. The full-time nurses are regularly scheduled to work 40 hours in a seven-day period, 80 hours in a fourteen-day period, or 160 hours in a four-week period. The part-time nurses are regularly scheduled to work a minimum of 20 hours in a seven-day period, 40 hours in a fourteen-day period, or 80 hours in a four-week period.

Per diem Registered nurses are those nurses who are not scheduled on regular part-time basis. Approximately 140 per diem Registered Nurses work at least 350 hours in a calendar year. Per diem Registered Nurses perform the same duties as the full-time and regular part-time Registered Nurses. All per diem Registered Nurses have been historically excluded from the bargaining unit. The collective bargaining agreement specifically states that per diem nurses are not considered classified staff nurses but rather temporary employees who are not covered by the terms of the agreement. The employer provides the union with quarterly reports on the use of per diem nurses as well as the number of hours worked by per diem nurses.

During April 2017, the union and employer were engaged in negotiations for a successor agreement to the parties' expired 2015-2017 agreement. On April 7, 2017, union Labor Representative Linda Machia sent a letter to the employer proposing that the per diem Registered Nurses who work at least 350 hours a year be included in the bargaining unit. The parties were unable to reach an agreement on that issue. The union filed the instant petition on July 3, 2017. The employer does not contest the union's assertion that the union placed the employer on notice of the issue during negotiations.

ANALYSIS

Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the Legislature. RCW 41.80.070. The goal in making unit determinations is to group together

employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Central Washington University*, Decision 9963-B (PSRA, 2010); *Quincy School District*, Decision 3962-A (PECB, 1993).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of Chapter 391-35 WAC. The general purpose of the unit clarification process is to provide this agency as well as the parties to a collective bargaining relationship a mechanism to make changes to an existing bargaining unit based upon a change in circumstances to ensure its continued appropriateness. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

Because unit clarifications alter the composition of bargaining units and in order to maintain stability in the bargaining units, the Commission adopted WAC 391-35-020 to govern the time frames in which unit clarification petitions may be filed. The time frames vary depending on the nature of the positions at issue and whether the petitioning party is attempting to include or exclude those positions in or from an existing bargaining unit.

Petitions concerning confidential employees may be filed at any time because such employees are precluded from collective bargaining, and whether those employees enjoy collective bargaining rights is jurisdictional. WAC 391-35-020(1)(e); *see also North Franklin School District*, Decision 5888 (PECB, 1997). Similarly, a petition to add positions to a bargaining unit that is the only appropriate unit may be filed at any time. WAC 391-35-020(4)(b).

With respect to petitions concerning the supervisory or part-time status of employees, the timeliness standards impose more restrictions. WAC 391-35-020(2). In order to challenge the status of a supervisory or part-time position, the petitioning party must have placed the other party "on notice *during negotiations* that it would contest the inclusion or exclusion of the position or class" of employees. WAC 391-35-020(2)(a) (emphasis added). The petitioning party also must have filed its unit clarification petition prior to signing the current collective bargaining agreement.

Id.; *State – Agriculture*, Decision 12564 (PSRA, 2016). The purpose of these requirements is to encourage free and open communication between the parties at the bargaining table, respect their contractual arrangements, and avoid the destabilizing effects of one party attempting to obtain a unit clarification ruling that upsets bargaining unit agreements. *Mason County*, Decision 9914 (PECB, 2007), *citing Yakima School District*, Decision 9020-A (PECB, 2007).

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 union's request to include the per diem Registered Nurses who work at least 350 hours in a calendar year is granted. It is presumptively appropriate to include per diem state civil service employees at the state's higher education who work at least 350 hours a year in the same bargaining units as their full-time counterparts. WAC 391-35-350 and WAC 357-04-045; see also *University of Washington*, Decision 9398 (PSRA, 2006) and *University of Washington*, Decision 10337 (PSRA, 2009). The per diem Registered Nurses must be included in the union's Registered Nurses 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 1700 employees in the bargaining unit but only 140 historically excluded non-permanent positions. Finally, the employer's argument that the per diem employees should be allowed to vote on representation is not supported by the statutory scheme which requires this agency to ensure that bargaining units remain appropriate.

FINDINGS OF FACT

1. The University of Washington (employer) is an employer within the meaning of RCW 41.80.005(10).
2. The Washington State Nurses Association (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents a bargaining unit that consists of the approximately 1400 Registered Nurses working at the University of Washington Medical Center. According to the parties' 2013-2015 collective bargaining agreement, those nurses are considered classified staff nurses. The full-time nurses are regularly scheduled to work 40 hours in a seven-day period, 80 hours in a fourteen-day period, or 160 hours in a four-week period. The part-time nurses are regularly scheduled to work a minimum of 20 hours in a seven-day period, 40 hours in a fourteen-day period, or 80 hours in a four-week period.
4. Per diem Registered nurses are those nurses who are not scheduled on regular part-time basis. Per Diem Registered Nurses perform the same duties as the full-time and regular part-time Registered Nurses. Approximately 140 per diem Registered Nurses work at least 350 hours in a calendar year. All per diem Registered Nurses have been historically excluded from the bargaining unit. The collective bargaining agreement specifically states that per diem nurses are not considered classified staff nurses but rather temporary employees who are not covered by the terms of the agreement. The employer provides the union with quarterly reports on the use of per diem nurses as well as the number of hours worked by per diem nurses.
5. During April 2017, the union and employer were engaged in negotiations for a successor agreement to the parties' expired 2015-2017 agreement. On April 7, 2017, union Labor Representative Linda Machia sent a letter to the employer proposing that the per diem Registered Nurses who work at least 350 hours a year be included in the bargaining unit. The parties were unable to reach an agreement on that issue. The union filed the instant

petition on July 3, 2017. The employer does not contest the union's assertion that the union placed the employer on notice of the issue during negotiations.

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 per diem nurses described in Finding of Fact 4 only share a community of interest with bargaining unit described in Finding of Fact 3.

ORDER

The bargaining unit described in Finding of Fact 3 shall be clarified to include the per diem Registered Nurses at the University of Washington Medical Center that work at least 350 hours per year.

ISSUED at Olympia, Washington, this 29th day of December, 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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RECORD OF SERVICE - ISSUED 12/29/2017

DECISION 12810 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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