

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

WASHINGTON STATE DEPARTMENT  
OF FISH AND WILDLIFE

and

WASHINGTON ASSOCIATION OF FISH  
AND WILDLIFE PROFESSIONALS

For clarification of an existing  
bargaining unit.

CASE 131166-C-18

DECISION 12992 - PSRA

ORDER CLARIFYING  
BARGAINING UNIT

*Rhonda J. Fenrich*, Attorney at Law, Fenrich & Gallagher, P.C., for the Washington Association of Fish and Wildlife Professionals.

*Scott Lyders*, Labor Negotiator, for the Washington State Department of Fish and Wildlife.

On December 4, 2018, the Washington State Department of Fish and Wildlife (employer) and the Washington Association of Fish and Wildlife Professionals (union) jointly filed a petition to include the newly created natural resource worker 1 and 2 positions into an existing bargaining unit represented by the union. The current bargaining unit includes positions engaged in resource management activities through data collection.

The parties' joint request to modify the bargaining unit is granted. Adding the natural resource worker 1 and 2 positions to the existing bargaining unit would create an appropriate bargaining unit because the positions have a community of interest with the existing bargaining unit employees. Additionally, including them in the unit would avoid future potential work jurisdiction disputes.

ANALYSISCommunity of Interest*Applicable Legal Standard*

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The goal in making bargaining 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. *Quincy School District*, Decision 3962-A (PECB, 1993). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

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 appropriate bargaining unit based upon a change of circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units). Unit clarification proceedings can be used to determine the bargaining unit placement of newly-created positions. WAC 391-35-020(1)(a).

In making bargaining unit determinations, the Commission considers "the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees." RCW 41.56.060(1). The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors

will arise in every case and any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d 435 (1984).

An accretion may be ordered when changed circumstances lead to the existence of positions that logically belong only in one existing bargaining unit. *Id.*; *City of Auburn*, Decision 4880-A (PECB, 1995). In order for an accretion to be directed, the resulting unit must be appropriate. *Pierce County*, Decision 6051-A (PECB, 1998). An accretion will be denied if the positions could stand on their own as a separate bargaining unit or could appropriately be placed in any other bargaining unit. *City of Auburn*, Decision 4880-A. An accretion cannot be ordered where the number of employees to be added to the bargaining unit is so large as to call into question the union's majority status in the enlarged unit. *Port of Seattle*, Decision 11131 (PORT, 2011). The party proposing accretion bears the burden of demonstrating that conditions for accretion are present. *State – Enterprise Services (Contracts & Legal Services)*, Decision 11652-A (PSRA, 2013); *City of Auburn*, Decision 4880-A.

#### *Application of Standard*

The employer staffs check stations to look for aquatic invasive species (AIS) on boats and other watercraft in an effort to prevent the introduction of AIS in the waterways of Washington state. Nonpermanent scientific technicians were employed to conduct the AIS check station work. The employer created these positions each year on an as-needed basis and abolished them at the end of the check period. The union represented the nonpermanent scientific technicians who have performed the AIS check station work.

The employer recently created new nonpermanent natural resource worker 1 and 2 positions to replace the abolished scientific technician positions. The assigned duties, skills, and working conditions of the natural resource worker 1 and 2 positions are sufficiently similar to the employees in the existing bargaining unit. Similar to the other employees in the bargaining unit, the main duties for the natural resource worker 1 and 2 positions include inspecting recreational and commercial watercraft and mandatory check station operations; watercraft decontamination; and maintenance of equipment, stations, and facilities. Additionally, the natural resource worker 1

and 2 positions will be involved in resource management activities by gathering AIS data through check station inspections. Finally, the primary work location for the natural resource worker 1 and 2 positions is in the watercraft inspection stations.

In addition to similar duties, skills, and working conditions, bargaining unit employees have historically performed some of the work of the natural resource worker 1 and 2 positions. In the past, the now abolished scientific technician 1 and 2 positions performed the AIS work. The scientific technician 1 and 2 positions were represented by the union. The scientific technician 1 and 2 positions did not perform the maintenance of equipment, stations, and facilities work. This maintenance work was added when the employer created the natural resource worker 1 and 2 positions. While the maintenance work is new work added to the position, the maintenance work is similar in nature to work performed by other positions within the bargaining unit.

Finally, the extent of organization supports including the natural resource worker 1 and 2 positions within the existing bargaining unit. The natural resource worker 1 and 2 positions report to the natural resource technician 2 position. The natural resource technician 2 position functions as a first-line supervisor and is a single nine-month nonpermanent position. The natural resource technician 2 position is already represented by the union. Similar to the natural resource worker 1 and 2 positions, the natural resource technician 2 position acts as a lead employee, oversees documenting the inspection and assists with identification of AIS on watercraft, performs advanced watercraft decontaminations, and provides oversight on basic decontamination.

Based on the duties, skills, working conditions; the historical performance of work; and the extent of organization, the natural resource worker 1 and 2 positions have a community of interest with the existing bargaining unit.

#### FINDINGS OF FACT

1. The Washington State Department of Fish and Wildlife (employer) is a public employer within the meaning of RCW 41.80.005(8).

2. The Washington Association of Fish and Wildlife Professionals (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents positions that are involved in resource management activities through data collection.
4. The employer staffs check stations to look for aquatic invasive species (AIS) on boats and other watercraft in an effort to prevent the introduction of AIS in the waterways of Washington state. Nonpermanent scientific technicians were employed to conduct the AIS check station work. The employer created these positions each year on an as-needed basis and abolished them at the end of the check period. The union represented the nonpermanent scientific technicians who have performed the AIS check station work.
5. The employer recently created new nonpermanent natural resource worker 1 and 2 positions to replace the abolished scientific technician positions. The assigned duties, skills, and working conditions of the natural resource worker 1 and 2 positions are sufficiently similar to the employees in the existing bargaining unit. Similar to the other employees in the bargaining unit, the main duties for the natural resource worker 1 and 2 positions include inspecting recreational and commercial watercraft and mandatory check station operations; watercraft decontamination; and maintenance of equipment, stations, and facilities. Additionally, the natural resource worker 1 and 2 positions will be involved in resource management activities by gathering AIS data through check station inspections. Finally, the primary work location for the natural resource worker 1 and 2 positions is in the watercraft inspection stations.
6. In addition to similar duties, skills, and working conditions, bargaining unit employees have historically performed some of the work of the natural resource worker 1 and 2 positions. In the past, the now abolished scientific technician 1 and 2 positions performed the AIS work. The scientific technician 1 and 2 positions were represented by the union. The scientific technician 1 and 2 positions did not perform the maintenance of equipment, stations, and facilities work. This maintenance work was added when the employer

created the natural resource worker 1 and 2 positions. While the maintenance work is new work added to the position, the maintenance work is similar in nature to work performed by other positions within the bargaining unit.

7. Finally, the extent of organization supports including the natural resource worker 1 and 2 positions within the existing bargaining unit. The natural resource worker 1 and 2 positions report to the natural resource technician 2 position. The natural resource technician 2 position functions as a first-line supervisor and is a single nine-month nonpermanent position. The natural resource technician 2 position is already represented by the union. Similar to the natural resource worker 1 and 2 positions, the natural resource technician 2 position acts as a lead employee, oversees documenting the inspection and assists with identification of AIS on watercraft, performs advanced watercraft decontaminations, and provides oversight on basic decontamination.

#### 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. Based upon findings of fact 4 through 7, including the natural resource worker 1 and 2 positions within the existing bargaining unit is appropriate under Chapter 41.80 RCW.

#### ORDER

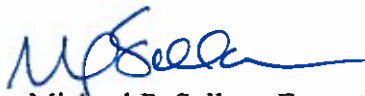
The natural resource worker 1 and 2 positions are added to the existing bargaining unit. The bargaining unit shall be redefined as follows:

All non-supervisory civil service employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW who are employed by the Department of Fish and Wildlife and who are engaged in fish, wildlife and habitat sciences and resource management activities, including information technology positions that gather, interpret and

analyze biological and resource management data, excluding confidential employees, supervisors, internal auditor, Washington Management Services employees, Wildlife Area Managers and Assistant Managers, Maintenance Mechanics, employees in other bargaining units, and all other employees.

ISSUED at Olympia, Washington, this 24th day of April, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "M. Sellars", with a long horizontal flourish extending to the right.

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.



# RECORD OF SERVICE

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ISSUED ON 04/24/2019

DECISION 12992 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 131166-C-18

EMPLOYER: WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE

REP BY: FRANKLIN PLAISTOWE  
OFFICE OF FINANCIAL MANAGEMENT  
LABOR RELATIONS SECTION  
PO BOX 47500  
OLYMPIA, WA 98504-7500  
labor.relations@ofm.wa.gov

CINDY LERCH  
WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE  
600 CAPITOL WAY N MS 43200  
OLYMPIA, WA 98501-1091  
cynthia.lerch@dfw.wa.gov

SCOTT LYDERS  
OFFICE OF FINANCIAL MANAGEMENT  
PO BOX 47500  
OLYMPIA, WA 98504-7500  
scott.lyders@ofm.wa.gov

PARTY 2: WA ASSOCIATION OF FISH AND WILDLIFE PROFESSIONALS

REP BY: SHEILA SMITH  
WA ASSOCIATION OF FISH AND WILDLIFE PROFESSIONALS  
1111 WASHINGTON ST SE  
OLYMPIA, WA 98501  
president@wafwp.org

RHONDA J. FENRICH  
FENRICH & GALLAGHER, P.C.  
245 WEST 5TH AVE  
EUGENE, OR 97401  
rhonda@fglaborlaw.com