

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE EMPLOYMENT  
SECURITY DEPARTMENT

For clarification of an existing bargaining  
unit represented by:

WASHINGTON FEDERATION OF  
STATE EMPLOYEES

CASE 131159-C-18

DECISION 13031 - PSRA

ORDER CLARIFYING  
BARGAINING UNIT

*Herb Harris*, Coordinator of PERC Activities, for the Washington Federation of State Employees.

*Julie Carnignan*, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Employment Security Department.

The Washington Federation of State Employees (union) is the exclusive bargaining representative of a bargaining unit of mixed-class employees at the Washington State Employment Security Department (employer). *State – Employment Security*, Decision 8413 (PSRA, 2004). That bargaining unit currently includes employees in the economic analyst 3 job class. The employer recently changed the work performed by two employees in the economic analyst 3 job class and reclassified those positions into the Washington Management Service. The position numbers for the at-issue employees are 0038/6387W and 0371/6389W.

On November 30, 2018, the employer filed a unit clarification petition requesting that the recently reclassified positions be removed from the bargaining unit on the grounds that employees in the Washington Management Service are ineligible to collectively bargain. The employer also asked that any bargaining unit work that the positions continue to perform also be removed from the bargaining unit's historic work jurisdiction.

Hearing Officer Dario de la Rosa conducted a prehearing investigation to determine if the union had any objection to the employer's petition. The union did not raise any objections to the employer's petition, including removing the small amount of bargaining unit from the bargaining unit's historic work jurisdiction.

The employer's request to remove the economic analyst 3 positions is granted because employees in the Washington Management Service lack collective bargaining rights and are prohibited from being included in a bargaining units with other civil service employees.

#### *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).

Chapter 41.80 RCW collective bargaining rights apply to most individuals who are in the classified service under Chapter 41.06 RCW. RCW 41.80.005(6); *See also University of Washington*, Decision 9410 (PSRA, 2006). While managers are considered part of the classified services, employees in the Washington Management Service are precluded from exercising collective bargaining rights. *See WAC 357-58-025* (clarifying that Washington Management Service

employees are part of the classified services); *see also* RCW 41.80.005(6)(c) and RCW 41.06.022 (precluding managers from exercising collective bargaining rights). The rules for designating an employee as a Washington Management Service employee is governed by Chapter 357-58 WAC. Although state agencies enjoy the right to reclassify a position to the Washington Management Service, they are still obliged to bargain the effects that the reclassification has on mandatory subjects of bargaining, including work jurisdiction issues. *See University of Washington, Decision 9410.*

#### *Application of Standards*

The employer's request to remove two economic analyst 3 positions from the union's bargaining unit is granted. Washington Management Service employees are precluded from being included in bargaining units with state civil service employees. The collective bargaining statutes mandate the positions' removal from the bargaining unit following the employer's reclassification of those positions to the Washington Management Service. That decision is not reviewable by this agency.

The parties also agree that any historic bargaining unit work that continues to be performed by the recently reclassified economic analyst 3 positions can also be removed from the bargaining unit's historic work jurisdiction. Thus, no future work jurisdiction issues will be created by the requested clarification.

#### FINDINGS OF FACT

1. The Washington State Employment Security Department (employer) is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents a mixed class non-supervisory bargaining unit in the employer's workforce. The bargaining unit includes employees in the economic analyst 3 job class. The work performed by the employees in the economic analyst 3 job class is part of the bargaining unit's historic work jurisdiction.

4. The employer recently reclassified two employees in the economic analyst 3 job class, positions 0038/6387W and 0371/6389W, to Washington Management Service.
5. The employees described in finding of fact 4 continue to perform a small amount of bargaining unit work.

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 economic analyst 3 positions described in finding of fact 4 are precluded from being included in the bargaining unit described in finding of fact 3 based upon the employer's decision to reclassify those positions to Washington Management Service.

ORDER

The bargaining unit described in finding of fact 3 shall be clarified to remove positions 0038/6387W and 0371/6389W and any historic bargaining unit work that those positions continue to perform.

ISSUED at Olympia, Washington, this 9th day of July, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Michael B. 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 07/09/2019

DECISION 13031 - 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 131159-C-18

EMPLOYER: WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT

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

BRAD MCGARVIE  
WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT  
PO BOX 9046  
OLYMPIA, WA 98507  
bmcgarvie@esd.wa.gov

JULIE CARNIGNAN  
OFFICE OF THE ATTORNEY GENERAL  
7141 CLEANWATER DR SW  
PO BOX 40145  
OLYMPIA, WA 98504-0145  
juliec1@atg.wa.gov

PARTY 2: WASHINGTON FEDERATION OF STATE EMPLOYEES

REP BY: HERB HARRIS  
WASHINGTON FEDERATION OF STATE EMPLOYEES  
1212 JEFFERSON ST SE STE 300  
OLYMPIA, WA 98501-2332  
herbh@wfse.org