

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION

For clarification of an existing bargaining
unit of employees of:

WASHINGTON STATE DEPARTMENT
OF NATURAL RESOURCES

CASE 131653-C-19

DECISION 13272 – PSRA

CORRECTED ORDER CLARIFYING
BARGAINING UNIT

Lane Hatfield, Attorney at Law, for Washington Public Employees Association.

Amee J. Tilger, Assistant Attorney General, Attorney General Robert W. Ferguson,
for the Washington State Department of Natural Resources.

The Washington Public Employees Association (union) represents bargaining units of nonsupervisory and supervisory employees at the Washington State Department of Natural Resources (employer). *State – Natural Resources*, Decision 10050 (PSRA, 2008). The nonsupervisory bargaining unit includes employees in the Natural Resources Police Officer job class who work in the employer’s Enforcement Division. The employer also has employees in the Fish and Wildlife Enforcement Sergeant job class who supervise the Natural Resources Police Officers.¹ The Fish and Wildlife Enforcement Sergeants are also part of the Enforcement Division and the employer placed them in the union’s bargaining unit.

On June 21, 2019, the union filed a unit clarification petition seeking to clarify that the Fish And Wildlife Enforcement Sergeants are part of the union’s existing mixed class supervisory bargaining unit. The union claims that the at-issue positions only share a community of interest with its bargaining unit and therefore the positions should be added to the bargaining unit without an election.

¹ The employer does not have a unique job class for supervisory police officers. Rather, the employer utilizes the Department of Fish & Wildlife’s “Fish & Wildlife Sergeant” job class for its supervisory police officers.

Hearing Officer Dario de la Rosa conducted an investigation and met with the parties to discuss the scope of the union's bargaining unit. During those discussions, the parties agreed that the union's bargaining unit was the only appropriate bargaining unit for the Fish and Wildlife Enforcement Sergeants because the union has historically represented law enforcement officers in the agency.

The request to modify the union's supervisory bargaining unit to include the Fish and Wildlife Enforcement Sergeants is granted. The union's bargaining unit is the only appropriate bargaining location for the Fish and Wildlife Sergeants.

ANALYSIS

Applicable Legal Standards

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 (ATU Local 587)*, 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 employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation.” RCW 41.80.070. 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 Standards

The employees in the Fish and Wildlife Enforcement Sergeants’ job class only share a community of interest with the union’s existing supervisory bargaining unit based upon the duties skills and working condition, the extent of organization in the employer’s workforce, and the avoidance of

fragmentation. The union also has historically represented the law enforcement employees in the employer's workforce and including the Fish and Wildlife Enforcement Sergeants in the union's supervisory bargaining unit continues this historic pattern.

The extent of organization among employees also strongly supports a conclusion that the Fish and Wildlife Sergeants only share a community of interest with the union's supervisory bargaining unit. *Washington State University*, Decision 10115 (PSRA, 2008). When crafting bargaining units, this agency ensures that an employee or group of employees are not stranded in a unit too small to effectively exercise its right to collectively bargain. *Id.* The extent of organization the employer's workforce demonstrates is a preference for a horizontal bargaining unit configurations that includes all of the employees in a particular job class. The union already represents the Law Enforcement Officers in the employer's workforce and the ensuring that the Fish and Wildlife Sergeants are included in the union's bargaining unit maintains organizational structure of the employer's workforce and avoids fragmenting the employer's workforce.

FINDINGS OF FACT

1. The Washington State Department of Natural Resources is an agency within the meaning of RCW 41.80.005(1) and the State of Washington is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Public Employees Association is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents a nonsupervisory bargaining unit of mixed class employees. The nonsupervisory bargaining unit includes employees in the Natural Resources Police Officer job class who work in the employer's Enforcement Division.
4. The union also represents a supervisory bargaining unit of mixed class employees.

5. In addition to the Natural Resources Police Officer described in finding of fact 3, the employer also has employees in the Fish and Wildlife Enforcement Sergeant job class. The Fish and Wildlife Enforcement Sergeants are also part of the Enforcement Division and supervise the Natural Resources Police Officers.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-35 WAC.
2. Based upon findings of fact 3 through 5, the unrepresented employees in the Fish and Wildlife Enforcement Sergeant job class share a community of interest with the bargaining unit described in finding of fact 4.

ORDER

The employees in the Fish and Wildlife Enforcement Sergeant job class at the Washington State Department of Natural Resources shall be added to the bargaining unit described in finding of fact 4 without the need of an election.

ISSUED at Olympia, Washington, this 10th day of December, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Michael P. Bellars, 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

ISSUED ON 12/10/2020

CORRECTED DECISION 13272 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 131653-C-19

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