

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE DEPARTMENT OF  
AGRICULTURE

and

WASHINGTON FEDERATION OF STATE  
EMPLOYEES

For clarification of an existing bargaining unit.

CASE 137589-C-23

DECISION 13781 - PSRA

ORDER CLARIFYING BARGAINING  
UNIT

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

*Scott Lyders*, Labor Negotiator, Washington State Office of Financial Management, for the Washington State Department of Agriculture.

On September 20, 2023, the Washington State Department of Agriculture (employer) and Washington Federation of State Employees (union) jointly filed a petition seeking to clarify the union's mixed class bargaining unit. The employer recently reorganized its Commodity Inspection Division, Plant Protection Division, and Livestock Identification Program, including renaming certain programs and reclassifying certain job classes. As a result of these changes, the employer and union agree that 29 previously unrepresented positions in the Plant Protection Division must be included in the union's bargaining unit because those positions are currently performing bargaining unit work and work jurisdiction issues would be created if those positions were excluded from the union's bargaining unit. The parties also agree that the existing certification no longer accurately describes the union's bargaining unit and should be updated to accurately reflect the employer's current organizational structure.

The parties' request for clarification is granted. The employer's decision to reorganize its workforce is a change in circumstances that altered the community of interest for the unrepresented employees in the Plant Protection Division. Those employees only share a community of interest with the union's bargaining unit and excluding those employees from the bargaining unit would create work jurisdiction issues. The unrepresented employees in the Plant Protection Division shall be added to the union's bargaining unit without the need of an election and the bargaining unit description shall be updated to reflect the recent reorganization. The bargaining unit description shall also be modified to accurately reflect the changes in the names and titles of the employer's divisions and job classes.

## BACKGROUND

The union represents a mixed class bargaining unit in the employer's workforce that is currently described as follows:

All non-supervisory employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW employed by the Washington State Department of Agriculture in the Grain Branch of the Grain and Chemical Division, the Fruit and Vegetable Inspection Program, the following classifications in the Commission Merchants Program, Livestock Identification Program, and Weights and Measures Program: Administrative Assistant 1, 2, 3, 4; Brand Control Specialists; Brand Inspectors (excluding temporary Brand Inspectors); Commission Merchant Investigators 1 and 2; Office Assistants (excluding temporary Office Assistant 2 - Brand Clerks); Secretary Seniors; Weights and Measures Supervisors; and Weights and Measures Inspectors, and all employees in the Plant Services Program, excluding the Plant Protection Program Manager; Plant Certification Program Manager; Plant Pathology Program Manager; Plant Services Field Supervisor; Plant Services Inspector 3; Entomologist, Chief; Weed Specialist 2; Seed Analysis Laboratory Supervisor; Seed Inspection Supervisor; Administrative Assistant 3 (only that position that functions as the principal assistant to the Assistant Director of Plant Services), and excluding supervisors, confidential employees, Washington Management Service employees, and all other employees.

*State – Agriculture*, Decision 12375 (PSRA, 2015). The employer and union are parties to a collective bargaining agreement that expires on June 30, 2025.

The employer recently reorganized its work force that resulted in several changes that the bargaining unit employees and the existing bargaining unit certification. The first change involved employees in the Commodity Inspection Division. The employer provides a number of inspection services and regulatory programs that facilitate the movement of agricultural products in domestic and international markets, including the sampling, weighing, quality testing, grade inspection, and phytosanitary services for grains and commodities following state and federal regulations. These services were previously performed by the Grain Branch of the Grain and Chemical Division. The employer recently renamed the Grain Branch of the Grain and Chemical Division to the Grain Inspection Program. The employer and union request the bargaining unit certification be updated to reflect this change.

The employer also operates a Seed Inspection Certification Program that employs International Seed Testing Association accredited samplers and United State Department of Agriculture licensed samplers. The employer recently moved the Seed Inspection Certification Program from the Plant Services Program to the Commodity Inspection Division. Since the Commodity Inspection Division is not entirely a represented bargaining unit, the parties request the bargaining unit Seed Inspection Certification Program be specifically listed in the bargaining unit description.

Additionally, the Seed Analysis Laboratory Supervisor and Seed Inspection Supervisor job classes were specifically excluded from the existing bargaining unit. The Seed Inspection Supervisor has been renamed to the Seed Field Supervisor. The parties request that the list of exclusions be updated to reflect this change.

The Plant Services Program facilitates agricultural trade and ensures consumer protection by providing accurate and reliable inspection, testing and certification of agricultural plant products, and serving on the front line of defense against the introduction and spread of pests. The Plant

Services Program has since been renamed to be the Plant Protection Division. The parties request that the bargaining unit certification be updated to reflect this name change.<sup>1</sup>

The parties also assert there are 29 unrepresented employees in the Plant Protection Division. Those employees are in the Agricultural Aide, Agricultural Research Technologist 3, Agricultural Technologist, Investigator 3, Management Analyst 4, Natural Resource Specialist 3, Natural Resource Specialist 5, Pest Biologist 1, Pest Biologist 2, Pest Biologist 3, Program Specialist 3, Program Specialist 4 job classes. The union represents employees in each of these job classes and the unrepresented employees work side by side with the union represented employees and perform the same Plant Protection Division work as the union represented employees.

The Livestock Inspection Program provides asset protection for the livestock industry by recording brands, licensing feedlots and public livestock markets, and by conducting surveillance and inspection of livestock at time of sale and upon out of state movement. The program is funded by fees paid by the livestock industry and receives no general fund dollars.

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<sup>1</sup> The Commission Merchants Program and the Weights and Measures Program are currently part of the Plant Protection Division, and the parties assert neither of these programs need to be specifically included in the bargaining unit description. The Plant Protection Program Manager, Plant Certification Program Manager, Plant Pathology Program Manager, and Entomologist, Chief are either supervisors or Washington Management Service employees and the parties assert that none of these job titles need to be specifically listed in the list of positions excluded from the bargaining unit.

The nonsupervisory employees of the Yakima Chemistry Program are in a separate bargaining unit represented by the Washington Public Employees Association and the parties assert this program does not need to be included in the list of exclusions.

The parties request that the Hops Samplers and Graders, Pest Biologist 4, Natural Resource Scientists 4, and the Noxious Weed Board are all historically nonrepresented positions that should remain on the list of exemptions. Finally, the Administrative Assistant 3 job class included in the list of exemptions functioned as the principal assistant to the Assistant Director of Plant Services but is no longer in use in the Plant Division.

The union represents all of the employees in the Livestock Identification Program, including the Brand Inspectors and Brand Control Specialist. The parties request that the bargaining unit description be updated to reflect this fact.

## ANALYSIS

### Applicable Legal Standard

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. RCW 41.80.070; *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), *rev. denied*, 96 Wn.2d 1004 (1981). 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 clarifications 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, with 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).

A unit clarification petition that seeks to add employees to an existing bargaining unit requires a recent meaningful change in circumstances that alters the community of interest such that clarification is necessary. WAC 391-35-020; *University of Washington*, Decision 10496-A (PSRA, 2011) (citing *City of Richland*, Decision 279-A). Among the types of changes that can alter the existing community of interest and necessitate clarification are meaningful changes to job duties, reorganization of the workforce, or other significant changes to the workplace environment. *See*

*Lewis County (Teamsters Local 252)*, Decision 6750 (PECB, 1999). A mere change in job titles is not necessarily a material change in working conditions that would qualify under chapter 391-35 WAC to alter the composition of a bargaining unit through the unit clarification process. See *University of Washington*, Decision 10496-A.

Determining if recent changes are meaningful rests upon whether the bargaining unit is appropriate absent the clarification. In determining if any existing bargaining unit remains appropriate in a unit clarification proceeding, the agency applies the same statutory unit determination criteria as RCW 41.56.060(1), which is used to establish the unit's initial appropriateness.

When a unit clarification petition proposes to add or accrete positions into the bargaining unit, it seeks to do so without a vote of the employees in the at-issue positions. An accretion may be ordered when changed circumstances lead to the existence of positions that logically belong in only one existing bargaining unit. *City of Auburn*, Decision 4880-A (PECB, 1995). An accretion is not appropriate if the positions could stand on their own in a separate bargaining unit or could appropriately be placed in any other bargaining unit. *Id.* For an accretion to be directed, the resulting unit must be appropriate. *Pierce County*, Decision 6051-A (PECB, 1998). 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).

#### Application of Standards

The 29 unrepresented employees working in the Plant Protection Division only share a community of interest with the union's existing nonsupervisory bargaining unit based upon the duties, skills, and working conditions and the extent of organization in the employer's workforce. The unrepresented employees are in the same job classes and perform the same Plant Protection Division duties as the union represented employees in the Plant Protection Division. If the unrepresented employees were excluded from WFSE's bargaining unit work jurisdiction issues would be created.

The extent of organization also supports a conclusion that the unrepresented employees in the Plant Protection Division belong in the union's bargaining unit. When crafting bargaining units, this agency ensures that an employee or group of employees is not stranded in a unit too small to effectively exercise their right to collectively bargain. *Washington State University*, Decision 10115 (PSRA, 2008). The extent of organization in the employer's workforce is a preference for vertical bargaining unit configurations that include all employees in a division or work unit. The parties' requests for bargaining units that encompass all nonsupervisory employees in the Plant Protection Division conform to this historical pattern.

Finally, the parties request to modify the bargaining unit to accurately reflect the employer's current organizational structure if granted. The agency's rules provide a process for an organization to petition to amend an existing certification based upon a minor change in circumstances, such as a change of job titles or the titles of a division or work unit in the employer's work force. *See* WAC 391-35-085. The parties' request to update the bargaining unit description is consistent with Commission's rule and need for bargaining unit descriptions to accurately describe the employees in a bargaining unit.

#### FINDINGS OF FACT

1. The Washington State Department of Agriculture is an employer within the meaning RCW 41.80.005(8).
2. The Washington Federation of State Employees is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents a mixed class bargaining unit in the employer's workforce that is currently described as follows:

All non-supervisory employees covered by Chapter 41.06 RCW and Chapter 41.80 RCW employed by the Washington State Department of Agriculture in the Grain Branch of the Grain and Chemical Division, the Fruit and Vegetable Inspection Program, the following classifications in the Commission Merchants Program, Livestock Identification Program, and

Weights and Measures Program: Administrative Assistant 1, 2, 3, 4; Brand Control Specialists; Brand Inspectors (excluding temporary Brand Inspectors); Commission Merchant Investigators 1 and 2; Office Assistants (excluding temporary Office Assistant 2 - Brand Clerks); Secretary Seniors; Weights and Measures Supervisors; and Weights and Measures Inspectors, and all employees in the Plant Services Program, excluding the Plant Protection Program Manager; Plant Certification Program Manager; Plant Pathology Program Manager; Plant Services Field Supervisor; Plant Services Inspector 3; Entomologist, Chief; Weed Specialist 2; Seed Analysis Laboratory Supervisor; Seed Inspection Supervisor; Administrative Assistant 3 (only that position that functions as the principal assistant to the Assistant Director of Plant Services), and excluding supervisors, confidential employees, Washington Management Service employees, and all other employees.

*State – Agriculture*, Decision 12375 (PSRA, 2015).

4. The employer provides a number of inspection services and regulatory programs that facilitate the movement of agricultural products in domestic and international markets, including the sampling, weighing, quality testing, grade inspection, and phytosanitary services for grains and commodities following state and federal regulations. These services were previously performed by the Grain Branch of the Grain and Chemical Division. The employer recently renamed the Grain Branch of the Grain and Chemical Division to the Grain Inspection Program.
5. The employer operates a Seed Inspection Certification Program that employs International Seed Testing Association accredited samplers and United State Department of Agriculture licensed samplers. The employer recently moved the Seed Inspection Certification Program from the Plant Services Program to the Commodity Inspection Division.
6. The Seed Analysis Laboratory Supervisor and Seed Inspection Supervisor job classes were specifically excluded from the existing bargaining unit. The Seed Inspection Supervisor has been renamed to the Seed Field Supervisor.



7. The Plant Services Program has since been renamed to be the Plant Protection Division.
8. The parties also assert there are 29 unrepresented employees in the Plant Protection Division. Those employees are in the Agricultural Aide, Agricultural Research Technologist 3, Agricultural Technologist, Investigator 3, Management Analyst 4, Natural Resource Specialist 3, Natural Resource Specialist 5, Pest Biologist 1, Pest Biologist 2, Pest Biologist 3, Program Specialist 3, Program Specialist 4 job classes.
9. The union represents employees in each of the job classes described in finding of fact 8 and the unrepresented employees work side by side with the union represented employees and perform the same Plant Protection Division work as the union represented employees.
10. The Livestock Inspection Program provides asset protection for the livestock industry by recording brands, licensing feedlots and public livestock markets, and by conducting surveillance and inspection of livestock at time of sale and upon out of state movement. The union represents all of the employees in the Livestock Identification Program, including the Brand Inspectors and Brand Control Specialist.

#### 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 8 and 9, the employees in finding of fact 8 only share a community of interest with the bargaining unit described in finding of fact 3.
3. Based upon finding of facts 4 through 10, the bargaining unit described in finding of fact 3 must be modified to reflect the changed described in findings of fact 4 through 10.

ORDER

1. The employees described in finding of fact 8 shall be added to the bargaining unit described in finding of fact 3 without the need of an election.
2. The bargaining unit described in finding of fact 3 shall be redefined as follows:

All nonsupervisory employees covered by chapter 41.05 RCW and chapter 41.80 RCW employed by the Washington State Department of Agriculture in the Grain Program; Fruit and Vegetable Program; Seed Program, excluding the Seed Analysis Laboratory Supervisor and Seed Field Supervisor; Livestock Identification Program; Plant Protection Division, excluding nonsupervisory employees of the Chemical and Hop Laboratory, Hop Samplers and Graders, Pest Biologists 4, Natural Resource Scientists 4, and employees of the Noxious Weed Board; and excluding supervisors, confidential employees, Washington Management Service employees, and all other employees.

ISSUED at Olympia, Washington, this 30th day of January, 2024.

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.



# RECORD OF SERVICE

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ISSUED ON 01/30/2024

DECISION 13781 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 137589-C-23

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