

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE DEPARTMENT OF  
AGRICULTURE

For clarification of an existing bargaining unit  
represented by:

WASHINGTON PUBLIC EMPLOYEES  
ASSOCIATION

CASE 137997-C-23

DECISION 13805 - PSRA

ORDER CLARIFYING BARGAINING  
UNIT

*Amanda Hacker*, President, for the Washington Public Employees Association.

*Joshua C. Sneva*, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Agriculture.

On November 21, 2023, the Washington State Department of Agriculture (employer) filed a petition seeking to amend the bargaining unit description of the Washington Public Employees Association's (union) nonsupervisory mixed class bargaining unit. The union's bargaining unit includes employees in the employer's Food Safety Program of the Food Safety and Consumer Services Division, Agricultural Chemical Specialists in the Pesticide Management Division, and employees working in the Chemical and Hop Laboratory in the Plant Protection Division. The employer recently reorganized and renamed these divisions and asserts the bargaining unit description needs to be updated to reflect the existing workforce.

Representation Case Administrator Dario de la Rosa investigated the employer's petition. During the investigation, the parties recognized that the scope of the petition needed to be expanded to include the unrepresented Pesticide Regulatory Specialist positions in the Pesticide Management Division. The union represents some, but not all, of the Pesticide Regulatory Specialists in the Pesticide Management Division. The employer and union agree that 12 previously unrepresented Pesticide Regulatory Specialists 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 request for clarification is granted. The unrepresented Pesticide Regulatory Specialist positions in the Pesticide Management Division only share a community of interest with the union's bargaining unit. Excluding those employees from the bargaining unit would create work jurisdiction issues. The unrepresented Pesticide Regulatory Specialist positions in the Pesticide Management Division shall be added to the union's bargaining unit without the need of an election. 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 who perform food safety duties within the Food Safety Program of the Food Safety and Consumer Services Division excluding: Washington Management Service, supervisors, confidential, and exempt employees.

All non-supervisory employees who perform Agricultural Chemical Specialist duties and who are employed in the Pesticide Management Division in Eastern Washington excluding: Agricultural Chemical Specialist Seniors, Washington Management Service, supervisors, confidential, and exempt employees.

All non-supervisory employees of the Yakima Chemistry Program who are employed in the Plant Protection Division excluding: Washington Management Service, supervisors, confidential, and exempt employees.

*State – Agriculture*, Decision 9390-A (PSRA, 2007). 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 to the bargaining unit employees and the existing bargaining unit certification.

*Food Safety & Consumer Service Division*

The current bargaining unit description includes all the nonsupervisory employees of the former Food Safety Program. The employer recently divided the employees in the Food Safety Program into three separate programs based upon the employees' specialty. The Food Safety Program remains responsible for regulation, licensing, and inspection of food processing facilities, food storage warehouses, dairy farms and processing plants, cottage food operations, custom meat facilities, egg and marijuana-infused edibles. The newly created Animal Feed Program regulates commercial animal feed including livestock feed, poultry feed, fish feed, and pet food at the state level. The newly created Food Safety & Consumer Services Laboratory provides laboratory testing to protect the public's health by providing data on food borne pathogens to regulatory agencies and the agricultural community. No positions would be added or removed from the laboratory based upon the changes to the Food Safety & Consumer Service Division.

Following the reorganization, the represented positions in the Food Safety Program includes employees in the Food Safety Compliance Specialists 1, 2, 3, and 4 job classes. The bargaining unit excludes all other positions in the Food Safety Program, including employees in the Data Consultant 1, Management Analyst 3, Management Analyst 5, Program Assistant, and Food Safety Compliance Specialist 5 job classes.<sup>1</sup> The represented position in the Animal Feed Program includes employees in the Food Safety Compliance Specialist 1, 2, 3, and 4 job classes. The bargaining unit excludes all other positions in the Animal Feed Program, including employees in the Administrative Assistant 3, Program Specialist 3, Program Specialist 4, and Management

---

<sup>1</sup> In July 2023, the employer created a new Food Safety Compliance Specialist 5 job class for employees who supervise professional staff or administer a statewide food safety subprogram. Six employees were reallocated into this classification when it was created, all of whom were previously in nonrepresented Public Health Advisor 3 and 4 positions. This body of work has historically been nonrepresented and the parties agree should remain unrepresented.

Analyst 4 job classes. Finally, the bargaining unit includes the Laboratory Assistants, Laboratory Technicians, and Microbiologists in the Food Safety & Consumer Services Laboratory.

*Agricultural Environmental Services Division*

The bargaining unit currently includes all nonsupervisory employees who perform Agricultural Chemical Specialist duties and who are employed in the Pesticide Management Division in Eastern Washington. The employer recently renamed the Pesticide Management Division to the Agricultural Environmental Services Division. The division includes 16 represented and 12 unrepresented employees in the Pesticide Regulatory Specialist 1 and 2 job classes in the following programs: Registration, Compliance, and Technical Assistance and Education.

The Registration Program includes the Fertilizer unit. Two employees in the Pesticide Regulatory Specialist job class serve as Fertilizer Tonnage and Compliance Specialists. One position is located on the east side of the state and is union represented and the other is on the west side of the state and is unrepresented. These two positions have nearly identical bodies of work and regularly serve as backup for the other.

The Compliance Program employs three teams of Pesticide Regulatory Specialists. Two of the teams are stationed on the east side of the state and are bargaining unit positions. The third team is stationed on the west side of the state and the positions are unrepresented. The duties, skills, and working conditions for these employees are similar regardless of location. While each team tends to focus on geographic area, the employees will often travel across the state for training purposes or if an employee specializes in a subject that employees in the other geographic location lack.

The Technical Assistance and Education Program includes four Pesticide Regulatory Specialists, three represented in eastern Washington and one position in western Washington. The Pesticide Regulatory Specialists in the Technical Assistance and Education Program all perform similar duties and support each other across the state. The position assigned to Western Washington was established in 2022. When the employer posted the job announcement for that position, both eastern and western Washington were listed as possible work locations for the applicants. The successful candidate lived in western Washington has been unrepresented based upon the existing

bargaining unit definition. The parties agree that Pesticide Regulatory Specialists' duties, skill, and working conditions demonstrate that these employees share a community of interest and work jurisdiction issues would be created if these employees were in separate bargaining units.

#### *Chemical and Hop Laboratory*

The current bargaining unit description includes all the nonsupervisory employees in the Yakima Chemistry Program who are employed in the Plant Protection Division. The program supports agency programs by analyzing samples taken in investigations of alleged pesticide misuse, analyzing feed and fertilizer samples, and monitors for pesticide residues in food and dairy products. The employer has since renamed the Yakima Chemistry Program to the Chemical and Hop Laboratory. No positions would be added or removed from the laboratory based upon this particular change.

### 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 41.80.070, 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 12 unrepresented Pesticide Regulatory Specialist job class working in the employer's Agricultural Environmental Services Division only share a community of interest with the union's existing nonsupervisory bargaining unit. The unrepresented employees are in the same job classes and perform the same duties as the union represented employees in the Pesticide Regulatory Specialist job class. If the unrepresented employees were excluded from the WPEA's bargaining unit work jurisdiction issues would be created.

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 Public Employees Association 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 who perform food safety duties within the Food Safety Program of the Food Safety and Consumer Services Division excluding: Washington Management Service, supervisors, confidential, and exempt employees.

All non-supervisory employees who perform Agricultural Chemical Specialist duties and who are employed in the Pesticide Management Division in Eastern Washington excluding: Agricultural Chemical Specialist Seniors, Washington Management Service, supervisors, confidential, and exempt employees.

All non-supervisory employees of the Yakima Chemistry Program who are employed in the Plant Protection Division excluding: Washington Management Service, supervisors, confidential, and exempt employees.

*State – Agriculture, Decision 9390-A (PSRA, 2007).*

4. The employer recently divided the employees in its Food Safety Program into three separate programs based upon the employees' specialty. The Food Safety Program remains responsible for regulation, licensing, and inspection of food processing facilities, food storage warehouses, dairy farms and processing plants, cottage food operations, custom meat facilities, egg and marijuana-infused edibles. The newly created Animal Feed Program regulates commercial animal feed including livestock feed, poultry feed, fish feed, and pet food at the state level. The newly created Food Safety & Consumer Services Laboratory provides laboratory testing to protect the public's health by providing data on food borne pathogens to regulatory agencies and the agricultural community. No positions would be added or removed from the laboratory based upon the changes to the Food Safety & Consumer Service Division.
5. The employer recently renamed the Pesticide Management Division to the Agricultural Environmental Services Division. The division includes 16 represented and 12 unrepresented employees in the Pesticide Regulatory Specialist 1 and 2 job classes in the following programs: Registration, Compliance, and Technical Assistance and Education.
6. The Registration Program includes the Fertilizer unit. Two employees in the Pesticide Regulatory Specialist job class serve as Fertilizer Tonnage and Compliance Specialists. One position is located on the east side of the state and is union represented and the other



is on the west side of the state and is unrepresented. These two positions have nearly identical bodies of work and regularly serve as backup for the other.

7. The Compliance Program employs three teams of Pesticide Regulatory Specialists. Two of the teams are stationed on the east side of the state and are bargaining unit positions. The third team is stationed on the west side of the state and the positions are unrepresented. The duties, skills, and working conditions for these employees are similar regardless of location.
8. The Technical Assistance and Education Program includes four Pesticide Regulatory Specialists, three represented in eastern Washington and one position in western Washington. The Pesticide Regulatory Specialists in the Technical Assistance and Education Program all perform similar duties and support each other across the state.
9. The employer has since renamed the Yakima Chemistry Program to the Chemical and Hop Laboratory. No positions would be added or removed from the laboratory based upon this particular change.

#### 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 5 through 8, the unrepresented Pesticide Regulatory Specialists described in finding of fact 5 only share a community of interest with the bargaining unit described in finding of fact 3.
3. Based upon findings of fact 4 through 8, the bargaining unit described in finding of fact 3 must be modified to reflect the changes described in findings of fact 4 through 8.

ORDER

1. The unrepresented Pesticide Regulatory Specialists described in finding of fact 5 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 civil service employees employed by the Washington State Department of Agriculture as follows: all employees that are Laboratory Assistants, Laboratory Technicians, and Microbiologists in the Food Safety and Consumer Services Laboratories Program of the Food Safety and Consumer Services Division; all employees in the Food Safety Compliance Specialist 1, 2, 3, and 4 job classes in the Food Safety Program of the Food Safety and Consumer Services Division; all employees in the Food Safety Compliance Specialist 1, 2, 3, and 4 job classes in the Animal Feed Program of the Food Safety and Consumer Services Division; employees in the Pesticide Regulatory Specialist 1 and 2 job classes in the Agricultural Environmental Services Division; all employees working in the Chemical and Hop Laboratory. Excluding supervisors, confidential employees, Washington Management Services Employees, the Hop Samplers and Graders in the Chemical and Hop Laboratory, and all other employees.

ISSUED at Olympia, Washington, this 27th day of March, 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

---

ISSUED ON 03/27/2024

DECISION 13805 - 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 137997-C-23

EMPLOYER: WASHINGTON STATE DEPARTMENT OF AGRICULTURE

REP BY: SAMUEL YOUNG  
WASHINGTON STATE DEPARTMENT OF AGRICULTURE  
1111 WASHINGTON ST SE  
PO BOX 42560  
OLYMPIA, WA 98504  
syoun@agr.wa.gov

GINA L. COMEAU  
OFFICE OF FINANCIAL MANAGEMENT  
INSURANCE BUILDING  
PO BOX 43113  
OLYMPIA, WA 98504  
labor.relations@ofm.wa.gov

JOSHUA C. SNEVA  
OFFICE OF THE ATTORNEY GENERAL  
7141 CLEANWATER DR SW  
PO BOX 40145  
OLYMPIA, WA 98504-0145  
josh.sneva@atg.wa.gov

PARTY 2: WASHINGTON PUBLIC EMPLOYEES ASSOCIATION

REP BY: AMANDA HACKER  
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION  
140 PERCIVAL ST NW  
OLYMPIA, WA 98502  
amanda@wpea.org