

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 117

Involving certain employees of:

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS

CASE 136020-E-22

DECISION 13808 - PSRA

ORDER OF DISMISSAL

*Eamon S. McCleery*, Senior Staff Attorney, for Teamsters Local 117.

*Oliver T. Beatty*, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Corrections.

*Edward Earl Younglove III*, Attorney at Law, Younglove & Coker, P.L.L.C., for the Washington Federation of State Employees.

On November 4, 2022, Teamsters Local 117 (Teamsters) filed a representation petition seeking to add 16 unrepresented Instructors in the Training and Development unit at the Washington State Department of Corrections (employer) to its nonsupervisory institutions bargaining unit. The remaining four Instructors in the Training and Development unit are represented by the Washington Federation of State Employees (WFSE) and are included in WFSE's nonsupervisory Community Corrections bargaining unit. *State – Corrections*, Decision 12005 (PSRA, 2014). The WFSE intervened under WAC 391-25-170. Both the employer and WFSE objected to the Teamsters' petition. Representation Case Administrator Dario de la Rosa conducted a hearing on October 25, 2023, and the parties filed post-hearing briefs.<sup>1</sup>

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<sup>1</sup> Processing of the Teamsters' petition was held in abeyance due to a competing change of representation petition that sought to replace WFSE as the exclusive bargaining representative of the nonsupervisory community corrections bargaining unit. Case 136342-E-23.

The Teamsters' petition is dismissed because it seeks an inappropriate bargaining unit configuration. The unrepresented Instructors in the Training and Development unit share a community of interest with the WFSE represented Instructors. If the Teamsters' petition was allowed to move forward, there would be work jurisdiction issues with having the Instructors in two different bargaining units.

### BACKGROUND

The Instructors in the Training and Development unit have been the subject of other proceedings before this agency. In order to place this decision in its proper context, it is necessary to revisit the facts established in *State – Corrections*, Decision 12005.<sup>2</sup> Between 2000 and 2009, employee training at Department of Corrections was decentralized. The Prisons Division, which operates the correctional institutions, provided in-service training for the employees working at those facilities. *Id.* Similarly, the Community Corrections Division, which monitors offenders on probation or parole, provided training for employees working in that division. *Id.*

The employees from the Prisons Division were in the Corrections Specialist job class, and the employees from the Community Corrections Division were in the Community Corrections Specialist job class. *Id.* The two classes had different skill requirements and were paid different rates. *Id.* The Corrections Specialists were unrepresented while the Community Corrections Specialists were in the WFSE's Community Corrections bargaining unit.

In 2009, the employer created the Training and Development unit to centralize and consolidate its employee training programs to a single work unit. *Id.* The Training and Development unit creates and implements training in a uniform manner across the department's workforce. *Id.* The employer transferred the employees who performed the more limited and decentralized training services to the Training and Development unit regardless of bargaining unit status. *Id.* This included the

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<sup>2</sup> The parties agreed that the transcript, exhibits, and evidence from *State – Corrections*, Decision 12005 are part of the instant record.

WFSE-represented Community Corrections Specialists and the unrepresented Corrections Specialists. *Id.* Despite the differences between the two job classes in pay rate and skill requirements, all of the positions in the Training and Development unit shared similar duties and working conditions.

On June 16, 2010, the employer reallocated all of the Training and Development unit positions to the Human Resource Consultant 3 job class. *Id.* However, the positions operate with the working title of Instructor. The employer also informed the WFSE that it intended to remove the represented Instructors from the Community Corrections bargaining unit.

On June 29, 2010, the WFSE filed an unfair labor practice complaint alleging the employer unilaterally reallocated the WFSE-represented Instructors without first providing notice and an opportunity for bargaining. Case 23411-U-10-5966; *see also State – Corrections*, Decision 12005. The complaint also alleged that the employer unilaterally removed bargaining unit positions from its Community Corrections bargaining unit without first providing notice and an opportunity for bargaining. *Id.* WFSE then filed a “defensive” unit clarification petition to reaffirm its position as the exclusive bargaining representative of the positions that it historically represented in the Training and Development unit. Case 23412-C-10-1446; *See also State – Corrections*, Decision 12005.

Following a hearing on the merits, a PERC examiner held the employer had the right to unilaterally reallocate a position to a new job title, provided the position was not removed from the bargaining unit. *State – Corrections*, Decision 10842-A (PSRA, 2011). The examiner also found the employer had not actually removed the position from WFSE’s bargaining unit. *Id.* The examiner dismissed the complaint because no unilateral change had occurred. *State – Corrections*, Decision 10842-A, *aff’d*, *State – Corrections*, Decision 10842-B (PSRA, 2012).

On February 7, 2013, WFSE withdrew its unit clarification petition. The employer opposed the move to withdraw the petition. The employer argued there were still unresolved community of interest issues that needed to be addressed and the WFSE’s unit clarification petition was the

proper vehicle to address those concerns. WFSE's withdrawal was accepted and Case 23412-C-10-1446 was closed on February 27, 2013.

On June 3, 2013, the employer filed its own unit clarification petition seeking to remove the WFSE represented Instructors from WFSE's bargaining unit and make them unrepresented. The petition was dismissed as untimely. *State – Corrections*, Decision 12005, *aff'd*, *State – Corrections*, Decision 12005-A. The employer has maintained the bargaining unit status for the WFSE represented Instructors since the issuance of *State – Corrections*, Decision 12005, even if the individual employees in the positions changed.

#### *Current Training and Development Unit*

The Training and Development unit continues to be responsible for employee trainings at the department, including New Employee Orientation, the Correctional Worker Core Academy (Core), the Case Management Academy, the Community Corrections Officer Academy (CCO Academy), the Reentry Academy, and in-service classes. Administrative Manager Dan Cowles oversees the unit. There are 20 Instructors in the Training and Development unit. Four of these positions are represented by WFSE and sixteen are unrepresented for purposes of collective bargaining. They spend most of their training time performing the CORE Academy and the CCO Academy courses. The Training and Development Unit also includes employees in the Human Resource Consultant 4 job class that operate with the working title of Program Coordinator.

One of the stated goals of the Training and Development unit is to provide uniform curriculum to department staff across Washington. Cowles testified that regardless of whether a class is taught in Shelton or Walla Walla "at the exact same time, the time frames and information and the topics being covered should be identical for the most part." The petitioned-for Instructors also testified that they are expected to teach the curriculum without much room for variation. They also testified because of the uniformity in how the courses are taught, any employees in the Training and Development unit can "step in" for each other to provide relief if needed and there are no substantive differences between duties, skills, and working conceptions of the WFSE represented and unrepresented Training and Development employees.

The Program Coordinators oversee six workgroups that include between one and six Instructors. The first work group focuses on training at the CCO Academy and the Case Management Academy and operates from the Maple Lane facility. This workgroup includes one Program Coordinator and one Instructor. When the CCO Academy is not operating, that Instructor assists with other trainings including the Core academy. That Instructor is unrepresented even though the WFSE represented employees historically trained Community Corrections employees.

The other five work groups include both WFSE represented and unrepresented employees and operate from various facilities. Although these work groups operate from different facilities, there is no difference in the duties performed by these employees, they are functionally integrated, and spend a majority of their time teaching the Core Academy. The workgroup assigned to the Washington Corrections Center for Women includes one Program Coordinator and three Instructors, all of whom are unrepresented. The workgroup assigned to Monroe includes one Program Coordinator and three Instructors, One of the Instructors is represented by the WFSE while the other two are unrepresented. The workgroup assigned to the Washington Correction Center facility in Shelton and includes one Program Coordinator and three Instructors. One Instructor is represented by the WFSE while the other two are unrepresented. The workgroup assigned to the Maple Lane facility includes one Program Coordinator and four Instructors. One Instructor is represented by the WFSE and the other three are unrepresented.<sup>3</sup> The workgroup assigned to the Walla Walla facility includes one Program Coordinator and six Instructors. One Instructor is represented by the WFSE while the other five are unrepresented.

At the time the Teamsters filed its petition, the employer and WFSE were parties to a collective bargaining agreement that expired on June 30, 2023. The current collective bargaining agreement between the employer and WFSE became effective on July 1, 2023, and expires on June 30, 2025.

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<sup>3</sup>

The employees assigned to Maple Lane will move in either March or June of 2024 when the Department of Social and Health Services assumes jurisdiction of the facility.

## ANALYSIS

### Applicable Legal Standard(s)

#### *Determination of Appropriate Bargaining Unit*

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 unit determinations is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer and avoid potential work jurisdiction disputes and fragmentation. *Quincy School District*, Decision 3962-A (PECB, 1993); *King County (Amalgamated Transit Union, Local 587)*, Decision 6696 (PECB, 1999).

In making bargaining unit determinations, this agency considers “the duties, skills, and working conditions of the public employees; the history of collective bargaining . . . ; the extent of organization among the public employees; and the desire of the public employees.” RCW 41.56.060. Bargaining unit determinations are made on a case-by-case basis, and the criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). Not all of the factors will arise in every case, and where they do exist, 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).

This agency’s role is to determine whether there is a community of interest, not the best community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015) (citing *Snohomish County*, Decision 12071 (PECB, 2014); *City of Winslow*, Decision 3520-A (PECB, 1990)).

*Self-Determination Elections*

In addition to certifying appropriate new bargaining units, this agency also has the authority to modify existing bargaining units. RCW 41.80.070. A self-determination election process is one method for modifying bargaining units. WAC 391-25-080.<sup>4</sup> The process is designed to allow an individual employee or a small group of unrepresented employees the opportunity to express their desires and vote on their inclusion in a larger bargaining unit that the petitioning union already represents. *Pierce County*, Decision 10992 (PECB, 2011). The number of unrepresented employees to be added to the existing bargaining unit is important. If the number of employees to be added to the bargaining unit equals or exceeds the number of employees in the existing unit, the majority status of the underlying unit is called into question. *Id.* In that event, the self-determination petition should be dismissed to avoid improperly raising a question concerning representation for the underlying bargaining unit where one should not exist.

The self-determination election process is a two-step process. First, a determination must be made as to the appropriateness of the resulting bargaining unit. This is accomplished by applying the unit determination standards to both the petitioned-for employees and the existing bargaining unit. If, after applying the unit determination criteria, it is determined that the resulting bargaining unit of combined employees is appropriate under the statute, then the second step is to allow the petitioned-for employees the opportunity to express their desires about their inclusion in the combined bargaining unit.

Application of Standard

The Teamsters' petition seeks an inappropriate bargaining unit configuration. The petition seeks to add the unrepresented Instructors in the Training and Development unit, but there are other Instructors in the unit performing the same work. That work is integrated among all the Instructors

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When the Teamsters filed its petition, the self-determination rule was found at WAC 391-25-440. In November 2022, the Commission amended its rules and recodified WAC 391-25-440 at WAC 391-45-080 for better sequencing. There were no substantive changes to the operation of the self-determination rule.

in the unit. The Teamsters' petitioned-for bargaining unit would create work jurisdiction issues and fragmentation. The petition is dismissed.

When the employer created the Training and Development unit, it did so to create a uniform system of training throughout the agency. To achieve this goal, the employer centralized the training employees in a single unit, standardized the job class for every employee in the unit, and implemented the same duties, skills, and working conditions for all employees. In doing so, the employer ensured that any one employee in the unit can perform the work of any other employee in the unit. Based upon these similarities, the Instructors in the Training and Development unit all share a community of interest. To include the Instructors in two different bargaining units would create work jurisdiction issues and fragment the employer's workforce.

Accordingly, the Teamsters' petition is inappropriate. In their closing brief, the Teamsters essentially concede that all the Instructors share a community of interest and that it is only appropriate to have them all in the same bargaining unit. In light of that, the Teamsters go on to assert that the remaining WFSE-represented Instructors should be added to the Teamsters' petition.

However, the Teamsters' petition sought to add the unrepresented Instructors. The petition did not seek to add the WFSE-represented Instructors – likely because they were represented. The Teamsters have not sought to amend their petition. Rather, they have simply asserted in their closing brief that if we were to find the petition appropriate, we should let them add all the Instructors, including the WFSE-represented Instructors.

Lack of a formal motion to amend aside, there are a number of flaws in that position. First, the four Instructors are represented by the WFSE and covered by a collective bargaining agreement that did not expire until June 30, 2023, when the petition was filed. That agreement bars the filing of a petition to represent those employees.

The contract bar principle stabilizes collective bargaining relationships by providing an orderly procedure for raising questions concerning representation. *Yakima Valley College*, Decision 280 (CCOL, 1977). A collective bargaining agreement bars the filing of a representation petition except

during the “window period.” The window period is “that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract” during which a third party may file a representation petition. RCW 41.80.080; WAC 391-25-030(2)(a)(i). If the collective bargaining agreement is expired, a representation petition may be filed at any time. WAC 391-25-030(1); *City of Tacoma*, Decision 5085 (PECB, 1995). The party asserting a contract bar bears the burden of proving a valid contract exists. *King County Housing Authority*, Decision 11631-A (PECB, 2013); *West Valley School District*, Decision 2913 (PECB, 1988), *aff’d on other grounds*, Decision 2913-B (PECB, 1988).

To create a contract bar, the collective bargaining agreement must meet the requirements of WAC 391-25-030(2)(b):

- (i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;
- (ii) The agreement must be in writing, signed by the parties’ representatives, and in effect;
- (iii) The agreement must contain a fixed expiration date not less than 90 days after it was signed.

*See also Spokane County Fire District 4*, Decision 13583-A (PECB, 2023).

A petition to add unrepresented employees to an existing bargaining unit through a self-determination election is limited to situation “where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit that it already represents . . . .” WAC 391-25-080(1). Here, the WFSE represented positions in the Training and Development unit cannot be added to the Teamsters bargaining unit through the self-determination process because WFSE maintains status as the exclusive bargaining representative of its employees. WFSE and the employer were parties to a collective bargaining agreement that expired on June 30, 2023, and parties to a subsequent agreement that expires on June 30, 2025. WFSE possesses the right to have any question concerning representation concerning the employees it represents decided through a secret ballot election. Accordingly, the only way to

change representation for the WFSE employees through the representation process is to file a change of representation petition during the appropriate window period.<sup>5</sup>

The Teamsters assert the contract bar does not apply. They argue that because the WFSE bargaining unit does not contain all the Instructors in the Training and Development unit, the WFSE bargaining unit is inappropriate. Even if true, that argument does not lead to the conclusion that the represented Instructors should be severed from the WFSE bargaining unit and added to the Teamsters petition. The work performed by the Instructors has been part of the WFSE historical work jurisdiction since at least 2009. If the unrepresented Instructors only share a community of interest with the WFSE-represented Instructors because they all perform the same bargaining unit work, that should be resolved via a unit clarification to accrete the unrepresented Instructors into the WFSE bargaining unit.<sup>6</sup>

## CONCLUSION

The Teamsters' petition to add the unrepresented Instructors to its nonsupervisory Institutions bargaining unit is inappropriate it would create work jurisdiction issues. The Teamsters assertion in its closing brief that we should add the WFSE-represented Instructors to its petition in order to fix the flaw in its original petition is itself flawed and inappropriate. The petition shall be dismissed.

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<sup>5</sup> The Teamsters would need to file a change of representation petition to sever the WFSE represented positions from the Community Corrections bargaining unit and include those employees with the unrepresented Training and Development unit employees in a newly created Training and Development bargaining unit. The severance standards announced in *State – Social and Health Services*, Decision 12542-B (PSRA, 2016) would apply to such a petition. If severance were appropriate, this agency would then conduct a secret ballot election to ascertain the desires of the employees. The party that is certified as the exclusive bargaining representative could then ask this agency to merge the Training and Development bargaining unit into a larger existing bargaining unit under RCW 41.80.070(3).

<sup>6</sup> Similarly, when the employer filed its unit clarification petition in 2013, it sought to sever the WFSE-represented Instructors from the bargaining unit and make them unrepresented. Neither the employer nor the WFSE raised the question of whether the unrepresented employees should be accreted into the WFSE bargaining unit.

FINDINGS OF FACT

1. The Washington State Department of Corrections is an employer within the meaning of RCW 41.80.005(8).
2. Teamsters Local 117 is an employee organization within the meaning of RCW 41.80.005(7).
3. The Washington Federation of State Employees is an employee organization within the meaning of RCW 41.80.005(7).
4. The Teamsters represents a nonsupervisory mixed class Institutions bargaining unit in the employer's workforce.
5. The WFSE represents a nonsupervisory mixed class community corrections bargaining unit in the employer's workforce.
6. The employer and WFSE are parties to a collective bargaining agreement that expires on June 30, 2025.
7. On November 4, 2022, the Teamsters filed a representation petition seeking to add 16 20 unrepresented Instructors in the Training and Development unit to its nonsupervisory institutions bargaining unit. The remaining four Instructors in the Training and Development unit are represented by the Washington Federation of State Employees (WFSE) and are included in WFSE's nonsupervisory Community Corrections bargaining unit.
8. Between 2000 and 2009, employee training at the Department of Corrections was decentralized. The Prisons Division, which operates the correctional institutions, provided in-service training for the employees working at those facilities. Similarly, the Community

Corrections Division, which monitors offenders on probation or parole, provided training for employees working in that division.

9. In 2009, the employer created the Training and Development unit to centralize and consolidate its employee training programs to a single work unit. The Training and Development unit creates and implements training in a uniform manner across the department's workforce. The employer transferred the employees who performed the more limited and decentralized training services to the Training and Development unit regardless of bargaining unit status.
10. On June 16, 2010, the employer reallocated all of the Training and Development unit positions to the Human Resource Consultant 3 job class. The positions operate with the working title of Instructor.
11. On June 3, 2013, the employer filed a unit clarification petition seeking to remove the WFSE represented Instructors from WFSE's bargaining unit and make them unrepresented. The petition was dismissed as untimely. *State – Corrections*, Decision 12005, *aff'd*, *State – Corrections*, Decision 12005-A. The employer has maintained the bargaining unit status for the WFSE represented Instructors since the issuance of *State – Corrections*, Decision 12005, even if the individual employees in the positions changed.
12. The Training and Development unit continues to be responsible for employee trainings at the department, including New Employee Orientation, the Correctional Worker Core Academy (Core), the Case Management Academy, the Community Corrections Officer Academy (CCO Academy), the Reentry Academy, and in-service classes.
13. There are 20 Instructors in the Training and Development unit. Four of these positions are represented by WFSE and sixteen are unrepresented for purposes of collective bargaining. They spend most of their training time performing the CORE Academy and the CCO Academy courses. The Training and Development Unit also includes employees in the

Human Resource Consultant 4 job class that operate with the working title of Program Coordinator.

14. One of the stated goals of the Training and Development unit is to provide uniform curriculum to department staff across Washington regardless of whether a class is taught in Shelton or Walla Walla. The Instructors are expected to teach the curriculum without much room for variation and because of the uniformity in how the courses are taught. Any employees in the Training and Development unit can “step in” for each other to provide relief if needed and there are no substantive differences between duties, skills, and working conditions of the WFSE represented and unrepresented Training and Development employees.
15. The other five work groups include both WFSE represented and unrepresented employees and operate from various facilities. Although these work groups operate from different facilities, there is no difference in the duties performed by these employees, they are functionally integrated, and spend a majority of their time teaching the Core Academy.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 7 through 15, the petitioned-for Instructors described in finding of fact 6 do not share a community of interest with the Teamsters represented bargaining unit described in finding of fact 4.
3. Based upon finding of fact 6 the Teamsters petition is not timely under RCW 41.80.080(4) and WAC 391-25-030(2)(b).

ORDER

The petition filed by Teamsters Local 117 in the above-entitled matter is DISMSSED.

ISSUED at Olympia, Washington, this 27th day of March, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", written over the printed name.

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 391-25-660.



# RECORD OF SERVICE

ISSUED ON 03/27/2024

DECISION 13808 - 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 136020-E-22

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