

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE DEPARTMENT OF  
COMMERCE

and

WASHINGTON FEDERATION OF STATE  
EMPLOYEES

For clarification of an existing bargaining unit.

CASE 138704-C-24

DECISION 13859 - PSRA

ORDER CLARIFYING BARGAINING  
UNIT

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

*Mynor Lopez*, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Commerce.

On March 8, 2024, the Washington State Department of Commerce (employer) and Washington Federation of State Employees (union) jointly filed a petition to add the employees in the Contracts Specialist 1 and Contracts Specialist 3 job classes to the union's mixed class bargaining unit. In 2018, this agency added the employees in the Contracts Specialist 2 job class to the union's bargaining unit. *State – Commerce*, Decision 12812 (PSRA, 2018). At the time the employees in the Contracts Specialist 2 job class were added to the bargaining unit, the employer was not utilizing the Contracts Specialist 1 or 3 job classes. The employer has subsequently started using the Contracts Specialist 1 and 3 job classes. The parties jointly agree the Contracts Specialist 1 or 3 job classes only share a community of interest with the union's bargaining unit.

The request for clarification is granted. The employees in the Contracts Specialist 1 and 3 job classes only share a community of interest with the union's bargaining unit. Excluding those employees from the bargaining unit would create work jurisdiction issues and those employees

shall be added to the union's bargaining unit without the need of an election. The bargaining unit description shall also be modified to accurately reflect the job classes included in the bargaining unit.

## BACKGROUND

The union represents a nonsupervisory mixed class bargaining unit that is currently described as

All non-supervisory civil service employees of the Washington State Department of Commerce working to develop community programs, all clerical positions (including employees in the Forms and Records Analyst job class), and all employees in the Management Analyst, Facilities and Safety Manager, and Procurement and Supply Specialist job series, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), and all other employees.

*State – Commerce*, Decision 12812. In 2018, the employer hired a single employee to the Contracts Specialist 2 job class. The employer had not previously utilized the Contracts Specialist series and the single employee was the only Contracts Specialist in the employer's workforce at the time. The union filed a petition to add the Contracts Specialist 2 to its bargaining unit and the certification specifically notes that only the Contracts Specialist 2 job class was added to the union's bargaining unit. *Id.*

The employer subsequently hired one employee to the Contracts Specialist 1 job class and two additional employees to the Contract Specialist 3 job class. All of the Contracts Specialists provide education and technical assistance to the employer concerning the best practices, rules, and regulations of all contracting activities to ensure compliance with relevant laws and policies, including all pre- and post-award activities. The Contracts Specialist 1 position performs the first level of contract administration; the Contracts Specialist 2 position performs the same work but at a journey level; and the Contracts Specialist 3 position performs the work at a higher level with more responsibility than the Contracts Specialist 2 position. All of the Contracts Specialists work in the same workgroup and report to the same supervisor.

## 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 Standard*

The employees in the Contracts Specialist 1 and 3 job classes must be added to the union's bargaining unit because that is the only appropriate bargaining unit for those positions. The work performed by the Contracts Specialists has been part of the WFSE historical work jurisdiction since at least 2018. The Contracts Specialist 1 and 3 job classes are in the same job classes and perform the same duties as the union represented Contracts Specialist 2. If the Contracts Specialist 1 and 3 job classes were excluded from WFSE's bargaining unit work jurisdiction issues would be created.

The extent of organization also supports a conclusion that all of the nonsupervisory Contracts Specialists 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 demonstrates a preference for a bargaining unit configuration that includes all employees either performing a certain kind of work

or being in a certain kind of job class. The parties' requests to include the Contracts Specialists in the union's bargaining unit conform to this historical pattern.

#### FINDINGS OF FACT

1. The Washington State Department of Commerce is an employee within the meaning of 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 nonsupervisory mixed class bargaining unit that is currently described as " All non-supervisory civil service employees of the Washington State Department of Commerce working to develop community programs, all clerical positions (including employees in the Forms and Records Analyst job class), and all employees in the Management Analyst, Facilities and Safety Manager, and Procurement and Supply Specialist job series, excluding confidential employees, internal auditors, supervisors, Washington Management Service employees (on and after July 1, 2004), and all other employees."
4. In 2018, the employer hired a single employee to the Contracts Specialist 2 job class. The employer had not previously utilized the Contracts Specialist series and the single employee was the only Contracts Specialist in the employer's workforce at the time. The union filed a petition to add the Contracts Specialist 2 to its bargaining unit and the certification specifically notes that only the Contracts Specialist 2 job class was added to the union's bargaining unit.
5. The employer subsequently hired one employee to the Contracts Specialist 1 job class and two additional employees to the Contracts Specialist 3 job class.

6. All of the Contracts Specialists provide education and technical assistance to the employer concerning the best practices, rules, and regulations of all contracting activities to ensure compliance with relevant laws and policies, including all pre- and post-award activities. All of the Contracts Specialists work in the same workgroup and report to the same supervisor.

#### CONCLUSION 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 and 6, the employees described in finding of fact 4 only share a community of interest with the bargaining unit described in finding of fact 3.

#### ORDER

The employees in the Contracts Specialist 1 and 3 job classes shall be added to the bargaining unit described in finding of fact 3 without the need for an election. The bargaining unit description shall remain unchanged.

ISSUED at Olympia, Washington, this 30th day of May, 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 05/30/2024

DECISION 13859 - 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 138704-C-24

EMPLOYER: WASHINGTON STATE DEPARTMENT OF COMMERCE

REP BY: LAUREN WATTS  
WASHINGTON STATE DEPARTMENT OF COMMERCE  
1011 PLUM STREET SE  
OLYMPIA, WA 98504  
lauren.watts@commerce.wa.gov

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

MYNOR LOPEZ  
OFFICE OF THE ATTORNEY GENERAL  
7141 CLEANWATER DRIVE SW  
PO BOX 40145  
OLYMPIA, WA 98504-0145  
mynor.lopez@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