

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON FEDERATION OF
STATE EMPLOYEES

Involving certain employees of:

WASHINGTON STATE UNIVERSITY

CASE 128521-E-16

DECISION 12808 - PSRA

ORDER MERGING BARGAINING
UNITS

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, for the petitioner, the Washington Federation of State Employees.

Cheryl L. Wolfe, Senior Counsel, Attorney General Robert W. Ferguson, for the employer, Washington State University.

On October 28, 2016, the Washington Federation of State Employees (union) filed a petition to merge two different bargaining units of employees that it represents at Washington State University (employer). The bargaining units at issue are the Maintenance and Construction and Waste Management bargaining units. The union asserts that merging these two bargaining units would result in an appropriate bargaining unit. The employer opposes the union's request to merge these bargaining units and claims that no community of interest exists between the two bargaining units and therefore the petition should be denied.

Representation Case Administrator Dario de la Rosa met with the parties to discuss the union's petition and to attempt to resolve this matter. During those discussions, the parties agreed to submit arguments and affidavits in support of their respective position.

The union's request to merge its bargaining units is granted. If a single employee organization is the exclusive bargaining representative for two or more units of state civil service employees, those bargaining units may be consolidated into a single larger unit if the larger consolidated bargaining unit is deemed appropriate. RCW 41.80.070(3). In this instance, merging the existing bargaining units into a single larger unit would result in an appropriate bargaining unit under the statute.

BACKGROUND

The employer's Facilities Services Department is responsible for the physical maintenance and operation of the employer's campuses, including the main Pullman Campus. Daniel Costello is the Assistant Vice President in charge of the department. The department is divided into six different work groups: Maintenance Services, Construction Services, Waste Management, Custodial Services, Plant Services, and the Steam Plant.

The union represents two bargaining units of employees in Facilities Services. The Maintenance and Construction bargaining unit, also known as bargaining unit 13, consists of the approximately 125 employees in Maintenance Services and Construction Services work groups. That bargaining unit is currently described as "All full-time and regular part-time employees in the Construction Service, Maintenance and Utilities Divisions within the Facilities Operations Department at Washington State University, excluding supervisors, confidential employees, and all other employees." *Washington State University*, Decision 12048-B (PSRA, 2014). The employees in this bargaining unit work in journey-level trades such as carpentry, electrical, floor laying, plumbing, refrigeration, roofing, and other construction and maintenance jobs.

The Waste Management bargaining unit, also known as bargaining unit 19, consists of approximately 15 employees in Waste Management work group. That bargaining unit is currently described as "All full-time and regular part-time non-supervisory employees in the Washington State University Facilities Services, Waste Management Division, excluding supervisors, confidential employees, and all other employees." *Washington State University*, Decision 12620-A (PSRA, 2016). The employees in this bargaining unit are responsible for the collection, transportation, and disposal of wastes, recyclables, and surplus materials.

The Steam Plant and Plant Services and the Custodial Services Employees are currently unrepresented but have been represented in the past. See *Washington State University*, Decision 10136 (PSRA, 2008)(concerning the Steam Plant employees) and *Washington State University*, Decision 12690 (PSRA, 2017)(concerning the custodial services employees).

DISCUSSION

This agency has the authority to define new bargaining units of employees and to modify existing bargaining units to ensure their continued appropriateness. RCW 41.80.070. When this agency certifies a bargaining unit, the work performed by the employees in that bargaining unit becomes the historic work jurisdiction of that unit. *See, e.g., Kitsap County Fire District 7, Decision 7064-A (PECB, 2001)*(bargaining unit work is defined as “work that bargaining unit employees have historically performed”).

In making bargaining unit determinations this agency 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. These criteria are not applied on a strictly mathematical basis. *State – Fish and Wildlife, Decision 12636 (PSRA, 2016)*. 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. PERC, 101 Wn.2d 435 (1984)*. When crafting the final bargaining unit configuration, this agency is only required to create and certify *an* appropriate bargaining unit configuration, not the most appropriate bargaining unit configuration. *See State – Veterans Affairs, Decision 12549-A (PSRA, 2016)*. Bargaining units of state civil service employees may be merged provided only one exclusive bargaining representative represents the bargaining units subject to merger and the resulting merged bargaining is appropriate under the statute. RCW 41.80.070(3); WAC 391-25-426.

The merger of bargaining units under RCW 41.80.070(3) can be presumed to reflect a concern about the proliferation of bargaining units as well as an attempt to avoid fragmentation issues. *University of Washington, Decision 11155 (PSRA, 2011)*. Although the purpose of the statute is to avoid to alleviate fragmentation in the workforce, the focus of the statute is narrow. The statute allows for the merger of *existing* bargaining units into a single appropriate bargaining unit. The statute does not anticipate or contemplate other types of modifications or clarification of the bargaining units in the same proceedings.

Application of Standards

Merging the Maintenance and Construction bargaining unit with the Waste Management bargaining unit would result in an appropriate bargaining unit under the statute. While the current bargaining unit configurations is appropriate, a bargaining unit composed of the Maintenance Services, Construction Services, and Waste Management work groups would also be appropriate under RCW 41.80.070.

The extent of organization and avoidance of fragmentation supports a conclusion that a community of interest exists between the two bargaining units. The extent of organization examines how the work fits into the employer's operation and whether the clarification will create future work jurisdiction questions. When making bargaining unit determinations, the agency also seeks to avoid fragmentation that would create potential work jurisdiction disputes. *University of Washington*, Decision 8315 (PECB, 2003).

Here, the pattern of organization within the Facility Services Department demonstrates a history of vertical organization along work group lines. The entirety of the Maintenance Services, Construction Services, and Waste Management work groups are included in the two existing bargaining units. Additionally, the former Steam Plant and Custodial Services bargaining units were also comprised of all employees in each particular work group.

Although the bargaining units in Facilities Services have historically included all employees of a particular work group, the structure of the bargaining units in Facility Services have not been restricted to a "one bargaining per work group" pattern. The Maintenance and Construction bargaining unit is a single bargaining unit comprised of two different work groups, Maintenance Services and Construction Services. Thus, bargaining unit configurations that "mix and match" different work groups in Facilities Services could be appropriate under the existing pattern. Furthermore, while a "wall-to-wall" bargaining unit comprised of all of Facilities Services would arguably be a more appropriate bargaining configuration, nothing suggests that a single bargaining unit of just the Maintenance Services, Construction Services, and Waste Management work groups would create work jurisdiction issues as to render it inappropriate. Finally, no evidence suggests that work jurisdiction issue would be created if the two bargaining units were to be merged.

The history of bargaining for the Maintenance and Construction bargaining unit and Waste Management bargaining unit supports a conclusion that the two bargaining units share a community of interest, although the weight of this support is minimal. The union and employer are parties to a master collective bargaining agreement that applies to all of the bargaining units the union represents with this particular employer. When the parties negotiated their most recent agreement, the Waste Management bargaining unit was not formally represented by the union. The parties later reached agreement to bring that group under the umbrella of the master agreement. While the union has not formally bargained on behalf of the Waste Management groups, it has successfully negotiated for the Maintenance and Construction bargaining unit.

The duties, skills, and working conditions neither support nor work against a conclusion that the Maintenance and Construction bargaining unit and Waste Management bargaining unit share a community of interest. While there may be instances where each bargaining unit works side-by-side, no evidence suggests that the job duties of each bargaining unit are intertwined to the extent that work jurisdiction issues exist between the groups. There are no overlapping job classes between the two bargaining units and conditions of employment are largely governed through the collective bargaining process. Finally, while both bargaining units share the same appointing authority, Costello, each bargaining unit has its own separate lines of direct supervision.

CONCLUSION

RCW 41.80.070 only requires this agency to certify an appropriate bargaining unit. There is no requirement that the most appropriate bargaining unit configuration be certified. In this instance, merging the Maintenance and Construction bargaining unit and Waste Management bargaining unit would result in an appropriate bargaining unit. The union's petition is granted. There is no evidence that merging the two units would result in an inappropriate unit.

FINDINGS OF FACT

1. Washington State University (employer) is an employer within the meaning of RCW 41.80.005(10).

2. The Washington Federation of State Employees (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. The employer's Facilities Services Department is responsible for the physical maintenance and operation of the employer's campuses, including the main Pullman Campus. The department is divided into six different work groups: Maintenance Services, Construction Services, Waste Management, Custodial Services, Plant Services, and the Steam Plant.
4. The union represents a Maintenance and Construction bargaining unit that consists of the approximately 125 employees in Maintenance Services and Construction Services work groups. That bargaining unit is currently described as "All full-time and regular part-time employees in the Construction Service, Maintenance and Utilities Divisions within the Facilities Operations Department at Washington State University, excluding supervisors, confidential employees, and all other employees." *Washington State University*, Decision 12048-B (PSRA, 2014).
5. The employees in the bargaining unit described in Finding of Fact 4 work in journey-level trades such as carpentry, electrical, floor laying, plumbing, refrigeration, roofing, and other construction and maintenance jobs.
6. The union represents a Waste Management bargaining unit that consists of approximately 15 employees in Waste Management work group. That bargaining unit is currently described as "All full-time and regular part-time non-supervisory employees in the Washington State University Facilities Services, Waste Management Division, excluding supervisors, confidential employees, and all other employees." *Washington State University*, Decision 12620-A (PSRA, 2016).
7. The employees in the bargaining unit described in Finding of Fact 6 are responsible for the collection, transportation, and disposal of wastes, recyclables, and surplus materials.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and WAC 391-25-426.
2. The merger of the bargaining units described in paragraphs 4 and 6 of the foregoing findings of fact will result in an appropriate unit for the purposes of collective bargaining under RCW 41.80.070, implementing the fragmentation and merger components of that section.

ORDER

1. The bargaining units described in Findings of Fact 4 and 6 shall be merged into one bargaining unit described as follows:

All full-time and regular part-time employees in the Construction Services, Maintenance Services, and Waste Management Sections within the Facilities Services/Operations Department at Washington State University, excluding supervisors, confidential employees, and all other employees.

2. The Washington Federation of State Employees shall continue to be the exclusive bargaining representative of all employees in the merged unit.

ISSUED at Olympia, Washington, on this 19th day of December, 2017.

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 391-25-660.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12808 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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