

Representation Coordinator Sally Iverson held an investigation conference with the parties on June 20, 2008, during which the parties stipulated that the employees were not covered by Chapter 41.76 RCW, the collective bargaining law applicable to faculty at the four-year institutions of higher education. Additionally, the parties subsequently stated that the lecturers are not covered by the Personnel System Reform Act, Chapter 41.80 RCW, which is the collective bargaining law applicable to state civil service employees.

However, during the investigation conference, the parties mentioned that several of the petitioned-for employees had filed a class action declaratory action in King County Superior Court to determine whether the lecturers should be considered "faculty" for purposes of compensation.² The Investigation Statement issued later that day did not address which particular collective bargaining statute should govern this proceeding, and also did not address how the King County litigation affected the proceeding before this agency.

On July 3, 2008, the Executive Director issued a letter asking for the parties' positions on which collective bargaining statute applies, and as to whether the priority of action rule enunciated in *City of Yakima v. IAFF Local 469*, 117 Wn.2d 655 (1991), precludes this Commission from considering this matter pending the outcome of the court litigation. Both parties responded to the Executive Director's request.

In response to the Executive Director's request, the union filed a letter claiming that the lecturers are higher education employees exempt from the state civil service law, Chapter 41.06 RCW, and are

² Case 08-2-13986-7 (filed April 25, 2008).

therefore covered by RCW 41.56.021. That statute, enacted in 2007, permits certain higher education employees exempt from the state civil service law to collectively bargain under the provision of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The union also claimed that the priority of action rule should not preclude processing of the petition.

The employer argued that the employees are not exempt from civil service and therefore cannot be covered by RCW 41.56.021. The employer also stated that the priority of action rule should apply because the plaintiffs to the lawsuit are claiming that they have rights under the University of Washington Faculty Handbook. The employer also argues that the union's petition should be dismissed pending the outcome of the court litigation.

The Executive Director issued a show cause order on August 4, 2008, asking the parties why she should not dismiss the petition. The Executive Director raised serious doubts about the application of RCW 41.56.021, commenting that the employees have never been afforded civil service, exempt, or faculty status. She also raised serious concerns regarding this agency's ability to process the representation case in light of the pending litigation. Both parties responded to the Executive Director's order, and reiterated their earlier positions. The Executive Director then dismissed the union's petition on the basis that RCW 41.56.021 did not grant the lecturers collective bargaining rights. This appeal followed.

DISCUSSION

Lecturers are Not Covered by RCW 41.56.021

In 2002, the Washington State Legislature enacted the Personnel System Reform Act, codified at Chapter 41.80 RCW, to provide

collective bargaining rights to civil service employees at higher education institutions. *See, generally, University of Washington, Decision 9410 (PSRA, 2006) (outlining the history of civil service at the four-year institutions of higher education).* Also in 2002, the Legislature enacted Chapter 41.76 RCW, which provides collective bargaining rights to faculty at the four-year institutions of higher education.

In order for civil service employees to exercise collective bargaining rights under Chapter 41.80 RCW, they must be covered by Chapter 41.06 RCW, the state civil service law. RCW 41.80.005(6). However, under RCW 41.06.070(2)(a), certain higher education employees are "exempt" from the coverage of Chapter 41.06 RCW, provided they fall into certain categories or classifications. That statute states:

RCW 41.06.070 EXEMPTIONS - RIGHT OF REVERSION TO CIVIL SERVICE STATUS - EXCEPTION.

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged

in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision

Any employee exempted from civil service under RCW 41.06.070 loses their Chapter 41.80 RCW collective bargaining rights. *University of Washington*, Decision 9410, see also *Green River Community College*, Decision 8751-A (PSRA, 2005). This statute continues to grant the higher education institutions the authority to exempt individual employees and remove them from existing bargaining units, provided that the institutions satisfy their collective bargaining obligation if bargaining unit work is removed from the bargaining unit with the exempted employee. See *University of Washington*, Decision 9410.

2007 Exempt Employee Law

In 2007, the Legislature enacted RCW 41.56.021 to provide collective bargaining rights to certain employees at higher education institutions who have been exempted from the provisions of Chapter 41.06 RCW under RCW 41.06.070(2). RCW 41.56.021 states, in part:

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to employees of institutions of higher education who are exempted from civil service pursuant to RCW 41.06.070(2), with the following exceptions:

(a) Executive employees . . . , including executive heads of major administrative or academic divisions;

(b) Managers who perform any of the following functions:

(i) Formulate, develop, or establish institutional policy, or direct the work of an administrative unit;

(ii) Manage, administer, and control a program, including its physical, financial, or personnel resources;

(iii) Have substantial responsibility for human resources administration, legislative relations, public information, internal audits and investigations, or the preparation and administration of budgets;

(iv) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment;

(c) Employees who, in the regular course of their duties, act as a principal assistant, administrative assistant, or personal assistant to employees as defined by (a) of this subsection;

(d) Confidential employees;

(e) Employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(2) Employees subject to this section shall not be included in any unit of employees certified under RCW 41.56.022, 41.56.024, or 41.56.203, chapter 41.76 RCW, or chapter 41.80 RCW. Employees whose eligibility for collective bargaining is covered by chapter 28B.52, 41.76, or 41.80 RCW are exempt from the provisions of this chapter.

. . . .

Whether or not the lecturers fall under one of the RCW 41.56.021(1)(a) through (e) exceptions is not an issue in this case. What is at issue is whether the lecturers are considered exempt from civil service. The Executive Director found that there is no evidence demonstrating that the lecturers are a class of employees who have been specifically exempted from civil service, and that the lecturers have never been accorded exempt, classified, or faculty status.

The union argues that the Executive Director's interpretation of the lecturers' employment status is incorrect and by dismissing the petition, the Executive Director is subverting the legislative intent to grant bargaining rights to all higher education employees. According to the union, the lecturers should be considered "academic personnel," which would automatically make the lecturers exempt from civil service under RCW 41.06.070(2) and therefore eligible for collective bargaining rights under RCW 41.56.021. The

union urges this Commission to adopt a liberal interpretation of RCW 41.56.021 to favor collective bargaining rights.

The employer supports the Executive Director's interpretation of RCW 41.56.021, and notes that the university's governing board has not taken steps to exempt the lecturers from civil service. Therefore, according to the employer, the lecturers do not qualify for collective bargaining rights under that law.

Although RCW 41.56.021 grants collective bargaining rights to certain higher education employees who were previously ineligible for such rights, it does not grant collective bargaining rights to all higher education employees. For example, when the research and teaching assistants at the University of Washington and Washington State University sought collective bargaining rights, special legislation was required to secure that right, because neither group fell into any existing statutory scheme.³

Additionally, RCW 41.56.021(1)(a) through (c) and (e) still preclude certain other types of employees from exercising collective bargaining rights even though they hold classifications or positions that would otherwise be eligible for rights, such as administrative assistants to executive employees. Thus, it cannot be said that by enacting RCW 41.56.021 the Legislature intended to grant all higher education employees collective bargaining rights.

³ In 2002, the Legislature enacted RCW 41.56.203, which granted research and teaching assistants at the University of Washington bargaining rights. In 2008, the Legislature enacted RCW 41.56.205, which granted research and teaching assistants at Washington State University bargaining rights.

Lecturers are Not Academic Employees

The union contends that the ordinary dictionary definition of "academic employee" includes the lecturers. We disagree.

The term "academic personnel" is not defined in Chapter 41.06 RCW, Chapter 41.56 RCW, Chapter 41.76 RCW, or Chapter 41.80 RCW. When interpreting the statutes this Commission administers, we must ascertain the meaning of the words within those statutes and give them the full effect the Legislature intended. *State - Transportation*, Decision 8317-B (PSRA, 2005), citing *City of Yakima*, Decision 3503-A (PECB, 1990).

In ascertaining the meaning of a particular word or words within a statute, this Commission must consider both the statute's subject matter and the context in which the word is used. *State - Transportation*, Decision 8317-B, citing *Chamberlain v. Department of Transportation*, 79 Wn. App. 212, 217 (1995). Statutes must be interpreted and construed so that all language used is given effect, and no portion is rendered meaningless or superfluous. *State - Transportation*, Decision 8317-B, citing *Whatcom County v. City of Bellingham*, 127 Wn.2d 537 (1996). Furthermore, although this state's collective bargaining laws should be construed liberally, this Commission should not do so if such a construction would result in an unlikely, absurd, or strained interpretation of the statutory language. Accord *City of Yakima v. IAFF, Local 469*, 117 Wn.2d 655, 670 (1991) and *State ex rel. Evergreen Freedom Foundation v. Washington Education Association*, 140 Wn.2d 615, 637 (2000).

Ordinary Meaning of "Academic" and "Personnel"

As used in the statute, the ordinary meaning of the term "academic" means "of, belonging to, or associated with an academy or school

esp. of higher learning". WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 9 (1986). Additionally, the term "personnel" means " a body of persons employed in some service (as the army, or navy, a factory, office, airplane)." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1687. When these two definitions are read in conjunction, the ordinary meaning of these words would lead to a conclusion that "academic personnel" literally means any person employed by a school of higher learning.

Although this definition seems reasonable on its face, when read in context with the rest of RCW 41.06.070(2), the ordinary meaning leads to an absurd result: it would indicate an intent to allow a higher education employer to exempt all of its employees, and not just certain classes. Accordingly, this reading would render superfluous the other classes of employees who may be exempt from civil service under RCW 41.06.070(2).

The union directs us to the collective bargaining law for community college faculty, Chapter 28B.52 RCW, which contains a definition of "academic employee." RCW 28B.52.020(2) defines "academic employee" as "any teacher, counselor, librarian, or department head . . . whether full or part time with the exception of the chief administrative officer of, and any administrator in, each college district." The union points to the fact that "teachers" are included in this definition, a term that is similar in nature to lecturers.

Thus, while the term "academic employee" seems similar to "academic personnel," RCW 28B.52.020 is actually of little help because it includes other classes of employees, such as counselors, that can be exempted from civil service under RCW 41.06.070(b). Accordingly, reliance upon the broad definition used in the community

law is inapt for this case to determine the meaning of academic employee within the state civil service law.

In sum, we find that the Executive Director properly concluded that the lecturers are a special class of employees who are neither exempt employees as defined in RCW 41.56.021, employees covered by civil service, as defined in Chapter 41.06 RCW, or faculty under Chapter 41.76 RCW.

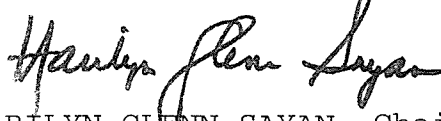
NOW, THEREFORE, it is

ORDERED

The Order of Dismissal issued by Executive Director Cathleen Callahan is AFFIRMED and Adopted as the Order of Dismissal of the Commission.

Issued at Olympia, Washington, the 20th day of February, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner