

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SEIU, LOCAL 925	)	CASE 12762-C-96-797
	)	
For clarification of an existing	)	DECISION 6659-A - PECB
bargaining unit of employees of:	)	
	)	
UNIVERSITY OF WASHINGTON	)	ORDER CLARIFYING
	)	BARGAINING UNIT
	)	

Theiler Douglas Drachler & McKee, by Martha Barron, Attorney at Law, and Paul Drachler, Attorney at Law, appeared on behalf of the union.

Christine Gregoire, Attorney General, by Diana E. Moeller, Assistant Attorney General, and Otto G. Klein III, Special Assistant Attorney General, appeared on behalf of the employer.

On October 14, 1996, the Classified Staff Association, District 925, SEIU, AFL-CIO (union), filed a unit clarification petition with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking a ruling concerning the propriety of actions by which the University of Washington (employer) purported to exclude employees from certain bargaining units, which the union represents under Chapter 41.56 RCW by operation of RCW 41.56.201. The union has amended its petition on multiple occasions, to identify additional positions purportedly excluded by the employer.

Testimony of witnesses was received and 120 documentary exhibits were identified during four days of hearing held before Hearing Officer Kenneth J. Latsch, on July 20, 21, 22 and 23, 1998. The hearing process was suspended prior to its conclusion, when the

parties submitted a stipulated issue on September 8, 1998. They each then filed a brief and reply brief concerning the right of the employer to apply the exemption criteria of the state civil service law, Chapter 41.06 RCW, to the bargaining units at issue here.

On April 15, 1999, the Executive Director ruled that none of the positions purportedly transferred to "exempt" status under the state civil service law since the bargaining units involved came under the coverage of Chapter 41.56 RCW have been, or are, excluded from the bargaining units on that basis. University of Washington, Decision 6659 (PECB, 1999).¹ The case was remanded for further proceedings consistent with Chapter 41.56 RCW.

On July 16, 1999, the union filed its 6th amended petition, identifying various positions which were claimed to have been removed from the bargaining units, including some purportedly removed after the issuance of University of Washington, Decision 6659 (PECB, 1999). In a letter dated August 2, 1999, one of the attorneys for the employer acknowledged that the employer continued to process exemptions after April 15, 1999.

Counsel for the employer commenced circulation of a stipulation, dated August 2, 1999, for signature. The copy of the document

¹ Among other things, the decision noted that:

- RCW 28B.16.015 and 41.56.201 expressly provide that the civil service law has no further application to those employees or bargaining unit(s);
- The narrow criteria for exemption from the coverage of Chapter 41.56 RCW are markedly different from the criteria for exclusion from the coverage of the state civil service law;
- Unit determination is a function delegated by the Legislature to the Commission, and is not a subject of bargaining between the employer and union.

eventually filed with the Commission bears a date stamp showing receipt on August 4, 1999, in the office of counsel for the union.

On August 4, 1999, counsel for both parties sent a letter to the Executive Director, advancing what they stated was an "unusual request given that our litigation remains pending before the agency". Without disclosing either the existence and content of the stipulation already being circulated among them, or any particular subjects, proposals and outcomes to be discussed, counsel asked that the Executive Director meet with them in connection with an effort "to find a mechanism that will allow the parties to resolve their dispute". The Executive Director initially accepted that invitation and set a meeting with counsel, after notifying the Commission of the request.

Prior to the requested meeting or any participation by the Executive Director in substantive discussion of the issues in the case with counsel, the stipulation dated August 2, 1999, was filed with the Commission on August 19, 1999. That stipulation resolved the issues for which the case had been remanded, and it asked that the Executive Director issue his final order in the matter.

By letter dated August 20, 1999, the Executive Director canceled the meeting arranged at the request of counsel, citing concern for the appearance of impartiality that must be maintained by the agency with respect to individual employees, and also citing concern that the parties' stipulation had again put the case directly before him. The Commission was notified of that action. Counsel renewed their request on September 15, 1999. The Executive Director has not responded to the latter request.

Based on the record at the hearing and the parties' stipulations, the Executive Director now clarifies the respective bargaining

units to include, for the past, present and future, all of the positions at issue in this unit clarification proceeding.

DISCUSSION

The stipulation filed by the parties on August 19, 1999, was not solicited by the agency. It set forth the following terms:

The University of Washington and the Classified Staff Association, District 925, SEIU, without waiving any appeal rights, enter into the following stipulation:

1. This stipulation applies to those positions which have been named in the unit clarification petition, its amendments, and/or added by agreement of the parties. **None of the employees serving in these positions are 1) appointed to office for a fixed term of office; 2) supervisory employees in non-supervisory bargaining units; or 3) confidential employees whose work has the "labor nexus" described in precedents interpreting RCW 41.56.020(2)(c).**

2. In light of the above stipulated facts, there is no further testimony or other evidence to present in this proceeding, as limited by the Executive Director's Decision, and the parties request that the Executive Director issue a Final Order from the Decision.

3. Each party has freely entered into this stipulation.

[Emphasis by **bold** supplied.]

The parties were reminded, in the letter issued on August 20, 1999, that stipulations filed in adjudicative proceedings are a matter of public record, and are binding upon the parties except for good cause shown. See, Community College District 5, Decision 448

(CCOL, 1978); WAC 10-08-140(6). Neither party has sought to withdraw from the stipulation filed on August 19, 1999.

Under the terms of the discussion, findings of fact and conclusions of law previously issued, the exemptions allowed by the state civil service law are not a basis for removing any employees from bargaining units which have previously been brought under the coverage of Chapter 41.56 RCW by operation of the mechanism set forth in RCW 41.56.201. The stipulation filed by the parties on August 19, 1999, eliminates any lingering question as to whether any of the employees at issue were or are eligible for exclusion from those units under the limited and narrowly-construed criteria specified in RCW 41.56.030(2). Issuance of a final order is thus appropriate in this proceeding.

The terms of the order are framed in light of the fact that these parties have created statutory rights for employees under Chapter 41.56 RCW by implementation of a mechanism which deprived those same employees of their statutory rights under Chapter 41.06 RCW. As noted in University of Washington, Decision 6659 (PECB, 1999), at page 10,

[N]o route back to civil service was provided by Chapter 379, Laws of 1993 for any "option-exercised" bargaining unit or employees, either at the behest of: The employer alone, the union alone, the employer and union together, or even the employees themselves.

The loss of civil service rights was not welcomed by all of the affected employees, and was even challenged by a dissenting employee in University of Washington, Decision 4668-A (PECB, 1994). The August 20, 1999 letter reflects a concern about individual employee rights under long-established precedent:

The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. [RCW 41.56.060.] Unit definition is not a subject for bargaining in the conventional "mandatory/permissive/illegal" sense, although parties may agree on units. Such agreement does not indicate that the unit is or will continue to be appropriate.

City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981) [footnotes omitted].

In the case of bargaining units brought under the coverage of Chapter 41.56 RCW by operation of RCW 41.56.201, the options regarding unit determination are further constrained by the fact that the bargaining unit must have been found appropriate under the civil service law before the RCW 41.56.201 mechanism can be implemented, and then,

The commission shall recognize, in its current form, the bargaining unit as certified by the higher education personnel board or its successor ...

RCW 41.56.201(2)(a).

These circumstances combine to warrant official scrutiny of any agreements by which the employer and union would deprive employees of their rights under Chapter 41.56 RCW.

NOW, THEREFORE, the Executive Director makes and issues the following:

AMENDED FINDINGS OF FACT

1. The University of Washington is an employer within the meaning of RCW 41.56.030(1).

2. The Classified Staff Association, District 925, SEIU, AFL-CIO (union), is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The Washington Personnel Resources Board (WPRB) has authority, under Chapter 41.06 RCW, to adopt and administer civil service rules for classified employees of state institutions of higher education. Prior to 1993, a Higher Education Personnel Board (HEPB) had authority, under Chapter 28B.16 RCW, to adopt and administer civil service rules for classified employees of state institutions of higher education. Since at least 1982, those civil service systems have provided for certification of exclusive bargaining representatives of such employees.
4. On various dates during and after 1982, the HEPB and WPRB certified the union as exclusive bargaining representative, under the civil service system, of certain of the employer's non-supervisory and supervisory classified employees.
5. RCW 41.56.201 was added to Chapter 41.56 RCW in 1993, and took effect on July 1, 1993. That provision and companion language in RCW 28B.16.015 give state institutions of higher education and the exclusive bargaining representatives of their classified employees an option to have their relationship and corresponding obligations governed entirely by Chapter 41.56 RCW. Those provisions specify that, upon filing of certain notices, the provisions of Chapters 28B.16 and 41.06 RCW cease to apply to all employees in the bargaining units covered under Chapter 41.56 RCW.
6. The employer and union filed notices of intent with the Commission and the WPRB on various dates, under RCW 41.56.201-

(1)(a) and 28B.16.015, indicating their intent to exercise the option provided to them by RCW 41.56.201.

7. The employer and union filed final notices with the Commission and WPRB on various dates, under RCW 41.56.201(1)(c) and 28B.16.015, indicating that they had executed initial collective bargaining agreements recognizing notices of intent described in paragraph six of these Findings of Fact. Their initial written and signed collective bargaining agreements negotiated under Chapter 41.56 RCW took effect on April 1, 1994, and July 1, 1994.
8. On various dates subsequent to the effective dates of the collective bargaining agreements described in paragraph seven of these Findings of Fact, the employer purported to exclude various employees from the bargaining units covered by those collective bargaining agreements, as "exempt".
9. In making the claims of "exempt" status described in paragraph eight of these Findings of Fact, the employer claimed authority for its actions under Chapter 41.06 RCW.
10. On October 14, 1996, the union invoked the authority of the Public Employment Relations Commission, by filing a petition under Chapter 391-35 WAC to challenge the propriety of the exclusions described in paragraphs 8 and 9 of these Findings of Fact. The union has filed multiple amendments to that petition, disputing additional employer actions of the same nature. Correspondence filed by the employer on August 5, 1999, acknowledges that such practices continued after the filing of the petition to initiate this proceeding, and even after the April 15, 1999, issuance of a previous decision in this proceeding.

11. On August 19, 1999, the parties filed a written and signed stipulation in this proceeding, applicable to all positions which have been named in the unit clarification petition, its amendments, and/or added by agreement of the parties.
12. Under the stipulation filed by the parties on August 19, 1999, none of the employees serving in the disputed positions are:
(1) appointed to office for a fixed term of office; (2) supervisory employees in non-supervisory bargaining units; or
(3) confidential employees whose work has the "labor nexus" described in precedents interpreting RCW 41.56.020(2)(c).

AMENDED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. By operation of RCW 28B.16.015 and 41.56.201(1)(c), all of the provisions of Chapters 28B.16 and 41.06 RCW (including all standards for exemption set forth in RCW 41.06.070 or which were formerly set forth in RCW 28B.16.040) permanently and irrevocably ceased to apply, on the effective dates of the collective bargaining agreements described in paragraph seven of the foregoing Finding of Fact, to all of the employees and positions in the bargaining units then covered by those collective bargaining agreements.
3. By operation of RCW 41.56.201(2), the parties' relationship and corresponding obligations since the effective date of the collective bargaining agreements described in paragraph seven of the foregoing Findings of Fact have been, and continue to be, governed entirely by Chapter 41.56 RCW.

4. None of the employees at issue in this proceeding qualify for exclusion under RCW 41.56.030(2), which provides the exclusive basis for exclusion of any employees or positions from the bargaining units described in paragraph seven of the foregoing Findings of Fact.

ORDER CLARIFYING BARGAINING UNIT

1. The bargaining units which the union represents under Chapter 41.56 RCW by operation of RCW 41.56.201 are clarified to include, and to have at all pertinent times included, all employees holding positions at issue in this proceeding, and all such employees and positions shall remain in those bargaining units except upon further order of the Commission.
2. The affected employees shall be returned to the bargaining unit without loss of pay or benefits.

DATED at Olympia, Washington, this 22nd day of October, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marvin L. Schurke", is written over the printed name.

MARVIN L. SCHURKE, 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.