

University of Washington, Decision 7071 (PRIV, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
GRADUATE STUDENT EMPLOYEES ACTION)
COALITION) CASE 15088-E-00-2512
)
Involving certain employees of:) DECISION 7071 - PRIV
)
UNIVERSITY OF WASHINGTON) ORDER CLOSING CASE
)
_____)

Theiler, Douglas, Drachler & McKee, by Martha Barron, Attorney at Law, and Paul Drachler, Attorney at Law, and Michael Miller, International Representative, represented the petitioner.

Summit Law Group, by Otto G. Klein III, Attorney at Law, represented the employer.

On March 15, 2000, the Graduate Student Employees Action Coalition, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (union), filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the University of Washington (employer). An investigation conference was held on April 14, 2000, and an investigation statement was issued. On May 4, 2000, the parties were asked to file sworn statements of their positions, pursuant to RCW 49.08.050. Such statements were filed and, on May 16, 2000, the union requested withdrawal of its petition.

The Executive Director has considered the matter, and concludes that the proceedings should be closed.

DISCUSSIONOffer of Service Under Chapter 49.08 RCW

In its petition, the union sought certification as representative of unrepresented employees in a bargaining unit it described as:

Teaching assistant (0817), teaching associate I (0816), teaching associate II (0815), pre-doctoral instructor (0804), pre-doctoral lecturer (0805) and employees performing teaching assistant, teaching associate I, teaching associate II, reader/grader and/or tutor work in the student assistant titles (0872, 0874 and 0875).

During the investigation conference, the Commission offered to provide dispute resolution services to these parties under the authority conferred on it by Chapter 49.08 RCW, which includes:

49.08.010 DUTY OF DIRECTOR--MEDIATION--
BOARD OF ARBITRATION SELECTED--BOARD'S FIND-
INGS FINAL. It shall be the duty of the
chairman of the public employment relations
commission upon application of any employer or
employee having differences, as soon as prac-
ticable, to visit the location of such differ-
ences and to make a careful inquiry into the
cause thereof and to advise the respective
parties, what, if anything, ought to be done
or submitted to by both to adjust said dispute
and should said parties then still fail to
agree to a settlement through said chairman,
then said chairman shall endeavor to have said
parties consent in writing to submit their
differences to a board of arbitrations ...

Proceedings under Chapter 49.08 RCW have been used throughout the history of the Commission, to resolve disputes between employers and employees who are not expressly covered by any of the several

other collective bargaining statutes administered by the Commission. In questions concerning the representation of employees, the employees' votes become the record before the "arbitrator" and the resulting certification constitutes the arbitration award.

Operating under the directive of RCW 41.58.005 to provide "uniform and impartial ... efficient and expert" resolution of labor-management disputes, the Commission exercised its authority under RCW 41.58.050 to adopt rules, including Chapter 391-25 WAC to regulate the processing of representation cases under all of the statutes administered by the Commission. Initial processing of representation petitions under Chapter 49.08 RCW is indistinguishable from the processing of petitions filed under any other statute administered by the Commission. Acceptance by these parties of the services offered under Chapter 49.08 RCW would have obviated the need for a hearing or ruling on the Commission's jurisdiction over employees that are not clearly covered by some other statute.¹

Opportunity to Claim Jurisdiction Under Other Statute

During the investigation conference, the employer declined to have the Commission conduct this representation proceeding under Chapter

¹ In view of the highly fragmented statutory structure for public employee collective bargaining in Washington, it is sometimes difficult to discern the precise borders of statutory coverage. See, Roza Irrigation District v. State, 80 Wn.2d 633 (1972) [Chapter 41.56 RCW applied to junior taxing districts]; Zylstra v. Piva, 85 Wn.2d 743 (1975) [Chapter 41.56 RCW applied to juvenile court employees for purposes of negotiating wages and benefits with their county co-employers]. In Eastern Washington University, Decision 245 (PECB, 1977), affirmed WPERR CD-86 (Spokane Cty, 1978), the Commission and court ruled that Chapter 41.56 RCW did not apply to the faculty of a state university. In Nucleonics Alliance v. WPPSS, 101 Wn.2d 24 (1984), all nine members of the Supreme Court voted to reverse a Commission decision excluding that employer from Chapter 41.56 RCW.

49.08 RCW. The attention of the parties was directed to WAC 391-25-299,² and the union was advised that the petition would be dismissed unless it claimed that the Commission has jurisdiction under some other statute.³ In a letter filed by the union on May 3, 2000, counsel for the union did not assert that the petitioned-for employees are subject to the Commission's jurisdiction under some statute other than Chapter 49.08 RCW.

Demand for Sworn Statements

On May 3, 2000, the union made a demand for a sworn statement from the employer. RCW 49.08.050 includes:

FAILURE TO ARBITRATE--STATEMENT OF FACTS--
PUBLICITY. Upon the failure of the director

² WAC 391-25-299 provides:

The commission lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. The executive director shall not proceed in such matters unless an agreement is filed under WAC 391-25-230 or 391-25-250. WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW except for hearings and issues submitted under WAC 391-25-270. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. 90-06-072, § 391-25-299, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59-.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

³ Chapter 28B.52 RCW applies to the academic employees of community and technical colleges; Chapter 41.56 RCW applies to local government employees (with exceptions) and to certain state employees (including printing craft employees of the University of Washington and employees of the University of Washington transferred to that statute under RCW 41.56.201); Chapter 41.59 RCW applies to the certificated employees of common school districts; Chapter 53.18 RCW applies to employees of port districts.

... in any case, to secure the creation of a board of arbitration, it shall become his duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the director ... under this provision shall be for public use and shall be given publicly in such newspapers as desire to use it. [1903 c 58 § 5; RRS § 7671.]

By means of a letter issued on May 4, 2000, the Executive Director requested sworn statements from both parties.

Counsel for the employer filed and served a sworn statement which included:

2. The University of Washington respectfully declines to submit to the jurisdiction of the Public Employment Relations Commission pursuant to RCW 49.08.010.
3. Since the referenced statute does not provide either the Public Employment Relations Commission, or the parties, any framework for bargaining (including establishing such matters as mandatory subjects of bargaining, parameters for the duty to bargain, remedies for violation of any such duty, etc.), the University of Washington believes it would be unwise to consent to jurisdiction under 49.08 for attempted resolution of the representation question.
4. Additionally, it appears there is a significant legal question as to the applicability of this statute given that the petitioner in this matter is neither an "employer" nor "employee", and thus the "application" does not comply with the explicit terms of the statute.

The union's international representative filed and served a sworn statement which included:

By this letter, we confirm the Graduate Student Employee Action Coalition, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO's willingness to submit their "differences to a board of arbitration." We remain hopeful that the University will see the wisdom of participating in a process that will verify the Teaching Assistants', Tutors' and Readers' choice of a meaningful voice in their working conditions through Union representation. Our records reflect that 80% of the employees in the unit seek such representation by the UAW.

In a separate letter filed on May 16, 200, the union requested that the petition be withdrawn.

NOW, THEREFORE, it is

ORDERED

1. The sworn statements filed in this matter under RCW 49.08.050 shall be a matter of public record in the Commission's files.
2. The parties and the news media shall be entitled to give such publicity to the sworn statements filed in this matter under RCW 49.08.050, as they desire to use them.
2. The withdrawal of the petition filed in the above-captioned matter is accepted, and the case is CLOSED.

Issued at Olympia, Washington, this 17th day of May, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director