

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
GRAPHIC COMMUNICATIONS INTER-) CASE 16164-E-01-2683
NATIONAL UNION, LOCAL 767-M)
) DECISION 8382 - PECB
Involving certain employees of:)
)
UNIVERSITY OF WASHINGTON) ORDER CLOSING CASE
)
)
_____)

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at Law, for the union.

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the employer.

On December 31, 2001, Graphic Communications International Union, Local 767M (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 two employees of the University of Washington (employer). Issues were framed during preliminary processing of the case, and Hearing Officer Martha M. Nicoloff conducted a hearing on June 14, 2002. At the hearing, the parties tendered additional stipulations in light of an intervening statutory change, but disagreed about which of two statutes is applicable. The parties filed briefs.

The Executive Director finds that facts and circumstances stipulated or disclosed by the parties in the course of arguing an issue of statutory applicability contradict several long-standing principles established in statutes and/or Commission and judicial

precedents. In turn, application of those principles dictate an ultimate result here that has not been requested by either of the parties in this case. The employees are accreted to an existing unit, based on conclusions that the positions at issue: (1) have been improvidently treated as civil service positions excluded from the unit of printing craft employees already represented by the union; (2) do not constitute an appropriate separate bargaining unit; and (3) are properly accreted to the existing bargaining unit. The accretion is effective upon issuance of this order. The proceeding is CLOSED.

BACKGROUND

The employer is the largest of the institutions of higher education operated by the state of Washington, with a main campus in Seattle and branch campuses in Tacoma and Bothell, and a total enrollment of about 40,000 students. It operates under the general policy direction of a board of regents appointed by the Governor. That board appoints a president who has overall responsibility for day-to-day management of the institution, including financial affairs, program administration, and personnel matters.

Among activities conducted in support of its primary educational mission, the employer maintains and operates facilities for printing and duplication of materials through a "Department of Publication Services" at the institution. The employees at issue here operate offset printing presses in that department.

A "State Higher Education Personnel Law" was enacted in 1969, with administration by a Higher Education Personnel Board (HEPB). See repealed Chapter 28B.16 RCW, formerly Chapter 28.75 RCW. An authority to determine and modify bargaining units for limited-

scope collective bargaining under that law was delegated to the HEPB. Among the exclusions from the coverage of that statute were:

(5) The governing board of each institution, and related boards, may also exempt from this chapter, subject to the employees right of appeal to the higher education personnel board, classifications involving . . . *graphic arts* or publication activities requiring prescribed academic preparation or special training . . .

RCW 28B.16.040(5) (emphasis added). This employer excluded some of its printing employees from the coverage of that statute.

In 1987, the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, was amended by the addition of a new section as follows:

RCW 41.56.022 APPLICATION OF CHAPTER TO UNIVERSITY OF WASHINGTON PRINTING CRAFT EMPLOYEES. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to the University of Washington with respect to the printing craft employees in the department of printing at the University of Washington.

In *University of Washington*, Decision 2871 (PECB, 1988), the Commission certified this union as exclusive bargaining representative of a unit described as:

All full-time and regular part-time printing craft employees in the printing department; excluding all printing non-craft employees, office clerical employees, guards, and supervisors.

In *University of Washington*, Decision 3467 (PECB, 1990), the Commission certified this union as exclusive bargaining representative of a bargaining unit of printing supervisors. This employer and union thus have ongoing bargaining relationships apart from the unit proposed in this case.

Onset and Initial Processing of This Case

In its petition filed on December 31, 2001, the union described the proposed bargaining unit as:

All production and maintenance [employees] engaged in manufacturing printed forms for Publication Services at the University of [Washington].

The petition indicated there were only two employees in that proposed bargaining unit.

As part of the routine processing of this case, the Commission's Representation Coordinator sent a letter asking the employer for a list of the employees in the proposed bargaining unit. The employer responded with a list on January 10, 2002, but asserted that the employees are subject to the provisions of Chapter 41.06 RCW,¹ and therefore outside of the jurisdiction of the Commission.

On January 17, 2002, the Executive Director gave the union a period of 10 days in which to show cause why this case should not be dismissed for lack of jurisdiction. The union responded on January 25, 2002, asserting that the employees involved are printing craft employees who work in the same department as the employees already represented by the union under Chapter 41.56 RCW, so that the Commission had jurisdiction in the matter. The employer responded on January 31, 2002, providing additional information and continuing to assert that the Commission lacked jurisdiction.

¹ In 1993, the HEPB was abolished and the classified employees of state institutions of higher education were placed under the coverage of the State Civil Service Law, Chapter 41.06 RCW. At that time, the authority to determine and modify bargaining units for the limited-scope bargaining under that law was delegated to the Washington Personnel Resources Board.

The Representation Coordinator scheduled an investigation conference to be held by telephone conference call. The parties were unable to convene that conference on the scheduled date, but they each submitted a letter setting forth positions on the issues that would normally have been dealt with in an investigation conference.² Those letters framed issues with respect to the jurisdiction of the Commission, the timeliness of the petition, the propriety of the proposed bargaining unit, the eligibility list, and the existence of a question concerning representation. A hearing was scheduled for June 14, 2002.

Expansion of Commission's Jurisdiction

The Personnel System Reform Act of 2002 (PSRA) was signed into law in April 2002, creating a new collective bargaining system for state civil service employees. The PSRA is to be phased in with various effective dates, but the authority to determine and modify bargaining units of state civil service employees was transferred to the Public Employment Relations Commission by sections that took effect on June 13, 2002. Thus, the Commission's jurisdiction was broadened in the period of time that intervened between the framing of the jurisdiction issue and the opening of the hearing.

The Hearing and Additional Stipulations

At the hearing held on June 14, 2002, the parties tendered additional stipulations, as follows: (1) that the Commission has jurisdiction in this proceeding; (2) that the petition was timely

² Investigation conferences are a routine part of the processing of representation cases. Their purpose is to obtain stipulations on some or all of the limited issues that can properly be addressed in representation cases, or to frame the issues for a hearing.

filed; (3) that the proposed bargaining unit could constitute an appropriate bargaining unit; (4) that a question concerning representation exists; and (5) the eligibility list for this representation proceeding. The hearing was thus limited to the two issues that continued to exist, as to which statute is applicable, and as to the method for determining the question concerning representation.³

POSITIONS OF THE PARTIES

The union asserts that the two employees involved here are covered by RCW 41.56.022. It contends they qualify as "printing craft" employees because: (1) They operate presses similar in form and function to those operated by employees in the bargaining unit already represented by the union under Chapter 41.56 RCW; (2) they work in the same building as the employees in the existing bargaining unit; and (3) they report, through one level of supervision, to the same management as the employees in the existing bargaining unit. The union argues that the disputed employees have always been employed in the employer's "Department of Printing" or its successor, and that the current "Publications Services Department" resulted from a merger of the historical "Department of Printing" with another campus organization after the enactment of RCW 41.56.022. The union asserts that the disputed employees constitute an appropriate bargaining unit encompassing all of the employees in their division.

³ The issue framed concerning the method for determining the question concerning representation is deemed to have been abandoned. Although the union requested a cross-check during and prior to the hearing, it requested an election in its post-hearing brief.

The employer argues that the employees involved are civil service employees under Chapter 41.06 RCW, and that they are neither "printing craft" employees nor employed in the "Department of Printing" as envisioned by RCW 41.56.022. It notes that the HEPB established the "offset printer operator" classification in 1984, and that the disputed employees continue to be employed in that classification. The employer asserts that the disputed employees work in a "forms" operation which has always been a component of a "copy services" function, rather than of its Department of Printing. Reflecting on the time when the existing bargaining unit was certified, it notes that the disputed employees: (1) were located in the same building as the print shop; (2) operated the same presses which they now operate; and (3) performed the same kind of work which they now perform. The employer then notes that the disputed employees were excluded from the existing bargaining unit by agreement of the parties, and it asserts there have been no changes of circumstances which would warrant a change of their unit status. It points out that the disputed employees have separate supervision at the first level, and contends that the reporting relationships of the proposed unit of employees and the current bargaining unit employees are the same only at the levels of the associate director and director of publications.

ANALYSIS

RCW 41.56.023 and RCW 41.56.201 Are Inapposite

Notwithstanding the enactment of the PSRA and the employer's stipulation at the hearing as to the jurisdiction of the Commission in this matter, the employer's brief includes that its classified employees "may only end up in a bargaining unit under the [Commission's] jurisdiction for scope of bargaining by utilizing the

provisions of [RCW] 41.56.201." The argument confuses an option with obligatory provisions, and is without merit.

RCW 41.56.023 and RCW 41.56.201 were enacted in 1993, to provide an option for state institutions of higher education and the unions representing their employees. The union had to first obtain certification as exclusive bargaining representative of the bargaining unit for the purposes of the limited-scope bargaining process under the State Civil Service Law. Thereafter, the employer and union could agree to move their bargaining relationship to full-scope bargaining under Chapter 41.56 RCW, while removing the employees from the coverage of the State Civil Service Law.⁴ The employer would have been a party to the representation proceeding under the State Civil Service Law, but could not have blocked the certification by merely withholding its consent; employer consent was only required for exercise of the "option" under those sections.

With the enactment of the PSRA in 2002, the Commission acquired jurisdiction over representation proceedings involving classified (civil service) employees of this employer. Employers are parties to representation proceedings under the PSRA, but cannot block a certification by merely withholding their consent. Thus, even if the employees involved here are covered by Chapter 41.06 RCW, the processing of this case must go forward.

Status as Printing Craft Employees

The term "printing craft" appears in both Chapter 41.06 RCW and Chapter 41.56 RCW, but is not defined in either of them. In that

⁴ The window of opportunity for exercise of the "option" under RCW 41.56.201 closed as of July 1, 2003.

context, the Executive Director looks first to the collective bargaining agreement negotiated by these parties under RCW 41.56.022, for guidance as to the types of job titles or classifications which they have historically treated as "printing craft" employees. Appendix C to the parties' contract details job titles included in that bargaining unit as diverse as "lithographer" (including "camera operator", "stripper" and "platemaker" sub-groups), "press operator" (without limitation as to the type of press), "book binder" (at two levels), "receiving/stock room clerk" (with no explicit reference to printing), "shipping/receiving clerk" (where a reference to "deliveries of finished printed material" provides basis for an inference of no involvement in the actual printing process), "press feeder" (without limitation as to the type of press), "preparatory assistant" (with reference to the lithographers), "electronic pre-press" (at two levels with specific reference to offset printing), "pre-press production technician" (with reference to preparation for in-house printing), "truck driver" (where a reference to "finished products" provides basis for an inference of no involvement in the actual printing process), and "general worker" (without reference to any printing tasks).

The proposed bargaining unit consists of two employees, Nick Rossi and Paul Richards. Rossi works full-time, and Richards works part-time.⁵ This record establishes that:

- The disputed employees operate offset printing presses which transfer an image from a plate to a rubber blanket, and then re-transfer the image from the rubber blanket to pieces of paper. The presses used are identical in form and function

⁵ Under either of the statutes which the parties claim to be applicable, the proposed unit is perilously close to a "one-person" unit that would be inappropriate under Commission precedents and WAC 391-35-330.

(except as to their label) to one of the presses operated in the employer's main print shop.

- The titles historically used by the employer connote skills associated with the printing crafts: An "offset duplicator operator" title was used prior to 1986; a "forms press operator" title was substituted when the positions were moved to the employer's main campus; the title was changed to "offset printer operator" in 1987 or 1988, to more adequately reflect the nature of the duties performed by these positions.⁶ The same "offset printer operator" title is used in the bargaining unit already represented by the union.
- Both the disputed employees and employees in the main print shop use a printing industry time reporting system called "Logic" for keeping track of time spent producing products by printing presses, bindery, etc. No other employees use the "Logic" system.
- In the performance of their duties, the disputed employees have regular and ongoing interaction with employees already represented by this union, including:
 - ▶ Employees already represented by this union perform the pre-press preparation of all of the plates used by the disputed employees (along with all of the plates used in the main print shop);
 - ▶ Employees already represented by this union warehouse and handle the paper used by the disputed employees; and

⁶ The offset printer operator classification was adopted by the HEPB in 1984, but was not applied to these positions until after the effective date of RCW 41.56.022.

- ▶ When the disputed employees finish printing a job, they deliver their product to bindery and shipping employees already represented by the union, who then do all of the padding, coating, boxing, and batch counting work needed prior to delivery of the finished products from both press rooms to the customers.
- The primary work of the disputed positions has been to produce forms used at the University of Washington Medical Center and Harborview Medical Center facilities operated by the employer, but the disputed positions also produce internal documents (such as overtime and vacation slips) for the department in which they are employed. Employees in the main print shop produce a variety of brochures, posters, business cards, stationery, and fliers used by various university departments.

Offset printing presses and the skills needed for their operation are clearly distinguishable from the spirit duplicator, mimeograph, facsimile, and electronic copier machines currently or historically used to copy papers in office and/or educational settings. In the absence of any reference to products or customers among the unit determination criteria found in RCW 41.06.340, RCW 41.56.060, or RCW 41.80.070, the fact that the petitioned-for employees and the already-represented employees produce different specific products and/or have different ultimate customers does not alter or negate the fact that they have similar duties and skills. The disputed individuals are found to be "printing craft" employees within the meaning of RCW 41.06.070(2)(d) and 41.56.022.

Statutory Changes

Even though the equipment used and products produced by the disputed positions have remained constant at all relevant times,

the legal environment surrounding them has changed since the Higher Education Personnel Law was enacted in 1969. Taken together, both statutory changes and a decision by the Supreme Court of the State of Washington compel a conclusion that the disputed employees are covered by Chapter 41.56 RCW.

Exclusion from Civil Service -

Rather than being a random aberration, exclusion of this employer's printing employees from the coverage of repealed Chapter 28B.16 RCW paralleled the exclusion of state printing plant employees from the coverage of the State Civil Service Law. See RCW 41.06.070(1)(m). The state printing employees are organized for the purposes of collective bargaining, and contracts resulting from that bargaining relationship cover wage and benefit (full-scope) issues beyond the bargaining processes under either repealed Chapter 28B.16 RCW or Chapter 41.06 RCW. The Commission has provided dispute resolution services for cases involving the state printing plant under Chapter 49.08 RCW.⁷ Similarly, a representation petition filed by this union for the University of Washington print shop in 1984 was docketed under Chapter 49.08 RCW.⁸

In 1985, since-repealed Chapter 28B.16 RCW was amended by the addition of RCW 28B.16.042, specifically excluding printing craft employees at the University of Washington from the State Higher Education Personnel Law. The employer's claim of ongoing coverage of the disputed employees under civil service laws must be looked at with great suspicion, because this employer was deprived of any

⁷ Notice is taken of the Commission's docket records, which disclose at least seven cases processed by the Commission between 1985 and 1996.

⁸ Notice is taken of the Commission's docket records for Case 5376-E-84-974. The union filed its petition on July 31, 1984. The case was closed on November 14, 1984.

discretion it may previously have had as to "graphic arts" employees when the exclusion of "printing craft" employees from civil service was made absolute.⁹

Conferral of Full-Scope Collective Bargaining Rights -

Review of legislative history behind RCW 41.56.022 (Chapter 484, Laws of 1987), discloses that this union lobbied the Legislature in support of a bill granting printing craft employees of this employer the right to full-scope collective bargaining under the Public Employees' Collective Bargaining Act then applicable to local government employers and employees. Enactment of RCW 41.56.022 then placed the "printing craft" employees of this employer under the coverage of a remedial statute which had recently been interpreted, by a unanimous decision of the Supreme Court of the State of Washington, as prevailing over conflicting statutes. *Rose v. Erickson*, 106 Wn.2d 420 (1986). Any actions to limit or negate the full-scope collective bargaining rights of any "printing craft" employee of this employer after the enactment of RCW 41.56.022 must be looked at with great suspicion.

Improvident Inclusion Under Civil Service Law

Close review of the history of changes within the employer's table of organization indicates that the employees at issue in this proceeding should likely have been accorded full-scope collective

⁹ Consistent with the parties' collective bargaining agreement covering the existing bargaining unit and with the foregoing conclusion that the disputed employees come within the meaning of "printing crafts" terminology, the legislative history file for Chapter 266, Laws of 1985, includes correspondence from the union to the House of Representatives, indicating that the union defined "printing craft" employees to include "printing press" operators.

bargaining rights under RCW 41.56.022 many years ago. Rather than assessing blame for any past action or inaction, the focus in this representation proceeding must be on future relationships.

The record indicates that this employer's printing functions have evolved somewhat during the period affected by the statutory changes discussed above.

- The printing operations were divided between two branches of the employer's table of organization (each with a separate director) prior to and during 1985, when only the printing craft employees in the "Department of Printing" were excluded from the coverage of repealed Chapter 28B.16 RCW.¹⁰
- As of 1986, a "forms" operation existed within the "printing" operation, but the disputed positions were located at the Harborview Medical Center facility operated by this employer.
- In 1986, the disputed positions were relocated to the basement of the communications building on the employer's main campus, where the employer's other printing employees were located.
- Shortly after RCW 41.56.022 was enacted in 1987, the employer merged its printing operations into a single branch of its table of organization under a single director.¹¹ The "forms" operation in which the disputed employees work was placed in a "copy duplicating" section of the merged department, under the authority of a manager who reports to the department head.

¹⁰ At that time, the employer's table of organization had an "Office of Publications" operation, as well as a "Department of Printing" operation which was further subdivided under "printing" and "copy duplicating" labels.

¹¹ The "Department of Publications" name appears to have come into existence at this time.

- In approximately 1990, both the disputed positions and other printing employees were relocated to the newly-built publications services building. The disputed employees work in an alcove which shares one of its walls with the main print shop.

Thus, there is basis for a conclusion that the disputed positions were within the "printing" operation when RCW 41.56.022 took effect. Neither the employer's abandonment of the "Department of Printing" label that once appeared on its table of organization, nor its use of the "Department of Publications" name for the merged operation, can avoid or defeat the will of the Legislature in extending collective bargaining rights under RCW 41.56.022.¹²

Currently, the department is divided into several sections operating under three associate directors who report to the director. One of those associate directors, Frank Davis, is responsible for human resources matters involving all employees in the department and all department operations; the associate director for finance and administration is responsible for accounting information systems and procurement for the entire department; the third associate director is responsible for client and creative services, including customer service representatives, designers and web publishing. The current supervisor of the forms operation, Sandy Gardner, is responsible for approving leave requests, signing time sheets, and performance evaluations. Gardner reports directly to Davis, and the disputed employees report directly to Davis in Gardner's absence. If both Gardner and Davis are absent, the disputed employees report to the department head or such other management official as is available. The

¹² When the Legislature largely repealed Chapter 28B.16 RCW and transferred this employer's classified employees to Chapter 41.06 RCW in 1993, it again used the "Department of Printing" label to exclude printing craft employees in RCW 41.06.070(2)(d).

employer's organizational structure thus contradicts its claim that the disputed employees are significantly separated from other employees within the successor to the "Department of Printing" referenced in Chapters 41.06 and 41.56 RCW.

Even if the disputed positions had been some other branch of the employer's table of organization prior to the enactment of RCW 41.56.022, their situation changed with their move to the main campus for co-location with the main printing plant, with their inclusion in the merged department, with their relocation to the new facility with minimal physical separation from the main printing plant, and with their integration of functions and record-keeping with the employees in the main printing plant. The relocation and merger were changes of circumstances that could have warranted extending them collective bargaining rights under RCW 41.56.022.

Stipulated Exclusion from the Bargaining Unit

In the proceedings that led to the certification of this union as exclusive bargaining representative of non-supervisory printing craft employees of this employer, the parties stipulated to the propriety of a bargaining unit described as: "All full-time and regular part-time printing craft employees in the printing department; excluding all printing non-craft employees, office clerical employees, guards, and supervisors." The stipulated eligibility list for that proceeding did not contain the names of employees working in the positions now at issue.

The usual rule stated in *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981) is that: "Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the

unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed." However, another often-quoted pearl of wisdom from the same *City of Richland* decision cautions against narrow focus on the agreements of parties:

The determination of appropriate bargaining units is a function delegated by the legislature to the Commission [footnote cited 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 [footnote citing federal precedent]. Such agreement does not indicate that the unit is or will continue to be appropriate."

(emphasis supplied). If the unit structure agreed upon by this employer and union was inappropriate in 1988, or has become so at any subsequent time, it is not binding on the Commission.

Separate Unit for "Forms" Section Inappropriate

The parties have tendered a stipulation in this proceeding that a bargaining unit limited to the two offset press operators who produce forms could be an appropriate bargaining unit under either statute. Review of the facts and surrounding circumstances dictates a conclusion that their stipulation cannot be accepted under either of the potentially applicable statutes.

Potential for Work Jurisdiction Conflicts under Chapter 41.56 RCW - Several cases decided under Chapter 41.56 RCW point out the need for close scrutiny of potential work jurisdiction conflicts. *South Kitsap School District*, Decision 472 (PECB, 1978) stands for the proposition that an employer has a duty to bargain with the exclusive bargaining representative of a bargaining unit before transferring ("contracting out" or "skimming") work historically

performed by employees in that bargaining unit to employees outside of that bargaining unit.¹³ In *City of Seattle*, Decision 781 (PECB, 1979), a representation petition concerning a proposed separate bargaining unit of individuals categorized as "intermittent" workers under that employer's civil service system was dismissed, because of an ongoing potential for work jurisdiction conflicts with the bargaining unit that included full-time employees performing similar work. In *South Kitsap School District*, Decision 1541 (PECB, 1983), two separately-organized bargaining units that had overlapping work jurisdictions were both found to be inappropriate, and the two unions had to compete for a merged unit.¹⁴

In this case, the record suggests a substantial potential for work jurisdiction conflicts:

- Employees in the existing bargaining unit do pre-press work on orders run by the employees in the proposed bargaining unit;
- Employees in the existing bargaining unit and employees in the proposed bargaining unit operate similar equipment, so that orders could be moved from one side of the separating wall to

¹³ The term "contracting out" is customarily used when bargaining unit work is transferred to employees of another employer under the terms of a contract between the employers; the term "skimming" is customarily used when bargaining unit work is transferred to other employees of the same employer.

¹⁴ In *South Kitsap*, Decision 1541, one of the overlapping bargaining units had been created by the Commission upon a stipulation of the employer and union involved. The Commission has no independent source of information from which to assess whether stipulations conceal a potential for future problems. Thus, the fact of the Commission having certified a bargaining unit is not conclusive where the bargaining unit is stipulated by the parties.

the other in either direction, particularly in "equipment breakdown", "overload" and "rush" situations; and

- Employees in the existing bargaining unit do post-production work on orders run by employees in the proposed bargaining unit.

The fact that both the existing bargaining unit and the proposed bargaining unit would be represented by the same organization would not eliminate the potential for work jurisdiction problems. Reversing an Examiner's decision in *City of Centralia*, Decision 1534-A (PECB, 1983), the Commission found an employer guilty of an unfair labor practice for "skimming" work between two bargaining units represented by the same union.¹⁵

Fragmentation Contrary to Chapter 41.80 RCW -

Even if the evidence indicated that the employees at issue here were somehow distinguishable from the "printing craft" employees covered by RCW 41.56.022, and that they remained within civil service notwithstanding RCW 41.06.070(2)(d),¹⁶ that would not compel acceptance of the stipulation tendered by the parties as to the propriety of the bargaining unit proposed by the union.

¹⁵ A Teamsters local represented separate bargaining units of police officers and dispatchers. That employer sought to save its training investment in a police officer by laying off a dispatcher and assigning the junior police officer to perform dispatching functions.

¹⁶ It is surprising that, when asked by the Hearing Officer during the hearing, the employer official responsible for human resources in the Department of Publications was unfamiliar with the fee collected by the Washington State Department of Personnel (measured as up to one-half of one percent of salaries and wages paid to civil service employees under RCW 41.06.285) for its services regarding civil service employees.

RCW 41.80.070 is fully applicable at this time even though other provisions of the PSRA have yet to take effect, and it must be honored in considering any stipulation. That section includes:

RCW 41.80.070 BARGAINING UNITS - CERTIFICATION.

(1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, unless the unit does not meet all the requirements of (a) and (b) of this subsection. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modification of existing units, the commission shall consider: 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. . . .

(emphasis added). In essence, these parties ask the Executive Director to accept that a bargaining unit limited to one full-time employee and one part-time employee within a workforce numbering in the thousands is *NOT* excessive fragmentation.

Given the many units already in existence within this employer's workforce, the unit proposed in the tendered stipulation is fragmentary on its face. The immediate supervisor of the bargaining unit at issue in this proceeding (Sandy Gardner) is included in one of the bargaining units for which the option made available under RCW 41.56.201 has been exercised. In addition to records transferred by the Washington State Department of Personnel to the Commission under the PSRA at RCW 41.80.902, the Commission's docket records include information on bargaining units for which the option made available under RCW 41.56.201 has been exercised. Among the bargaining units that have been created under the civil service system and then transferred to Chapter 41.56 RCW are

bargaining units which include "media services" employees and bargaining units of supervisors. If the disputed employees were really under the civil service law, one cannot help but wonder why they were not included in one of the units previously created under the civil service system. An inference is thus available that this employer has treated the disputed employees as if they were printing craft employees at some points in time, and has failed to treat them as civil service employees when the opportunity to do so was presented. The employer cannot have it both ways.

Propriety of Accretion to Existing Unit

The conclusion that the positions at issue in this proceeding cannot stand alone as a separate bargaining unit leads inexorably to the question of what should be their unit placement. Regardless of whether the positions now at issue were properly excluded in the past from the bargaining unit represented by the union under RCW 41.56.022, they are now printing craft employees and they are now within the department which is the successor to the Department of Printing referenced in RCW 41.56.022. To preserve (and implement) their statutory collective bargaining rights under Chapter 41.56 RCW, they must be accreted to the bargaining unit already represented by the union under that statute.

Accretions are an exception to the general rule of employee choice under collective bargaining laws. As indicated in *City of Richland*, Decision 279-A, however, employees can be placed into existing bargaining units by order to cure unit configurations that have become inappropriate. Accretions are most often ordered where positions cannot logically stand on their own as a separate unit or be logically accreted to any other existing unit. *Cowlitz County*, Decision 7471 (PECB, 2001); *City of Auburn*, Decision 4880-A (PECB, 1994). In this case, the accretion of the disputed positions to

the existing bargaining unit will take effect upon issuance of this order, and will obligate this employer and union to bargain about the wages, hours and working conditions of the accreted employees from that day forward.¹⁷ This accretion does not automatically confer any rights or benefits to the disputed employees under the parties' collective bargaining agreement.

FINDINGS OF FACTS

1. The University of Washington is an "institution of higher education" within the meaning of RCW 41.56.030(8).
2. Graphic Communications International Union, Local 767M, a bargaining representative within the meaning of RCW 41.56.060, has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of two offset printing press operators working in the Department of Publications Services at the University of Washington.
3. Employees in the positions at issue in this proceeding operated offset printing presses in 1985, when printing craft employees of this employer were statutorily excluded from the coverage of since-repealed Chapter 28B.16 RCW.
4. Employees in the positions at issue in this proceeding and other printing employees of this employer have been co-located in facilities on the employer's main campus since 1986.

¹⁷ By its stipulation in the representation proceeding before the Commission in 1988, the union was a willing participant in the exclusion of the positions now at issue from the existing bargaining unit. Accordingly, the union is not in a position to complain about any past injustices or loss of income by the employees involved.

5. Employees in the positions at issue in this proceeding operated offset printing presses in a "forms" operation within the employer's Department of Printing in 1987, when printing craft employees of this employer were statutorily extended collective bargaining rights under Chapter 41.56 RCW.
6. In 1987, after the relocation of the positions at issue in this proceeding to the employer's main campus as described in paragraph 4 of these findings of fact and after the enactment of RCW 41.56.022 as described in paragraph 5 of these findings of fact, the employer reorganized its printing operations into a single department under a single director.
7. At all times since the reorganization described in paragraph 6 of these findings of fact, employees in the positions at issue in this proceeding have operated offset printing presses in the Department of Publications Services which is the successor to the Department of Printing referenced in RCW 41.06.070(2)(d) and RCW 41.56.022.
8. Since 1988, the employer and union have had a bargaining relationship concerning a unit which was described in a certification issued by the Commission as: "All full-time and regular part-time printing craft employees in the printing department, including assistant supervisor; excluding all printing non-craft employees, office clerical employees, guards and supervisors." The parties stipulated the description of that bargaining unit in the proceedings that led to the certification of the union as exclusive bargaining representative, and also stipulated to exclude the positions at issue in this proceeding from that bargaining unit.

9. The employer's printing operations have occupied a purpose-built facility since approximately 1990. Although a wall separates two press rooms within that facility, there is regular and ongoing interaction of personnel and integration of functions between the employees at issue in this proceeding and other printing craft employees in the department.
10. The employees at issue in this proceeding are under the immediate supervision of an employee who is covered by the State Civil Service Law, Chapter 41.06 RCW, and who is included in a bargaining unit created under that law or its predecessor. In the absence of their immediate supervisor, the employees at issue in this proceeding report to the manager who oversees the employees in the bargaining unit described in paragraph 8 of these findings of fact.
11. There is no claim or evidence that the employees at issue in this proceeding have ever been, or now are, included in any bargaining unit under Chapter 41.06 RCW or its predecessor.
12. The operation of offset printing presses is distinguishable as to duties and skills from the operation of office copiers and duplicating machines, and is printing craft work within a reasonable interpretation of that term as used in both RCW 41.06.070(2)(d) and RCW 41.56.022.
13. The operation of offset printing presses is within the scope of printing craft work as defined by this employer and union in the collective bargaining agreement they negotiated in connection with the bargaining relationship described in paragraph 8 of these findings of fact.

14. In light of the similarities of duties, skills, and working conditions, the co-location of operations, a commonality of supervision above the first level, and regular and ongoing interaction between employees in the bargaining unit described in paragraph 7 of these findings of fact and the employees at issue in this proceeding, the creation of a separate bargaining unit limited to offset printing press operators in the "forms" operation within the Department of Publications Services would create an ongoing potential for work jurisdiction conflicts.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.022, as well as under RCW 41.06.340 and Chapter 41.80 RCW, and under Chapter 391-25 WAC.
2. The employees at issue in this proceeding are public employees within the meaning and coverage of Chapter 41.56 RCW and are entitled to the full-scope collective bargaining rights provided by that statute, so that any claimed or actual treatment of them as classified employees under the State Civil Service Law, Chapter 41.06 RCW, is improvident and inappropriate.
3. The bargaining unit limited to certain offset printing press operators employed within the employer's printing operation, as described in the stipulation tendered by the parties in this proceeding, is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.
4. The existing bargaining unit of printing craft employees of the employer is properly modified, under RCW 41.56.060, to

include the employees at issue in this proceeding, so that no question concerning representation presently exists under RCW 41.56.060 and 41.56.070.

ORDER

1. The offset printing press operator positions at issue in this proceeding are accreted to the bargaining unit of printing craft employees currently represented by the union. Such accretion is effective on and after the issuance of this order, and does not automatically confer any rights or benefits under any existing collective bargaining agreement.
2. The proceedings initiated by the filing of a petition for investigation of a question concerning representation in the above-captioned matter are CLOSED.

Issued at Olympia, Washington, on the 30th day of January, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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 391-25-660.