

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
AMERICAN FEDERATION OF TEACHERS ) CASE 21807-E-08-3374  
 )  
Involving certain employees of: ) DECISION 10157-A - PECB  
 )  
COMMUNITY COLLEGE DISTRICT 20 )  
(CLOVER PARK TECHNICAL COLLEGE) ) ORDER DIRECTING  
 ) FURTHER PROCEEDINGS  
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\_\_\_\_\_ )

On June 27, 2008, the American Federation of Teachers (petitioner) filed a petition seeking to represent certain employees of the Clover Park Technical College (employer). The petitioner sought a bargaining unit described in the petition as:

All full-time and regular part-time exempt employees of Clover Park Technical College, excepting those excluded by statute, RCW 41.56.

An investigation conference was conducted on July 30 and August 5, 2008. At the conclusion of the conference, the parties disagreed over the proposed bargaining unit. The employer argued that the Commission does not have jurisdiction in this case. The employer explained its position by analyzing several sections of Chapter 41.56 RCW. RCW 41.56.024 extended collective bargaining rights to employees of technical colleges. RCW 41.56.021 granted collective bargaining rights to certain exempt employees of "institutions of higher education." The employer noted that RCW 41.56.030 defined "institutions of higher education" as:

the University of Washington, Washington State University, Central Washington University, Eastern Washington

University, Western Washington University, The Evergreen State College, and the various state community colleges.

Given these legislative directives, the employer argued that because the Legislature did not extend collective bargaining rights to exempt employees of technical colleges, the Commission could not assert jurisdiction over the employees at issue in the instant case without specific legislative authorization.

The petitioner argued that the Commission has jurisdiction over the employees at issue. The petitioner contended that the Legislature intended to cover technical colleges in its extension of collective bargaining rights to exempt employees, and that RCW 41.56.024 shows a legislative intent to include technical colleges under Chapter 41.56 RCW.

On August 8, 2008, an order to show cause was issued directing the parties to comment on the possibility of dismissing the petition. The parties submitted timely responses to the order to show cause, and those responses were considered in making this decision.

#### ISSUE

The issue to be decided by the Executive Director is whether Chapter 41.56 RCW allows the Public Employment Relations Commission to assert jurisdiction over exempt employees of technical colleges. Based upon the submissions of the parties, the applicable statutes, rules, and case precedents, the Executive Director rules that the Commission does have jurisdiction in this matter and that further proceedings are warranted concerning the description of the proposed bargaining unit and specific eligibility issues must take place.

ANALYSIS

The parties to this case have a fundamental difference of opinion as to whether Chapter 41.56 RCW allows exempt employees of technical colleges to organize for purposes of collective bargaining. The employer, by following a precise statutory analysis, concludes that the exempt employees do not have collective bargaining rights. The employer focuses on incremental changes that have added discrete groups to the statute's coverage. The petitioner maintains that the statute must be read to include as many groups of public employees as possible.

To a degree, both parties are correct. Chapter 41.56 RCW is a durable statute which has been amended a number of times to add non-traditional employee groups, such as individual providers (RCW 41.56.026), family child care providers (RCW 41.56.028), and adult family home providers (RCW 41.56.029) to its coverage. Conversely, the petitioner appropriately notes that Chapter 41.56 RCW must be given liberal application and should be read to extend collective bargaining to unorganized groups of public employees. *City of Yakima v. International Association of Fire Fighters, Local 469*, 117 Wn.2d 655, 818 P.2d 1076 (1991).

However, Chapter 41.56 RCW must be read in context of other statutes. Of particular interest to this case is Chapter 28B.50.874, which deals with the transfer of administration of vocational-technical schools to the community and technical college system in 1998. In pertinent part, RCW 28B.50.874 states:

Any collective bargaining agreement in effect on June 30, 1991, shall remain in effect as it applies to employees of vocational technical institutes until its expiration or renewal date or until renegotiated or renewed in accordance with chapter 28B.52 or 41.56 RCW. After the

expiration date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement, as it applies to employees of vocational-technical institutes, shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. The board of trustees and the employees may mutually agree to continue the terms and conditions of the agreement beyond the one year extension. *However, nothing in this section shall be construed to deny any employee right granted under chapter 28B.52 or 41.56 RCW. Labor relations processes and agreements covering faculty members of vocational technical institutes after September 1, 1991, shall be governed by Chapter 28B.52 RCW. Labor relations processes and agreements covering classified employees of vocational technical institutes after September 1, 1991, shall continue to be governed by chapter 41.56 RCW. (emphasis supplied).*

This statute clearly expresses a legislative intent to allow employees of technical colleges to bargain collectively under terms of either Chapter 28B.52 RCW for faculty members, or Chapter 41.56 RCW for classified employees. Furthermore, while state civil service employees must be covered by Chapter 41.06 RCW to exercise collective bargaining rights under Chapter 41.80 RCW, no such statutory prerequisite exists for employees to exercise collective bargaining rights under Chapter 41.56 RCW.<sup>1</sup> See *University of Washington*, Decision 9410 (PSRA, 2006). This right is not limited by calling certain employees "exempt" nor does it recognize the employer's right to keep any classified groups from asserting their collective bargaining rights.

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<sup>1</sup> This conclusion recognizes the employer's argument that RCW 41.56.021, which provides collective bargaining rights to certain higher education employees exempt from Chapter 41.06 RCW, is limited to those employees at the four-year institutions and community colleges (but not the technical colleges).

In this case, the petitioner seeks to represent a group of employees who have been classified as "exempt" by the employer. Given the clear directive found in RCW 28B.50.847 which recognizes the application of Chapter 41.56 RCW for classified employees of technical colleges, and the traditional view that Chapter 41.56 RCW must be read to encourage public employees to assert their right to bargain collectively, I must find that the Commission does have jurisdiction in this matter, and that "exempt" employees of technical colleges may organize under terms of Chapter 41.56 RCW.

My conclusion concerning jurisdiction does not end this matter. There are still substantial issues concerning the scope of the proposed bargaining unit and/or eligibility of individual employees to be bargaining unit members. Accordingly, this case will be referred to the Representation Coordinator to conduct further proceedings.

ORDER DIRECTING FURTHER PROCEEDINGS

Based on the foregoing, the petition for investigation of a question concerning representation filed in this matter is hereby referred for further proceedings to determine the scope of the proposed bargaining unit and the eligibility of potential bargaining unit members.

Dated at Olympia, Washington this 22nd day of October, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director