

In the matter of the petition of: )  
 )  
GRADUATE STUDENT EMPLOYEE ACTION )  
COALITION, UAW ) CASE 16288-E-02-2699  
 )  
Involving certain employees of: ) DECISION 8315 - PECB  
 )  
UNIVERSITY OF WASHINGTON ) DIRECTION OF ELECTION  
 )  
 )

Christine Gregoire, Attorney General, by *Judy Mims*, Assistant Attorney General, and Summit Law Group by *Otto G. Klein III*, Attorney at Law, joined by *Kristen D. Anger*, Attorney at Law, on the brief, for the employer.

a. The parties could not stipulate that a question concerning representation exists because the employer reserved its stipulation concerning the showing of interest. The employer questions the sufficiency of the showing of interest because the cards were, for the most part, gathered prior to the effective date of the enabling legislation.

- b. The parties did not stipulate to the definition of an appropriate bargaining unit. While both parties stated an acceptance of a "one sixth of employment" standard to determine regular part-time status, the employer wishes to apply that test in a 40 hour per week model, and the [union] wishes to use a 20 hour per week standard.
- c. The parties could not agree on a way to define a "continuing expectation of employment". The employer wants to analyze the working relationship using all four academic quarters, while the [union] wants to use three quarters ([Autumn], Winter and Spring) as a way to analyze a regular work year.
- d. The parties did not agree on a final disposition for individuals serving as Research Associates. The [union] believes that most "RA's" should be eligible for unit inclusion, while the employer believes that most of the RA's must be excluded under terms of the enabling legislation.
- e. The parties could not agree on how to deal with instances where individuals held multiple employment positions, particularly if some of those positions involved RA duties.
- f. The parties could not stipulate to a final eligibility list for the proposed bargaining unit.

Hearing Officer Kenneth J. Latsch conducted a formal hearing on 17 days between June and December of 2002, and the transcript of those proceedings fills 2,645 pages.<sup>1</sup> The parties filed briefs on February 18, 2003. The union filed a reply brief on March 3, 2003.

The Executive Director rules that: (1) the full-time standard for the student/employees involved in this proceeding is 20 hours per week for the normal academic year (autumn, winter and spring

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<sup>1</sup> The hearing dates were: June 19, July 12, July 18, July 19, July 25, August 1, September 5, September 6, September 18, September 19, September 20, October 17, October 21, October 29, October 31, November 1, and December 4, 2002, constituting the longest hearing process in the 28-year history of the Commission.

quarters); (2) student/employees are eligible for inclusion in the petitioned-for bargaining unit if they work in any combination of covered positions for more than one-sixth of that full-time standard; (3) research assistants and student/employees performing similar duties and responsibilities under other titles are included in the bargaining unit if their service obligations toward this employer qualify them as regular part-time employees; (4) the sufficiency of the showing of interest is not a proper subject for a ruling; and (5) doubts as to the validity of the authorization cards as actual evidence of representation warrant directing an election in this case.

#### 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.<sup>2</sup> Acting directly or through designees, the president has authority to formulate and issue rules, regulations, and executive orders. A provost reporting to the president serves as the employer's chief academic officer. An executive vice-president reporting to the president serves on an executive team with the president and provost. Additional vice-presidents and assistant vice-presidents have responsibility for specific portions of the operation.

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<sup>2</sup> Analysis in this decision is limited to the employer's personnel policies concerning the student/employees at issue in this proceeding.

At the time of hearing, a dean headed each of 17 colleges and schools (hereafter: "sub-institutions") on the Seattle campus.<sup>3</sup> The deans are responsible for academic affairs, as well as budgetary leadership. There were about 150 departments, divisions, and degree-granting programs within the subinstitutions,<sup>4</sup> and most of the teaching/learning actually takes place in these departments, divisions, and programs.

Each of the employer's departments, divisions, and programs has a faculty attached to it. At the time of the hearing, the employer had about 10,000 faculty members. The faculty has autonomy in some academic matters, and makes decisions (or at least effective recommendations) on some issues pertinent to this proceeding, including graduate school admissions and personnel practices.

#### Graduate Student/Employees

The employer offers degrees the "master of . . ." and "doctor of . . ." level in about 90 programs and the employer normally has more than 7,000 graduate students enrolled. The employer's Graduate School administrative unit coordinates activities among many of the departments offering graduate degrees, and the dean of the Graduate School has a vice-provost title in recognition of the

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<sup>3</sup> Most undergraduate degrees (at the "Bachelor of . . ." level) are conferred through the College of Arts and Sciences, which is the largest of the 17 subinstitutions. Other large subinstitutions are the: College of Education, College of Engineering, College of Forest Resources, School of Law, School of Medicine, School of Nursing, College of Ocean and Fishery Sciences, School of Pharmacy, and Daniel J. Evans School of Public Affairs.

<sup>4</sup> There is no uniformity as to the number of departments or programs per subinstitution: Several have multiple units; others have few.

level of academic responsibility associated with that position. The employer has established some policies applicable to all graduate students, and the graduate admissions office is responsible for assuring that prospective graduate students meet the employer's criteria for entrance. The departments, divisions, and programs can set their own standards for admission to their particular fields of study, and often supplement employer-wide policies with policies of their own.<sup>5</sup>

Competitiveness -

Some of the employer's graduate programs are nationally ranked and the employer receives many more applications for graduate study than are accepted, so that admission to its graduate programs is very competitive. At the same time, competition between institutions of higher education for the best students prompts this employer to provide substantial financial assistance to attract desired students for graduate study.

Prospective graduate students are often familiar with a specific program or project on the employer's campus, and contact faculty member(s) about the possibility of pursuing a course of study at the institution. Some departments conduct weekend visits for prospective students to come to the campus to meet with faculty members. It is commonplace for faculty members to discuss financial terms with prospective students (subject to the student being accepted through the graduate admissions office), and faculty members may actively recruit applicants by indicating their ability to provide financial support for research or study.

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<sup>5</sup> While they cannot conflict with institution-wide policies, departmental policies can be much more detailed and can cover issues not addressed in the institution-wide policies.

The financial packages offered to graduate students come in a variety of forms: In some cases, the student is given funding (hereafter: an "award") with little or no service expectancy attached to it;<sup>6</sup> a financial package may be offered for the prospective student's entire course of graduate study, or financial terms may be set for a specific period of time.<sup>7</sup>

Service Appointments -

In the many situations that are of interest in this proceeding, the financial package offered to a graduate student includes a service expectancy imposed by this employer for work as student/employee in one or more of the following roles:

- Teaching assistant (TA) roles (including predoctoral instructor, predoctoral lecturer, predoctoral teaching assistant, predoctoral teaching associate I, predoctoral teaching

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<sup>6</sup> Some students are excluded from consideration in this case on the basis that they are not employees of this employer in any sense. Those include:

(1) Students who fund their own tuition and expenses while pursuing a degree, and so have neither income from nor service obligations toward this employer;

(2) Students whose tuition and expenses are funded by a fellowship for a course of study and/or a specific area of research (most often a merit-based award from an outside source such as the National Science Foundation, the National Institute of Health, or a private foundation) secured through an application made to the funding source prior to the student coming to the employer's institution, so that enforcement of any terms or conditions is between the student and the funding source; and

(3) Students who receive funding from the employer to pursue a course of study with no service expectancy imposed by the employer (hereafter an "award").

<sup>7</sup> In such cases, the particular graduate program often finds ways to provide the affected graduate student some renewal of, extension of, or substitution for, the initial financial package.

associate II, and student/employees with substantially equivalent duties) generally support the teaching/learning functions of faculty members. A TA might assist a faculty member in the classroom, might lead a discussion section, or might conduct a laboratory section.<sup>8</sup> In some courses, a TA (usually a predoctoral instructor) may actually assume responsibility for an entire course, or can take over for a faculty member who is on a sabbatical or is otherwise away from the university during the quarter when the course is to be offered. The employer had 1,424 student/employees working in TA roles in the autumn of 2001.

- Staff assistant (SA) roles (including predoctoral staff assistant, predoctoral staff associate I, predoctoral staff associate II, and student/employees with substantially equivalent duties) generally complement teaching/learning and research activities. An SA might serve as a student advisor, might perform institutional research, or might perform related work such as admissions. The employer had 190 student/employees working in SA roles in the autumn of 2001.
- Research assistant (RA) roles (including predoctoral researcher, predoctoral research assistant, predoctoral research associate I, predoctoral research associate II, and student/employees with substantially equivalent duties) generally support the research mission of the university. An RA might assist a faculty member, might assist a member of the em-

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<sup>8</sup> For example: As to undergraduate courses which may have 500 or more students, the faculty member usually lectures to the entire class, while a TA leads a quiz section of 20-30 students where details from the lectures are discussed and students are provided with help in preparing for examinations; a TA working in such a situation is not independently responsible for the course being offered, and works closely with the faculty member to ensure that certain subjects are covered in detail.

ployer's permanent research staff,<sup>9</sup> might perform specific research assignments, or might perform independent research under the general supervision of a faculty member. The employer had 2,113 student/employees working in RA roles in the autumn of 2001.

There is no single method or standard for these types of service appointments. It is, however, the general practice that the tuition obligations of graduate students with TA, SA, and RA appointments will be funded in some part or in their entirety. Most of the graduate students with TA, SA, and RA appointments also receive monetary compensation for the work they perform.

#### Other Student/Employee Work Opportunities -

Some graduate students are offered work opportunities that appear to be less formal than the TA, SA, and RA roles:

- Tutors either work for a particular department or for a study center such as Student Athlete Academic Services,<sup>10</sup> to help undergraduate students individually or in groups. Tutors assist students in improving their performance in a particular class. Tutors work varying hours, mostly less than 20 hours a week.<sup>11</sup> Some tutors work more hours in the middle portions of the quarters during the normal academic year, while others

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<sup>9</sup> Notice is taken of *University of Washington*, Decision 7811 (PSRA, 2002), wherein another union was certified an exclusive bargaining representative of a bargaining unit of about 444 full-time and regular part-time research technologists who are classified employees under the State Civil Service Law, Chapter 41.06 RCW.

<sup>10</sup> The study centers can employ as many as 100 tutors in a quarter, and may also hire either undergraduate students or non-students as tutors.

<sup>11</sup> In many situations, tutors work on a very limited basis.



are available throughout those quarters, depending on the program and its expectations.

- Readers and Graders assist faculty members by reviewing and grading the papers submitted by (mostly undergraduate) students.<sup>12</sup> Readers and graders are typically paid on an hourly basis. In some cases, graders keep office hours and help students having problems in a particular course. Graders are typically hired for an academic quarter at a time, but the record reflects that their work time will be concentrated in just a portion of the quarter. For the most part, graders work approximately 10 hours a week, but may work as much as 15 hours weekly.

Both the service expectancies and compensation associated with these roles are understood to be quite variable.

#### Undergraduate Student/Employees

Some student/employees are working toward a degree at the "bachelor of . . ." level. A majority of the tutoring work is performed by such undergraduates, and undergraduates may work in other student/employee categories.

#### New Legislation

In its 2002 session, the Washington State Legislature passed Engrossed Substitute House Bill 2540,<sup>13</sup> amending the Public

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<sup>12</sup> The record indicates that undergraduate students may be hired as readers and graders.

<sup>13</sup> The term "substitute" connotes that amendments made in committee were rolled into a substitute bill; the term "engrossed" connotes that additional amendments were made on Second Reading.

Employees' Collective Bargaining Act, Chapter 41.56 RCW, to extend statutory collective bargaining rights (for the first time) to student/employees working in specific classifications at the University of Washington. That legislation became Chapter 34, Laws of 2002, and its operative language is now codified as follows:

RCW 41.56.203 UNIVERSITY OF WASHINGTON-CERTAIN EMPLOYEES ENROLLED IN ACADEMIC PROGRAMS-SCOPE OF COLLECTIVE BARGAINING. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the University of Washington with respect to employees who are enrolled in an academic program and are in a classification in (a) through (i) of this subsection on any University of Washington campus. The employees in (a) through (i) of this subsection constitute an appropriate bargaining unit:

- (a) Predoctoral instructor;
- (b) Predoctoral lecturer;
- (c) Predoctoral teaching assistant;
- (d) Predoctoral teaching associates I and II;
- (e) Tutors, readers, and graders in all academic units and tutoring centers;
- (f) Predoctoral staff assistant;
- (g) Predoctoral staff associates I and II;
- (h) Except as provided in this subsection (1)(h), predoctoral researcher, predoctoral research assistant, and predoctoral research associates I and II. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include predoctoral researchers, predoctoral research assistants, and predoctoral research associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and

(i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h) of this subsection.

(2)(a) The scope of bargaining for employees at the University of Washington under this section excludes:

- (i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by the University of Washington;

(ii) The amount of tuition or fees at the University of Washington. However, tuition and fee remission and waiver is within the scope of bargaining;

(iii) The academic calendar of the University of Washington; and

(iv) The number of students to be admitted to a particular class or class section at the University of Washington.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement of the affected provision.

(ii) The University of Washington may provide additional compensation to student employees covered by this section that exceed that provided by the legislature.

That legislation contained an emergency clause, and so became effective when the bill was signed by the Governor on March 14, 2002. The petition filed to initiate this proceeding described the proposed bargaining unit in the following terms:

Employees who are enrolled in an academic program and are currently in a classification (a) through (i) or who were employed in the unit in the previous 12 months and who remain available for work in the unit and have an expectation of employment in the unit.

- (a) Predoctoral Instructor;
- (b) Predoctoral Lecturer;
- (c) Predoctoral Teaching Assistant;
- (d) Predoctoral Teaching Associates I and II;
- (e) Tutors, Readers, and Graders in all academic units and tutoring centers, including, but not limited to such employees within the Student Assistant titles;
- (f) Predoctoral Staff Assistant;
- (g) Predoctoral Staff Associates I and II;
- (h) Predoctoral Researcher, Predoctoral Research Assistant, and Predoctoral Research Associates I and II;

- (i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h), who are classified in these or other titles.

[excluding] Predoctoral Researchers, Predoctoral Research Assistants, and Predoctoral Research Associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the University, and all other employees.

The union filed that petition with the Commission shortly (perhaps minutes) after the Governor signed the new legislation into law.

## DISCUSSION

### The Complex Nature of the Institution

Part of the immense record made in this case consists of evidence amply demonstrating the existence of numerous variances of policy and practice within the employer institution, and among its subinstitutions, departments, divisions, and programs. That evidence is largely irrelevant in this case, however.

Commission precedents under Chapter 41.56 RCW have often repeated the principle that the determination of appropriate bargaining units is a function delegated by the Legislature to the Commission under specific criteria set forth in RCW 41.56.060, as follows:

*The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their*

*bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. . . .*

(emphasis added). If those "community of interest" criteria were applicable in this case, the voluminous record could provide room for debate about whether multiple communities of interest should be identified within the overall cadre of student/employees at the institution. But that is *NOT* the situation at hand.

The Legislature has occupied the unit determination field in several of the other statutes administered by the Commission:

- As to the faculty employees of this employer (and of the five other state institutions of higher education conferring degrees at and above the "bachelor of . . ." level), who have collective bargaining rights under Chapter 41.76 RCW, that statute does not contain community of interest criteria of the type found in RCW 41.56.060, and the definition of bargaining unit in RCW 41.76.005(11) effectively precludes any community of interest debate.<sup>14</sup>
- As to classified employees of this employer (and of the other state institutions of higher education and state general government agencies), whose collective bargaining rights are in transition from the State Civil Service Law, Chapter 41.06 RCW, to a broader scope under the Personnel System Reform Act of 2002 (PSRA) and Chapter 41.80 RCW, the community of interest criteria set forth in RCW 41.80.070(1) are limited by

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<sup>14</sup> RCW 41.76.005(11) includes: "all faculty members of all campuses of each of the colleges and universities. Only one bargaining unit is allowable for faculty of each employer, and that unit must contain all faculty members from all schools, colleges, and campuses of the employer."

both: Requiring separation of supervisors from non-supervisory employees (RCW 41.80.070(1)(a)); and requiring institution-by-institution bargaining units in higher education (RCW 41.80.070(1)(b)).

- As to the academic faculties of community and technical colleges (who bargain collectively under Chapter 28B.52 RCW), language in RCW 28B.52.030 referring to "an election to represent the academic employees within the . . . district" precludes the possibility of having more than one bargaining unit within a district, even though some of the districts have two or more separate operations.<sup>15</sup>
- As to teachers in the common schools (who bargain collectively under Chapter 41.59 RCW), community of interest criteria similar to those found in RCW 41.56.060 are set forth in the first paragraph of RCW 41.59.080, but language in RCW 41.59.080(1) requiring that all non-supervisory educational employees of employers be included in district-wide units effectively precludes any community of interest debate.<sup>16</sup>

Thus, it is not surprising that the Legislature has also occupied the field with respect to unit determination for certain classes of employees within Chapter 41.56 RCW:

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<sup>15</sup> *Green River Community College*, Decision 4491-A (CCOL, 1994). Chapter 28B.52 RCW lacked community of interest criteria of the type set forth in RCW 41.56.060 when it was first enacted as a professional negotiations act in 1971, and the quoted language survived through substantial amendment of that chapter in 1987.

<sup>16</sup> Chapter 28.72 RCW (later Chapter 28A.72 RCW) lacked community of interest criteria of the type found in RCW 41.56.060 when it was enacted as a professional negotiations act in 1965, instead referring to an organization winning "an election to represent the . . . employees within the . . . district".

- RCW 41.56.025 both makes Chapter 41.56 RCW applicable to employers operating as education providers under Chapter 28A.193 RCW, and limits bargaining units to the employees working as education providers to juveniles in adult correctional facilities.
- RCW 41.56.026 makes Chapter 41.56 RCW applicable to individual providers of home care services under Chapter 74.39A RCW, and provisions in Chapter 74.39A RCW then negate the community of interest criteria set forth in RCW 41.56.060 by requiring a state-wide bargaining unit of individual providers.
- RCW 41.56.201 as enacted in 1993 created an option for state institutions of higher education and unions representing their classified employees to have their collective bargaining relationship and obligations governed by Chapter 41.56 RCW, but RCW 41.56.201(2)(a) required the Commission to recognize the bargaining units in their current form, as certified by the Washington Personnel Resources Board or its successor.<sup>17</sup>

This employer and union were both active participants in the lobbying that preceded the adoption of the statutory language under which this case must be decided. Now that the bill they lobbied is law, the intent of the proponents is irrelevant, and Chapter 34, Laws of 2002, must be applied as written. *An institution-wide bargaining unit is REQUIRED* by the language in RCW 41.56.203(1) which states: "The employees in (a) through (i) of this subsection constitute an appropriate bargaining unit. . . ." (emphasis

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<sup>17</sup> The option established in RCW 41.56.201 ceased to be available as of July 1, 2003. An ironic tidbit of history is that the Commission became the successor to the WPRB under that section from the effective date of certain PSRA provisions on June 13, 2002 through June 30, 2003, but it then had to apply the community of interest criteria set forth in RCW 41.06.340 and 41.80.070, rather than the community of interest criteria in RCW 41.56.060.

added). To the extent these parties (or either of them) have belabored the record with evidence of variance among the types of student/employees, their wasted effort will not be rewarded with detailed discussion of such facts and arguments in this decision.

The positions of the parties, additional facts, and legal analysis are set forth below separately for issues or groups of issues that are properly before the Commission in this case.

### The "Regular Part-Time" Issues

Three of the issues framed in the investigation statement are closely related, and are discussed together here: The second issue framed (concerning the full-time base from which the test for inclusion in the bargaining unit is to be applied), the third issue framed (concerning the work year to which the test is to be applied), and the fifth issue framed (concerning student/employees who move between categories).

The Commission has codified a standard for determining whether an individual is a "regular part-time" employee included in a bargaining unit or a "casual" employee to be excluded from all bargaining units. WAC 391-35-350 states:

(1) It shall be presumptively appropriate to include regular part-time employees in the same bargaining unit with full-time employees performing similar work, in order to avoid a potential for conflicting work jurisdiction claims which would otherwise exist in separate units. Employees who, *during the previous twelve months, have worked more than one-sixth of the time normally worked by full-time employees*, and who remain available for work on the same basis, shall be presumed to be regular part-time employees. *For employees of school districts and educational institutions, the term "time normally worked by full-time employees" shall be based on the number of days in the normal academic year.*



(2) It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.

(a) Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

(emphasis added). The parties do not contest the applicability of the "one-sixth" threshold for regular part-time status set forth in WAC 391-35-350. They do, however, disagree about how that test should be applied in this case.

#### Positions of the Parties on Regular Part-Time -

The union maintains that student/employees in all categories listed in the new legislation should be included in the bargaining unit if they meet the one-sixth test. The union maintains that the base for computing the full-time standard should be 20 hours per week for three academic quarters (because the service expectancies of the student/employees are 20 hours per week or less in that period) and that work in any of the covered categories should be accumulated for purposes of applying the one-sixth test.

The employer contends the computation should be based on a 40-hour work week throughout the year, and that such a standard is a fair way to determine whether a student/employee has a sufficient relationship with the employer to be a member of the bargaining unit to be created in this proceeding. The employer would also have a "two consecutive quarters" requirement imposed and, at least

through presenting evidence at the hearing in this matter, it asked for separate computation in each type of student/employee work.

Applicable Legal Principles -

The student/employees at issue in this proceeding are specifically excluded from the coverage of Chapter 41.06 RCW.<sup>18</sup> The 40-hour work week and 2080-hour work year (40/2080) standard applicable to classified employees of this employer working under the State Civil Service Law, Chapter 41.06 RCW, is thus not controlling here.

WAC 391-35-350 was adopted in 2001, as the culmination of a number of precedents developed in various employment settings:

*King County*, Decision 1675 (PECB, 1983), addressed the need to evaluate employment settings individually. That decision included:

The fashioning of a test requires that the employment relationship, and the expectancy of continued employment, be looked at with a view sufficiently global to include the perspective of the employer seeking to establish and maintain a workforce as well as the perspective of an individual seeking to make a living or supplement other income.

Clearly, there can be no "one size fits all" for employment settings. The *King County* case presented a (relatively unusual)

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<sup>18</sup> RCW 41.06.070(1)(1). The collective bargaining rights of the student/employees at issue here are regulated exclusively by the recent amendment to Chapter 41.56 RCW. It follows that a recently-adopted rule, by which the Washington State Personnel Resources Board (WPRB) established that a part-time employee of an institution of higher education must work 350 hours in a one-year period to have sufficient civil service status under Chapter 41.06 RCW to be eligible for collective bargaining rights under Chapter 41.80 RCW, is also inapplicable here.

situation in which the workforce being organized consisted entirely of employees who worked less than a 40/2080 schedule.

In *Columbia School District*, Decision 1189-A (EDUC, 1982), the Commission dealt with another workforce composed entirely of employees working less than a 40/2080 schedule.<sup>19</sup> The Commission determined regular part-time status on the basis of the work year that applied to the affected employees. In *Columbia*, the "30 days in one year" formulation of the one-sixth test conformed to the educational program offered by those employers, as defined by the autumn through spring academic year in use there.

A similar result was reached in *Community College District 12*, Decision 2374 (CCOL, 1986), although different terminology was used. When the community college employment setting was examined, the work year used to compute regular part-time status for an entire bargaining unit working less than the 40/2080 schedule again corresponded to the autumn through spring academic year. Because the "days" methodology for computing work time in common schools was unfamiliar in that employment setting, "full time equivalency" (FTE) terminology familiar in community colleges was utilized.

Many bargaining units of school district classified employees encompass multiple occupations. Under precedents such as *Sedro Woolley School District*, Decision 1351-C (PECB, 1982) and *Tumwater School District*, Decision 2043 (PECB, 1985), a multi-functional employee (for example: an individual who substitutes as both a bus driver and custodian, or as both an instructional assistant and office-clerical employee) would be eligible for inclusion in the bargaining unit upon completion of 30 days of work in any combination of roles within the bargaining unit. Importantly, no case is cited or found where the one-sixth test was applied

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<sup>19</sup> The base year for the full-time teachers in the bargaining units involved was 7 or 7-1/2 hours per day for the 180 days of the normal academic year, thus amounting to between 1260 and 1350 hours per year.

separately to occupations within the same bargaining unit, and nothing in WAC 391-35-350 requires (or even provides basis for a party to demand) an occupation-by-occupation computation.<sup>20</sup>

Application of Precedent on "Regular Part-Time" -

This record clearly reflects that the service appointments made to student/employees are for 20-hour week or less. There is no evidence that the employer ever offers student/employees positions listed for more than 20 hours per week:

- The hours for TA appointments vary within a limited context. The employer has very detailed rules regulating TA usage, and departments must ensure that a TA receives appropriate training and faculty supervision in the particular class assignment. Faculty members must observe a TA at work, and some departments use a two-week program designed to train each TA in the particular subject matter. A TA generally has a defined work week, and most often works 20 hours per week in the TA assignment. The TA work hours may be closely monitored, and the affected department will take steps to reduce the workload of a TA who is working more than the prescribed 20-hour limit.
- The work hours of SA appointments are understood to be generally similar to those of student/employees with TA appointments.
- The RA appointments are generally stated in terms of 20 hours per week. While the employer produced evidence showing that RA appointments are more flexible than TA appointments, and

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<sup>20</sup> When faced with evidence of multi-functional employees in *Ephrata School District*, Decision 4675-A (PECB, 1995), the Commission rejected an occupation-by-occupation approach that would have fragmented the workforce.

even sought to contradict the existence of a service expectancy in regard to many RA appointments, the evidence certainly does not support finding any general practice of paying an RA extra compensation for work in excess of 20 hours, let alone paying an RA at an overtime rate.<sup>21</sup>

- The work hours of readers, graders and tutors vary widely, with the service expectancy most often less than 20 hours per week.

In light of the cited precedents tailoring the computation to the particular employment setting being considered, application of a "20 hours per week" standard is indicated in this case.

The employer divides the calendar year into quarters, and autumn (September or October to December), winter (January to March), and spring (March to June) quarters (each of approximately 11 weeks in length) constitute its normal academic year. The majority of the work opportunities for student/employees are during that normal academic year. The employer operates a summer program, but the course offerings are much smaller in scope than those made available in the normal academic year,<sup>22</sup> and there are limited work opportunities for student/employees during the summer quarter.<sup>23</sup>

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<sup>21</sup> To the extent that student/employees on RA appointments work more than 20 hours per week, that amounts to "volunteer" work. An employer cannot establish one standard for compensation and then ask the Commission to apply a higher standard for regular part-time status based on time worked in pursuit of a different motivation. The performance of research in connection with the preparation of a dissertation is discussed separately below.

<sup>22</sup> Only about 35 percent of the student body (14,000 out of a total of 40,000) were enrolled in the summer quarter.

<sup>23</sup> Only about 35 percent of the TA workforce (500 out of a total of 1,424) worked in the summer quarter).

In light of the cited precedents tailoring the computation to the particular employment setting being considered, and particularly in light of the reference to educational institutions in WAC 391-35-350, the use of a calendar year test is inapt for this workforce.

This record clearly indicates that there is mobility for student/employees among the types of work listed in RCW 41.56.203:

- The application process for TA appointments starts with advertisements inviting interested graduate students to apply. Practices concerning TA appointments vary from department to department, and may be applied in a rather flexible manner. Some TA appointments are made for a quarter at a time, but departments that use a large number of TA appointments frequently make them for the entire academic year. In some departments, a student/employee may only hold a TA appointment once or twice during his/her career as a graduate student.
- In some departments, a TA appointment may serve as a temporary funding mechanism until an RA appointment begins. Thus, a first year graduate student who hasn't settled on an area of study may be given a TA appointment, but will be switched to an RA appointment once a field of inquiry is established.
- Some student/employees may seek and accept a TA appointment to supplement the income they are receiving from some other type of student/employee role within the categories listed in RCW 41.56.203.<sup>24</sup>

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<sup>24</sup> The service expectancies associated with dual appointments may take the student/employee away from research work, and so may even extend the overall time required for completion of his/her own degree requirements, but that inherently tips the balance toward the employment side of the student/employee relationship.

The statute itself requires that student/employees in all of the listed categories be included in a single bargaining unit, so it makes no sense to create artificial barriers within the class of student/employees established by RCW 41.56.203.

In 2001, the employer paid more than \$21 million for graduate student tuition and stipends under appointments that arguably imposed service obligations on student/employees. In the context of that very substantial sum, compound application of the "regular part-time" issues framed in this case would produce widely divergent results:

- Applying the "20 hours per week" standard for service appointments to the employer's normal academic year (20 hours per week x 11 weeks per quarter x 3 academic quarters = 660 hours per annum) would result in inclusion of individual student/employees in the bargaining unit upon their working more than 110 hours in any combination of covered jobs in a one-year period.
- Applying the "40 hours per week throughout the year" standard such as that applicable to the employer's classified employees (40 hours per week x 52 weeks in the calendar year = 2080 hours per annum) would result in inclusion of individual student/employees in the bargaining unit only if they work more than 347 hours in a one-year period.

Compounding a 215 percent greater number of work hours required for inclusion in the bargaining unit, the latter formula would make bargaining unit membership far less attainable for student/employees who shift between categories. In light of the language of the applicable rule and the cited precedents tailoring the computation to the particular employment setting being considered, the threshold for this bargaining unit is set at 110 hours.

The RA Eligibility Issue

The conferral of an academic degree at the "doctor of . . ." level is commonly conditioned upon completion and defense of a written dissertation presenting a well-researched theory in the applicable field of study. A substantial portion of the relevant evidence in this record relates to the eligibility of student employees who are working on their dissertation research.

Positions of the Parties on RA Eligibility -

The employer contends that a large number of individuals holding RA appointments should be excluded from the bargaining unit, because they are working on research that will become part of their own dissertation. The employer maintains that RA appointments made to support such graduate students should not be considered to be a form of compensation for work performed, and that such individuals should be categorized as students. The employer does acknowledge that an RA who is working on a dissertation typically performs research that is useful to the employer's research mission.

The union argues that all individuals with RA appointments should be included in the bargaining unit, unless the service expectancies placed upon them by the employer are insufficient to meet the one-sixth test for regular part-time status. It maintains that a large number of student/employees should not be excluded from bargaining rights merely because of their parallel pursuit of their own degree, that the research work performed by an RA is of value to the employer even if it is also of learning value to the student/employee, that the statute allows inclusion of any RA in the bargaining unit, and that the employer's position would strand many with RA appointments while others performing similar work would be included in the unit by agreement of the parties.



Facts Concerning Research Funding -

The research component of the employer's operation has become a major source of income for this employer, above and beyond enhancing the employer's reputation among its peer institutions and/or being a source of bragging rights for the employer.<sup>25</sup> There is variance by department, but a number of common themes that run throughout the graduate programs are of interest here.

The record reflects that the employer received approximately \$800 million in research grants in 2002: More than 70 percent of all grant funds come from agencies of the federal government;<sup>26</sup> grants totaling more than \$39 million were received from state and local government sources; more than \$30 million was received from industry groups sponsoring research; and more than \$25 million was received from private foundations sponsoring research. Research-related revenues now make up about one-third of the employer's total budget.<sup>27</sup>

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<sup>25</sup> In 2000, the employer ranked nationally among research facilities as: second for receipt of grants for engineering and science research (\$444 million), and fifth for receipt of industry research and development contracts (\$57 million).

<sup>26</sup> More than \$390 million was funded by the Department of Health and Human Services; \$72 million came from the National Science Foundation; \$45 million came from the Department of Defense; and more than \$20 million came from the Department of Energy.

<sup>27</sup> The School of Medicine leads in the receipt of external research grants, receiving about \$372 million in grants in 2002. Other major recipients in 2002 were the College of Engineering (\$75 million), the College of Ocean and Fishery Science (\$66 million), the College of Arts and Sciences (\$89 million), and the School of Public Health and Community Medicine (\$52 million).

Research grants are received only after a faculty member (who is typically referred to as the "principal investigator" or "PI"), makes a written proposal detailing a specific line of inquiry. The research objectives are identified, usually with an explanation of the benefit to be received from the research. Grant proposals typically list a timeframe for the research, along with the personnel that will be needed (including student/employees serving in the RA role) for completion of the proposed research.<sup>28</sup>

Before a grant proposal is submitted to a potential funding source, it must be submitted to a very detailed review process to evaluate the substance and desirability of the proposal within the institution:

- The faculty member PI must submit the grant proposal to the department chairperson, for review and approval.<sup>29</sup>
- Proposals approved at the department level must be submitted to the dean of the subinstitution, for further review and approval at that level.<sup>30</sup>
- Proposals receiving deaconal approval are forwarded to the employer's Grant and Contract Services office, for verification that they conform with the employer's policies, as well as for review of equipment and space requirements.

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<sup>28</sup> Where renewal or extension of grant funding is being sought, the PI must also demonstrate progress under the earlier grant.

<sup>29</sup> If more than one department is involved in the proposed research, the chair of each affected department must approve the proposal.

<sup>30</sup> If more than one subinstitution is involved in the proposed research, the dean of each affected sub-institution must approve the proposal.

The evidence about the grant approval process thus clearly contradicts any suggestion that faculty members go their own way.

#### Licensing Revenues -

In the event that research performed on the employer's campus leads to a new product or process, any patents that may be granted belong to the employer. The employer receives revenues in the magnitude of millions of dollars annually from licensing those ownership rights, and ranked seventh among research facilities for receipt of licensing revenues in 2000. Even where a private firm funds the research, it will pay a fee to the employer for the use of any resulting product or process.

#### The Uses of Grant Funds -

Out of about 7,500 proposals submitted by the employer's faculty in 2002, about 5,000 were funded. All grants and contracts are awarded to the employer, rather than to the faculty member PI, and the employer administers the grant funds:

- Research grants and contracts generally pay for the salaries of faculty and staff members associated with that research. Research funds paid for more than 6,300 FTE positions in a recent year, including paying student/employee tuition and stipends.
- Research grants and contracts generally pay for any supply and equipment purchases associated with the particular research.
- The employer charges each grant for so-called "indirect costs" amounting to more than 50 percent of the overall grant funds.<sup>31</sup> The employer can use those revenues to supplement other

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<sup>31</sup> Faculty members submitting grant proposals must budget for indirect costs in their grant requests.

revenue sources, and the record reflects that the employer has used funds retained from research grants for instructional support, academic support, and library improvements.

- The employer's policy is to return six percent of the retained "indirect costs" to the department where a grant is received. Those funds are used at the discretion of the departments.<sup>32</sup>

Many student/employees are funded from research grants. Some decisions concerning student/employees are directly influenced, or even controlled, by the type of grant being sought.

#### The Predoctoral Student's Career -

During the first year of graduate studies in a program leading to a degree at the "doctor of . . ." level, a student/employee will likely take two or three classes per quarter. Some departments place such student/employees under RA appointments and rotate them through the laboratories of faculty members in the department,<sup>33</sup>

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<sup>32</sup> Such rebates are typically used by departments to fund ongoing research projects.

<sup>33</sup> Rotations are used to allow graduate students a broad range of educational opportunities, and to help them choose a particular topic for intense research. Professor John Slattery explained in the following terms:

The purpose of the rotation is really kind of twofold. It's to get the student introduced and integrated into the department to learn something about the work going on, not only in the laboratories that they're rotating through, but also more generally through the department by initiating contacts with more senior students. And also to learn some techniques and skill that will be useful as they actually initiate their dissertation research.

The student/employees do, however, perform some (closely directed) research during their first year rotations.

while other departments (English, Sociology, and Chemistry were mentioned as examples) place their newer student/employees in the TA role.

During the first two years of graduate study, doctoral students are encouraged to find a faculty "sponsor" who will help him/her focus on a particular area of research to be used in the dissertation process. This is also a time when faculty members who have funding for specific research projects to match interests with graduate students for work in that area. Some graduate students will have a well-focused idea of a particular research they desire to pursue,<sup>34</sup> while others may only have a general idea of their research interests. In either event, the graduate student is expected to work closely with faculty members to find a suitable dissertation topic and a place to conduct the needed research. A faculty committee is formed for each graduate student, typically made up of faculty members in the same general field of research and at least one representative from the Graduate School. The committee may administer any required examination(s) and will be responsible for determining whether the graduate student can continue in the particular area of research.

At some time during the period of graduate study, a doctoral student must take a "qualifying examination" and/or a "general examination" to demonstrate readiness to focus on doctoral research. Preparation for such examinations is very intense, and some student/employees do not take classes during the quarter when the examination is to be taken. After completing required courses and passing any required examinations, most doctoral students focus on research that will be used as the basis for their dissertation.

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<sup>34</sup> In the case of graduate students on fellowships, the terms of the fellowship may well define the limits of acceptable research possibilities.

Although the terminology may be unfamiliar in the academic setting, the record supports a conclusion that faculty sponsors are the direct supervisors (in a labor relations sense) of the student/employees working under an RA appointment. Such student/employees and their faculty sponsors often spend a great deal of time refining the proposed area of research, and faculty members make sure that the student/employee has the appropriate level of training for the research to be conducted. The record reflects that faculty members often use their initial time with a graduate student to train the student on particular research techniques that will be necessary for the chosen project. A faculty sponsor who agrees to have a graduate student work on a particular research project may thereby become responsible for funding (out of research grants on which the faculty members is named as the PI) any student/employee appointment(s) given to that student. Faculty sponsors conduct regular meetings with student/employees, to determine what progress is being made on the research. In situations where the faculty sponsor and the student/employee conclude that the research direction they had planned has not turned out to be as fruitful or as interesting as originally anticipated, and the faculty sponsor actively assists the student/employee with modifying the research plan or finding a new area of inquiry.<sup>35</sup>

In some departments, graduate students are encouraged (or even expected) to get the results of their research published in some academic journal or similar publication. Several graduate students

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<sup>35</sup> After a year or two of actual experience, a student who enters a research program with a particular set of interests may change direction into an entirely different field of inquiry. Research work performed prior to settling on a dissertation topic can be recycled for use in a dissertation as the interests of graduate students evolve.

testified that publication was a major event in their dissertation process, and enhanced the credibility of their dissertation project. Apart from the possibility of the student/employee using published material as part of his/her dissertation, the record supports an inference that the publication of papers by persons associated with it enhances the overall reputation of the employer institution.

Non-Dissertation RA Assignments -

While the majority of student/employees working in the RA role are engaged in research associated with their effort to complete and defend their own dissertation, the record establishes that the employer also has a cadre of student/employees working under RA appointments on institutional research or related work:<sup>36</sup>

- In the Department of Nursing, a vast majority of RA appointments do not have anything to do with a dissertation topic. The department posts RA positions in the same manner as TA appointments, and the RA position is defined in terms of a specific subject for research.
- In the Sociology Department, several student/employees on RA appointments were working on research unrelated to their own dissertation. Such work may involve preparation of bibliographies, proofreading, or analyzing data under the direction of a faculty member.
- In the English Department, the student/employees on the few RA appointments that exist for the most part perform a variety of clerical functions. Those clerical duties relate to certain publications issued by the department, and an RA might work

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<sup>36</sup> Given the description of the various SA categories in this record, a question arises as to whether the SA terminology might be more appropriate for these assignments.

with the journal staff on a variety of editorial tasks such as manuscript review and routine correspondence.

Thus, a student employee working on such an RA appointment is typically working in the same general field as that being pursued in their graduate studies, but is not working on the specific subject matter being used for their own dissertation topic. Although such RA assignments are usually for a fixed (and relatively brief) period, they clearly impose a service expectancy on the student/employee. For the most part, these assignments are given to provide financial support while the student/employee pursues his/her graduate degree.

#### Training Grants -

Graduate students working as "trainees" may be of interest in this proceeding, because of the language in RCW 41.56.203(1)(i) that extends collective bargaining rights to persons "whose duties and responsibilities are substantially equivalent" to the RA role under RCW 41.56.203(1)(h). Training grants are described in this record as typically being more open-ended than the research grants, and as intended to advance the general knowledge in a field (for example: connecting the diverse subjects of molecular biology and statistical reporting of biological research results within the general field of biology). Students having an interest in that area of inquiry then apply for a training grant. Unlike fellowships awarded outside of the employer's institution, the employer's faculty members select the persons who are to receive funding from a training grant. If the funding is in the nature of an award without service obligations, the union does not claim (and the law does not require) that such individuals be included in the bargaining unit at issue in this proceeding. On the other hand, if the faculty member imposes/enforces a service obligation on a training grant recipient for duties and responsibilities similar to



those of an RA, a student/employee who meets the test for regular part-time status must be included in the bargaining unit involved here.

Analysis of RA Eligibility Issue -

The parties devoted a substantial portion of the hearing to presenting evidence about RA appointments, with the employer maintaining that any RA working on their own dissertation should be excluded from the proposed bargaining unit no matter how many hours they work. Contradicting the "student versus employee" distinction which the employer would have drawn, the evidence in this record supports conclusions that: (1) the employer's research programs have become a huge revenue source for the institution; and (2) student/employees on RA appointments constitute a substantial portion of the workforce used by the employer to both attract and fulfill the requirements of research grants.

Any party that proposes exclusion of an entire class of persons from statutory bargaining rights bears a heavy burden. Under the decisions of the Supreme Court of the State of Washington in *Roza Irrigation District v. State*, 80 Wn.2d 633 (1972) and *Zylstra v. Piva*, 85 Wn.2d 743 (1975), the provisions of Chapter 41.56 RCW are to be construed liberally, and are to be applied in as many public employment settings as possible. In *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977), the Supreme Court rejected a line of precedents by which the Commission's predecessor administrative agency had sought to invent a class of "managerial-type supervisors" excluded from the coverage of Chapter 41.56 RCW. In *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978), the Supreme Court ruled that exclusions from Chapter 41.56 RCW are to be construed narrowly, and that the party proposing such exclusion has the burden of proving that exclusion is necessary. In *Rose v. Erickson*, 106 Wn.2d 420 (1986),

the Supreme Court ruled that Chapter 41.56 RCW prevails over conflicting statutes. The Commission's precedents similarly impose a high burden on a party seeking an exclusion of either individuals or an entire class of individuals from bargaining rights. *City of Seattle*, Decision 689-A (PECB, 1979).

The Executive Director rejects the employer's attempt to characterize the union's arguments as a "source of funds" inquiry inapt to a unit determination issue while itself claiming there is no employment relationship. In this case:

- From a very practical perspective, grant proposals submitted by faculty members (in the name of the employer and with the approval of senior employer officials) fulfill a role in the marketplace that is comparable to advertising by a private enterprise offering services to a client base. Grants don't just happen. This employer exerts substantial control over the solicitation of research business.
- Beyond simply receiving and paying out grant funds, the employer takes a substantial "cut" from all grant funds. That fact provides basis for an inference that student/employees with service expectancies are an integral part of a system that generates funds used by the employer to supplement its other sources of revenue. Even if the employer does not admit to making a profit on the indirect costs retained from research grants, external funding of the tuition obligations of doctoral students will, at a minimum, put funds into the employer's coffers that would not come in if the graduate student did not matriculate or had to drop out of school because of financial distress.
- Beyond the short-term interests associated with administering grant funds and using retained funds to supplement other

revenue sources, this record establishes that the employer has long-term interests associated with the licensing rights that grow out of the research performed on its campus. That "licensing revenue" income stream is built on research performed by persons on RA appointments at any stage of their graduate studies.

This record does not support exclusion of there being an employment relationship of an economic nature, exchanging remuneration for work performed.

Regardless of the differing views of these parties as to their intentions when RCW 41.56.203 was being drafted and considered in the Legislature, the ultimate focus in this case must be on the actual language of the adopted statute. The employer's arguments would ignore or negate operative words of the applicable statute that are clear and unambiguous. RCW 41.56.203(1)(h) only excludes student/employees on RA appointments from the bargaining unit if they meet a two-part test:

1. The individual must be "performing research primarily related to their dissertation"; AND
2. The individual must "have incidental or no service expectations placed upon them by the university."

The employer's focus throughout this proceeding has been erroneously limited to the first of those criteria. The fact of being on the so-called "dissertation track" is *NOT* sufficient to make a decision about eligibility for inclusion in the bargaining unit. It is ultimately the service expectancy imposed by the employer that qualifies (or the lack of a service expectancy that disqualifies) an RA from eligibility for inclusion in the bargaining unit involved in this case.

The record indicates that most graduate students spend many hours on their research, often including work on weekends and staying late into the night. The employer routinely uses "20 hours per week" terminology that connotes a service expectancy. Even if the specific work hours of student/employees on RA appointments are not tracked, many of them have a service expectancy for work that fulfills a research grant on which the faculty sponsor is the PI. If the faculty sponsor (supervisor) expects an RA to work on such research, the employer is held accountable for the actions of its agent.

A question arises here as to the meaning of the term "incidental" as used in RCW 41.56.203(h). Although that term is seemingly more descriptive than the inherently-ambiguous "limited" used in an early version of the bill that became RCW 41.56.203, no definition of "incidental" is set forth within the new legislation. Dictionaries include terms such as "unpredictable" or "minor" or "casual" in their definitions of the term.<sup>37</sup> Inasmuch as WAC 391-35-356 was already in effect when the new legislation was being considered by the Legislature in 2002, the Executive Director concludes that "incidental" as used in the statute should be interpreted in harmony with "casual" as used in the rule.<sup>38</sup> Thus, an RA whose service expectancy in all covered categories during preparation of their dissertation is for 130 or less hours of work per year is both excluded from the bargaining unit under the "incidental" test in RCW 41.56.203(1)(h) and as a casual employee under WAC 391-35-

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<sup>37</sup> See, for example, *Webster's II New Riverside University Dictionary*, Houghton Mifflin Co., 1994.

<sup>38</sup> In *Green River Community College v. Higher Education Personnel Board*, 95 Wn.2d 108 (1980), the Supreme Court of the State of Washington ruled that the Legislature could be presumed to have known of the administrative rule being challenged in that case.

350; an RA whose service expectancy in all covered categories during preparation of their dissertation exceeds 130 hours per year is both included in the bargaining unit under 41.56.203(1)(h) and is a regular part-time employee under WAC 391-35-350.

The employer argues in its brief that each of its departments has a high degree of autonomy in deciding what research is to be pursued and how the research is to be carried out, but that is not a basis for ignoring the language of the applicable statute. Moreover, the employer becomes actively involved in the final decisions before applications for research funding are actually submitted to outside funding sources, and then takes a very substantial portion of the proceeds of any research grant that is received. The Legislature has made the University of Washington the employer in this case, and it cannot escape that responsibility by hiding behind its own subinstitutions, departments and/or programs. If the employer must centralize some authority and decision-making to fulfill the responsibilities that the Legislature has placed upon the institution as a whole, so be it. The employer's too-narrow focus on research being related to a dissertation does not reflect how work is accomplished in its departments and programs. The union has provided persuasive evidence that student/employees on RA appointments often work side-by-side on research work, without distinction as to whether the work is or may be related to a dissertation, so that it would be impossible for an outside observer to tell whether an RA is working on a dissertation or on unrelated research. Moreover, the employer's argument in this case would negate the balanced analysis of employment settings called for in *King County*, Decision 1675 (PECB, 1983), by completely excluding or ignoring the perspective of student/employees seeking to make a living while pursuing a graduate degree.

The record demonstrates that the great majority of the student/employees on RA appointments do, in fact, have service expectancies imposed upon them by the employer (or by faculty members who are agents of the employer for this purpose) while they are working on their dissertations. While gaining a graduate degree is a real benefit to the student, those service expectancies fulfill research grants that bring in a great deal of money to the employer. The Legislature has decided that student/employees whose work appears to make money for the employer should be allowed to bargain collectively, and that legislative policy will be implemented here.

#### The Showing of Interest and Method of Determination

The union filed the petition to initiate this proceeding shortly after the Governor signed the new legislation into law. The union does not dispute that the authorization cards it filed as the showing of interest in support of its petition were signed prior to the effective date of the new law. Even without that union acknowledgment, the circumstances would support an inference to the same effect: This petition was filed in Olympia, within an hour or two after the Governor took action (also in Olympia) to sign the enabling statute, so there would have insufficient time between those two events for the union to get fresh signatures from student/employees (who mostly work in Seattle).

#### Positions of the Parties on Showing of Interest -

The employer asks that the union's showing of interest be rejected in its entirety. The employer maintains that authorization cards that predate the statute allowing collective bargaining should not be counted for any purpose, because they were gathered outside a statutory framework.

The union contends that the authorization cards it gathered prior to the effective date of the enabling legislation demonstrate the desire of student/employees to implement collective bargaining rights, that nothing prohibited the union from using authorization cards obtained in anticipation of the new legislation, and that the showing of interest submitted with the petition should be considered sufficient.

Analysis on Showing of Interest -

Applicable labor law principles, the Commission's rule, judicial precedent, and the Administrative Procedure Act all require rejection of the employer's attempt to litigate the sufficiency of the showing of interest filed in support of this petition:

- The "showing of interest" process contained in Chapter 41.56 RCW is a loose paraphrase of practices under the National Labor Relations Act, where the showing of interest is a rudimentary preliminary step that largely serves to protect taxpayers from the expense of processing cases where there is little chance of success, authorization documents signed by bargaining unit employees are protected from disclosure, the sufficiency of a showing of interest is determined by the National Labor Relations Board *ex parte*, and a showing of interest cannot be litigated at any hearing;
- The Washington State Court of Appeals protected the confidentiality of, and embraced the *ex parte* assessment of, showings of interest in *King County Public Hospital District 2 (Evergreen General Hospital) v. PERC*, 24 Wn. App. 64 (Division I, 1977), where it firmly rejected the demands of an inquisitive employer for intrusion into the showing of interest process;

- WAC 391-25-110 expressly protects the confidentiality of showings of interest;<sup>39</sup> and
- The Legislature expressly excluded the showing of interest process from the definition of "agency action" under the state Administrative Procedure Act, Chapter 34.05 RCW, at RCW

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<sup>39</sup> The current rule was first adopted in 1981, but Commission rules protecting the confidentiality of showings of interest date back to the onset of agency operations in 1976. As last amended in 2001, it now provides:

SUPPORTING EVIDENCE--SHOWING OF INTEREST  
CONFIDENTIAL. (1) A petition filed by employees or an employee organization shall be accompanied by a showing of interest indicating that the petitioner has the support of thirty percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest shall be furnished under the same timeliness standards applicable to the petition, and shall consist of original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate.

(2) The agency shall not disclose the identities of employees whose authorization cards or letters are furnished to the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) In order to preserve the confidentiality of the showing of interest and the right of employees freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt to withdraw any authorization submitted for purposes of this section.



34.05.010(3)(b),<sup>40</sup> and so has inherently excluded the showing of interest process from the "adjudicative proceedings" process defined in RCW 34.05.010(1) and regulated in RCW 34.05.410 through .494.

The employer's arguments about the sufficiency of the showing of interest could properly have been excluded from the hearing process, and certainly cannot be fully addressed here.<sup>41</sup>

An issue that does need to be addressed in this decision is the "method of determining question concerning representation" issue that inherently arises in any representation proceeding under Chapter 41.56 RCW, where only one union is seeking certification as exclusive bargaining representative of unrepresented employees.<sup>42</sup> Inasmuch as there was no collective bargaining statute in effect covering the student/employees when they signed authorization

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<sup>40</sup> That statute includes, "Agency action does not include an agency decision regarding . . . (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition . . . under a collective bargaining law . . . ."

<sup>41</sup> The one employer concern the Executive Director is willing to address here concerns whether stale cards were used. An amendment to WAC 391-25-110 in 2001 repealed a 90-day limit on the shelf life of cards, after a focus group discussion pointed out that the NLRB precludes the re-use of cards left over from a previously-abandoned organizing drive. Against that background, there is mention in this record of a previous representation petition filed by the union that was dismissed in *University of Washington*, Decision 7071 (PRIV, 2000). It suffices to say here that the union did not attempt to use any authorization cards it had filed in connection with the earlier proceeding as part of the showing of interest for this proceeding.

<sup>42</sup> RCW 41.56.060 authorizes both secret ballot elections (which are implemented by WAC 391-25-420, -430, -470, and -490) and cross-checks (which are implemented by WAC 391-25-391 and -410).

cards, the Executive Director concludes there is basis for concern that those authorizations were given in the abstract. The numbering of the bill evidences that there were amendments during the legislative process, so the student/employees could not have known what a statute might eventually contain. Such authorizations should not be used as actual evidence of representation.<sup>43</sup> An election will be conducted to determine the question concerning representation in this proceeding.

#### FINDINGS OF FACT

1. The University of Washington is an institution of higher education operated by the state of Washington, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. The Graduate Student Employee Action Coalition, UAW, a "bargaining representative" within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of various student/employees of the employer.
3. The employer operates under the general policy direction of a board of regents. Daily management of the institution, including academic, financial, and personnel affairs, are under the direction of a president who is selected by and reports to that board. The president (or his/her designee) has authority to formulate, prescribe and issue rules,

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<sup>43</sup> As with signatures on an initiative or referendum petition, the act of signing an authorization card does not obligate an employee to continue their support for the union thereafter. A cross-check under WAC 391-25-410 uses authorization cards for a very different purpose, and employees are entitled to withdraw their cards from use for that purpose.

regulations and executive orders. A provost, an executive vice-president, and a number of vice-presidents, assistant vice-presidents, and deans are responsible for day-to-day administrative matters. The employer's main campus is located in Seattle, Washington. It maintains branch campuses in Bothell and Tacoma.

4. At the time of the hearing in this proceeding, the employer operated 17 colleges and schools on its Seattle campus, each under the direction of a dean with responsibility for both academic and budgetary matters. Those subinstitutions have wide latitude in regard to the establishment of departments or programs, and approximately 150 departments and degree-granting programs currently exist. Some interdisciplinary degrees are granted, where studies cross departmental or program lines. Each department or degree-granting program has a faculty attached to it.
5. Faculty members have the primary responsibility for providing instruction to the students of the institution. The faculty has a degree of autonomy in academic/educational decisions, and make some decisions or recommendations on personnel issues and admission of students for study at the institution.
6. The institution has two main goals: A teaching/learning function is implemented in traditional classrooms, in laboratories, and in other settings designed to educate students in a variety of academic disciplines; a research function is implemented by faculty members soliciting grants from funding sources outside of the institution, and then overseeing the research funded by such grants.

7. The employer has employees in several categories that are not at issue in this proceeding, including: (a) about 10,000 faculty members who have (but up to this time have not exercised) collective bargaining rights under Chapter 41.76 RCW; (b) a number of classified employees who presently have civil service rights and limited collective bargaining rights under Chapter 41.06 RCW, and will have expanded collective bargaining rights under Chapter 41.80 RCW as of July 1, 2004; (c) a number of employees in bargaining units that have exercised the option provided for in RCW 41.56.201, who presently have collective bargaining rights under Chapter 41.56 RCW, and will have collective bargaining rights under Chapter 41.80 RCW; (d) a number of printing craft employees, who have collective bargaining rights under Chapter 41.56 RCW; and (e) a number of employees who are exempt from the coverage of the State Civil Service Law, Chapter 41.06 RCW, and have no collective bargaining rights.
8. The student/employees at issue in this proceeding are excluded from the coverage of the State Civil Service Law, Chapter 41.06 RCW, and primarily work in teaching assistant (TA), staff assistant (SA), or research assistant (RA) roles, or as readers, graders, or tutors, or perform similar duties, while pursuing their own academic degrees as students enrolled in educational programs offered by the employer.
9. The employer offers graduate degrees in more than 90 academic programs, and there are normally about 7,000 graduate students enrolled at the institution. The majority of graduate degrees are at the "master of . . ." or "doctor of . . ." level.
10. The employer's Graduate School administrative unit coordinates activities among the departments offering graduate degrees,

and administers admissions standards to ensure that potential graduate students meet specific criteria for entrance. In recognition of the high level of administrative and academic responsibilities associated with the position, the dean of the graduate school is also titled as vice-provost of the institution as a whole.

11. The employer has established certain policies that apply to all graduate appointments. The various departments can set their own standards for admission to their particular fields of study, and often supplement employer-wide policies with details and specific policies of their own, but departmental policies cannot conflict with institution-wide policies.
12. Students who come to the institution with fellowship funding from a source outside of the institution, and who are not subject to any service expectancy imposed and enforced by this employer, lack an employment relationship with this employer and are excluded from consideration in this case.
13. Students who pay their own tuition and expenses, and are not subject to any service expectancy imposed by the employer, lack an employment relationship with this employer and are excluded from consideration in this case.
14. Strong competition among institutions of higher education for graduate students in some fields of study prompts the employer to provide substantial financial assistance to attract quality applicants. During initial contacts with potential graduate students, faculty members may discuss their ability to provide financial support for the potential applicant to do research in a particular area of endeavor. Some departments conduct weekend visits for potential students to come to the Seattle

campus for meetings with specific faculty members. In some cases, the financial package offered to a prospective student covers the entire period of the student's graduate studies; in other cases, the financial assistance is for a specific period of time shorter than the expected period of graduate study, subject to the program finding other financial assistance for the affected graduate student at a later time.

15. Graduate students who are awarded financial assistance by or through the employer without being subjected to any service expectancy imposed by this employer lack an employment relationship with this employer and are excluded from consideration in this case.
16. Any student enrolled in the employer's institution who is subjected to a service expectancy imposed by this employer in any of the employment categories listed in RCW 41.56.203(1) as a condition of receiving financial assistance from this employer (including monetary compensation, waiver of tuition and/or fee obligations, or any other form of remuneration for work performed), is under consideration in this proceeding as a student/employee.
17. It is generally accepted practice that the tuition obligations of student/employees will be funded as part of a financial assistance package offered by the employer, and most of the time the student/employee pays no tuition. Many of those student/employees also receive monetary compensation for work performed in the respective departments.
18. Student/employees in the teaching assistant (TA) role (including the predoctoral instructor, predoctoral lecturer, predoctoral teaching assistant, predoctoral teaching associate

I, and predoctoral teaching associate II types listed in RCW 41.56.203(1)(a) through (d)), generally teach classes, lead discussion sections, oversee laboratory sections, serve as classroom assistants to faculty members, and/or provide supervised teaching. In the autumn quarter of 2001, the employer had about 1,424 student/employees working in TA roles.

19. Student/employees in tutor, reader, and grader roles as listed in RCW 41.56.203(1)(e), assist individual students and/or work in study centers, and assist faculty members. Undergraduate students and graduate students are employed in such roles, along with persons who are not enrolled as students in the institution. Any student/employees working in these roles are paid on an hourly basis.
20. Student/employees in staff assistant (SA) roles (including the predoctoral staff assistant, predoctoral staff associate I, and predoctoral staff associate II types listed in RCW 41.56.203(1)(f) and (g)) generally complement teaching and research activities, by serving as student advisors, doing institutional research, and/or doing related work such as admissions. In the autumn quarter of 2001, the employer had about 190 student/employees working in these roles.
21. Student/employees in research assistant (RA) roles (including the predoctoral researcher, predoctoral research assistant, predoctoral research associate I, and predoctoral research II types listed in RCW 41.56.203(1)(h)) generally engage in research projects under the direction of faculty members (including assisting faculty member or other research staff members on specific assignments) or perform independent research under the supervision of a faculty member. In the

autumn quarter of 2001, the employer had about 2,113 student/employees working under these titles.

22. Terms are not used consistently throughout the institution operated by the employer, and titles other than those described in paragraphs 18 through 21 of these findings of fact may be used for student/employees assigned to perform similar duties within the meaning of RCW 41.56.203(1)(i).
23. The common practice is that the service expectancy imposed by the employer on a student/employee is for 20 hours per week or less. There is no single method of setting service appointments, and some are annual appointments while others are only set for that quarter. The work hours of some student/employees working under TA appointments are closely monitored, and the general practice is that student/employees on TA appointments are not encouraged or expected to work more than 20 hours per week. The work hours of student/employees working under RA appointments are not closely monitored, and some student/employees working under RA appointments are encouraged to work more than 20 hours per week without additional compensation from the employer.
24. The employer divides the calendar year into four quarters for purposes of its academic calendar. The employer's programs are fully operational only during its normal academic year consisting of the autumn, winter and spring quarters, covering the months of September/October to June. Most student/employee appointments, including the vast majority of TA appointments, are limited to the normal academic year. The employer operates a summer program, but only limited course offerings and limited TA work opportunities exist during the summer quarter.



25. Student/employees (and particularly graduate students) may move from one role to another while enrolled at the institution, such as serving as an RA in one academic quarter and as a TA in the next academic quarter. This varies from time to time, depending on the particular course of study and funding involved, and depending on the policies and/or initiatives of the various departments.
26. The record establishes there are at least some instances where a student/employee working under one of the types of appointment described in paragraphs 18 through 22 of these findings of fact seeks and accepts work in another of those types to supplement his/her income. Such dual employment may reduce or delay the progress of the student/employee toward their own academic degree, and so may prolong the employment relationship between the student/employee and this employer.
27. Research funding is a major source of income for the university, amounting to \$800 million in 2002. By 2000, the employer was ranked second among all research facilities in the nation in regard to the receipt of research grants for engineering and science (\$444 million), and fifth in regard to the receipt of industry research and development contracts (\$57 million). At the time of hearing, research grants made up one-third of the employer's total budget.
28. The employer actively solicits research grants, which are received in response to grant proposals submitted by faculty members. All such grant proposals are subject to detailed review by the employer as to the substance and desirability of the proposed research, including: Submission by the faculty member serving as the principal investigator to the chairperson(s) of the department(s) involved for approval; sub-

mission of approved grant applications to the dean(s) of the substitution(s) involved for approval; and submission to the employer's Grant and Contract Services office for verification that the proposal both conforms to the employer's policies and procedures and any equipment and space requirements needed for the research. In 2002, more than 7,500 grant proposals were submitted, of which more than 5,000 were funded.

29. The employer takes a substantial portion of all grant funds received (usually in excess of 50 percent of the total grant funds) as a charge for "indirect" costs, and faculty members must budget for those indirect costs in their grant proposals. The employer can spend such retained funds to supplement other revenue sources and/or to pay expenses in budget categories unrelated to the research funded by the grant. The employer has used such funds for instructional support, academic support, and library improvements. The employer returns a portion of the retained funds to the departments in which the research occurs, and the departments are able to use those funds for expenditures not limited to the research funded by the grant.
30. The employer retains ownership rights as to any products or processes developed through research conducted on its campus, and it receives income from the licensing of those ownership rights. In 2000, it ranked seventh in the nation among research facilities in regard to the receipt of licensing revenue. The employer can spend such funds to supplement other revenue sources and/or to pay expenses in budget categories unrelated to the research funded by the original grant.

31. Research grants paid for more than 6,300 full-time equivalent (FTE) positions in the employer's overall workforce in 2001. Of that, the employer paid more than \$21 million to graduate students and another \$18 million for fellowships and trainee stipends. Research grants are also used to pay the tuition of graduate students, fellows, and trainees performing research.
32. Grant proposals typically list the personnel necessary for completion of the proposed research, including student/employees working under RA appointments. Such student/employees constitute a substantial and ongoing workforce used by the employer to fulfill the obligations of research grants.
33. In some departments, new student/employees are required to rotate among working for several faculty members in the department. Although learning basic laboratory techniques and surveying a broad range of educational opportunities are among the educational purposes of such rotations, those student/employees are subject to a service expectancy imposed by the employer and they actually perform some research work during that rotation process. Graduate students working toward a doctoral degree are expected to find a faculty sponsor within their first year or two of graduate study, and that is a time when faculty members who have grants for specific research projects seek to match interests with graduate students to conduct that research.
34. In addition to the direct supervision provided by the faculty sponsor, a faculty committee formed concerning each doctoral student (including the faculty sponsor and at least one representative from the Graduate School) supervises the student's general field of research, administers any required examinations, is responsible for determining whether the

doctoral student can continue in the particular area of research, and participates in the student's defense of his/her dissertation.

35. After completing required course work and passing any required examination(s), doctoral students generally work under their faculty sponsor with a focus on the particular area of research that will be used as the basis for the preparation and defense of their dissertation. The faculty sponsor and the graduate student spend substantial time refining the proposed area of research, and the faculty sponsor may be responsible for obtaining funding for the student, including any student/employee position, through grants on which the faculty sponsor is the principal investigator.
36. The interests and direction of graduate students often evolve, so that a student who embarks upon a particular set of interests may change direction after a time into an entirely different field of inquiry. Research done by a student/employee under service expectations imposed by the employer prior to settling on a dissertation topic may nevertheless be used by the graduate student as part of a dissertation.
37. Many doctoral students working under RA appointments spend more than 20 hours per week on research which both fulfills the obligations of a research grant and may be or become part of a dissertation being prepared by the student/employee. The evidence supports an inference that faculty sponsors generally impose and enforce at least the 20 hours per week service expectancy to fulfill their obligations under research grants in which they are named as principal investigator. Faculty sponsors conduct regular meetings with the doctoral student, to determine what progress is being made on the research.

38. Training grants are used to support some research under the direction of faculty members designated as the principal investigators for such grants. Funds from training grants may be awarded to graduate students without a service expectancy, or may be provided as part of a financial package which includes a service expectancy imposed by the employer.
39. Some RA appointments are for research or related work in the same general field of study that is being pursued by a doctoral student for his/her own dissertation, but is not directly related to the specific subject matter that is being used as a dissertation topic by the student/employee. Such RA appointments are typically for a limited duration or for a limited project. Such RA appointments are given to provide an opportunity for the student to earn income while he/she pursues research related to their dissertation topic.
40. Even when involved primarily in research related to their own dissertation topic, student/employees on RA appointments perform work that is of value to the employer, and ultimately produces revenue for the employer, while producing income for the student/employees.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The bargaining unit sought by the petitioner in this proceeding, consisting of:

All regular part-time student/employees enrolled in an academic program at the University of Washington and working in one or any combination of the fol-

lowing classifications: predoctoral instructor; predoctoral lecturer; predoctoral teaching assistant; predoctoral teaching associate I; predoctoral teaching associate II; tutor, reader, or grader in all academic units and tutoring centers; predoctoral staff assistant; predoctoral staff associate I; predoctoral staff associate II; predoctoral researcher; predoctoral research assistant; predoctoral research associate I; predoctoral research associate II; and any other student employees whose duties and responsibilities are substantially equivalent to those employees, who remain eligible for work in any or all of those types; excluding: students who have no service expectancy imposed upon them by the employer, casual employees, and all other employees of the employer.

is an appropriate unit for the purposes of collective bargaining under RCW 41.56.203.

3. The dispute in this proceeding concerning the eligibility of student/employees on various research assistant and training appointments is controlled by the language of RCW 41.56.203, so that decisions made by other agencies under other statutes are inapplicable as precedent in this proceeding.
4. Student/employees in any combination of the types listed in paragraph 2 of these conclusions of law who have service expectancies imposed by the employer for more than 110 hours of work in a period of 12 calendar months (including those working under RA appointments on research that is or may become part of their dissertation), are regular part-time employees under RCW 41.56.203 and WAC 391-35-350, and are eligible voters in this proceeding.
5. Students whose service expectancies imposed by the employer are for 110 hours or less in a period of 12 calendar months are casual employees excluded by WAC 391-35-350 from the

bargaining unit described in paragraph 2 of these conclusions of law, and are not eligible voters in this proceeding.

6. The evaluation of the showing of interest supplied by the Graduate Student Employee Action Coalition, UAW, is a function excluded from the definition of agency action under the Administrative Procedure Act, Chapter 34.05 RCW, and is not subject to challenge by the employer under WAC 391-25-110.
7. The authorization cards filed by the Graduate Student Employee Action Coalition, UAW with the Commission on the effective date of Chapter 34, Laws of 2002, cannot be counted as actual evidence of representation authorization for purposes of a cross-check under RCW 41.56.060 and WAC 391-25-391, because they were signed by the employees at a time when no collective bargaining statute was in effect covering their employment.
8. A representation election under RCW 41.56.060 and .070 is the appropriate method for determining the question concerning representation that now exists in the bargaining unit described in paragraph 2 of these conclusions of law.

#### DIRECTION OF ELECTION

1. Within 14 days following the date of this order, the University of Washington shall file and serve a single list, integrating all classifications listed in RCW 41.56.203, containing the names and residence addresses of all student/employees who are or may be eligible voters in the election to be conducted in this proceeding based on:
  - a. Having worked more than 110 hours in one or any combination of the categories listed in RCW 41.56.203(1), during

the one period commencing with the winter quarter of the 2002-2003 academic year and continuing through the autumn quarter of the 2003-2004 academic year; or

- b. Having been given a service appointment in one or any combination of the teaching assistant, staff assistant, and research assistant categories listed in RCW 41.56.203(1) for the 2003-2004 academic year or beyond which is stated in terms of a "half-time" or "20 hours per week" or any similar service expectancy.
2. A representation election shall be conducted by mail ballot, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in paragraph 2 of the foregoing conclusions of law, to determine whether a majority of the student/employees in that bargaining unit desire to be represented by the Graduate Student Employee Action Coalition, UAW, for purposes of collective bargaining with the University of Washington.

DATED at Olympia, Washington, this 16<sup>th</sup> day of December, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-590.