

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	CASE 17127-C-03-1073
	)	DECISION 8606 - PSRA
	)	
	)	CASE 17128-C-03-1074
SERVICE EMPLOYEES INTERNATIONAL	)	DECISION 8607 - PSRA
UNION, LOCAL 925	)	
	)	CASE 17129-C-03-1075
	)	DECISION 8608 - PSRA
	)	
For clarification of an existing	)	CASE 17149-C-03-1089
bargaining unit of employees of:	)	DECISION 8609 - PSRA
	)	
	)	CASE 17550-C-03-1090
	)	DECISION 8610 - PSRA
UNIVERSITY OF WASHINGTON	)	
	)	ORDER CLARIFYING
	)	BARGAINING UNITS
	)	

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Attorney at Law, for the union.

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Relations, and *Christine O. Gregoire*, Attorney General,  
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employer.

On January 21, 2003, Service Employees International Union, Local  
925 (union), filed three petitions for clarification of existing  
bargaining units it represents at the University of Washington  
(employer). The union filed petitions on May 27, 2003, concerning  
two additional bargaining units. All of the petitions ask that  
regular part-time employees be included in the bargaining units.  
After Hearing Officer Walter M. Stuteville was assigned, the  
parties tendered stipulations on all of the cases.

ISSUES

Two issues are presented for decision here: (1) Whether cases presented by stipulations are ripe for description in the absence of a timely brief from the employer; and (2) whether the stipulations tendered by the parties provide basis for the accretions requested by the union.

The Executive Director concludes that the cases were ripe for decision, and accepts the stipulations tendered by the parties except as to some terminology. Acting under WAC 391-35-020, the Executive Director modifies the bargaining units to include regular part-time employees who perform similar work.

ANALYSIS OF PROCEDURAL ISSUE

The employer is a state institution of higher education whose "classified" employees are covered by the State Civil Service Law, Chapter 41.06 RCW. The union represents several bargaining units. Some of those units were created under a civil service statute but then transferred to coverage under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, by exercise of the option created in RCW 41.56.201. All of them will be covered by the Personnel System Reform Act of 2002 (PSRA) when it is fully implemented.

The processing of these cases was delayed while the Washington Personnel Resources Board (WPRB) considered and acted upon a change of its rules, as detailed below. The WPRB adopted a rule change in October 2003, but the parties were unable to resolve these matters. A notice was issued on January 30, 2004, setting March 18, 2004, as the date for a hearing. The parties continued to discuss settle-

ment, and requested postponement of that hearing. Their request was granted.

On March 26, 2004, the union provided the Hearing Officer a stipulation of facts. On March 30, 2004, the employer provided the Hearing Officer a stipulation it described as containing "additional changes which we think are slightly more precise." The Hearing Officer sent a letter to the parties on April 28, 2004, distinguishing items on which the parties appeared to agree from items where the parties appeared to have ongoing disagreements, and noting a potential problem with one paragraph where the parties appeared to agree. The Hearing Officer also wrote:

I do not detect any factual issues to be resolved: The employer has a number of employees who work less than full-time, and its employment records will establish how much each of them has worked in whatever period is ultimately deemed relevant. Instead, it appears to me that the outstanding issues are issues of law, relating to interpretation of the Personnel System Reform Act of 2002 and the rule/ruling of the Washington Personnel Resources Board concerning the civil service status of employees working less than full-time. Therefore:

1. I am prepared to rule that an evidentiary hearing is not necessary in this case, and will do so unless good cause for a hearing is shown within **14 days** following the date of this letter.
2. The parties are hereby requested to file and serve briefs setting forth their respective positions and arguments concerning the matters addressed in paragraphs 2, 5 and 9 of the proposed stipulations. Those briefs are due **21 days** following the date of this letter.

Thereafter, the matter will be resubmitted to the Executive Director for a decision . . . .

Nothing was received from either party concerning the need for a hearing.

The employer had a change of representatives, and it requested an extension of the deadline for briefs.<sup>1</sup> The Hearing Officer granted that request. The union filed a letter on May 26, 2004, which was timely under the extended deadline for briefs. The employer requested another extension in a telephone message left for the Hearing Officer on May 28, 2004, but did not indicate the union had been contacted or that the union consented to the extension, and did not respond to a message left by the Hearing Officer.

These cases were resubmitted to the Executive Director, the Executive Director deemed it appropriate to proceed with a decision, and the preparation of this decision commenced. Apart from whether the employer's request for a second extension was timely and/or whether it was made in conformity with WAC 391-08-180, time is of the essence here. RCW 41.80.001 provides for bargaining under the PSRA to commence no later than July 1, 2004, with a deadline of October 1, 2004. The parties are entitled to know the scope of the bargaining units when they commence bargaining under the PSRA.<sup>2</sup>

#### ANALYSIS OF SUBSTANTIVE ISSUE

The principal question framed in these cases is "Whether the bargaining units should be clarified to include employees who work more than 350 hours but less than 1050 hours per annum?" Each of the petitions filed by the union in early 2003 related to a bargaining unit then in existence:

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<sup>1</sup> In making that request, the employer indicated it had contacted the union in conformity with WAC 391-08-180, and that it even had the concurrence of the union.

<sup>2</sup> The employer filed a letter/brief on June 17, 2004.

- Case 17127-C-03-1073 concerned a separate unit of supervisory clerical, administrative, and data processing employees;
- Case 17128-C-03-1074 concerned a unit of non-supervisory clerical, administrative, and data processing employees;
- Case 17129-C-03-1075 concerned a unit of non-supervisory media services employees;
- Case 17149-C-03-1089 concerned a unit of research technologists; and
- Case 17550-C-03-1090 concerned a separate unit of supervisory research technologists.

All of those bargaining units were created in the context of civil service rules that excluded employees scheduled to work less than 1050 hours in a 12-month period from rights under the state civil service law, and those employees (termed "temporary" under civil service practices) were not considered eligible to be included in bargaining units or covered by collective bargaining agreements under the state civil service law.

#### Applicable Legal Principles

The PSRA was enacted in 2002 with various effective dates. The statutory basis for the exclusion of part-time employees from civil service rights was arguably repealed by the PSRA amendments.<sup>3</sup> Two PSRA provisions that took effect in 2002 are operative here:

RCW 41.06.340 DETERMINATION OF APPROPRIATE BARGAINING UNITS -- . . . . (1) With respect to collective

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<sup>3</sup> A list of exclusions in RCW 41.06.070(2) was amended by deletion of: "Student, part-time, or temporary employees, . . . as defined by the Washington Personnel Resources Board . . . ."

bargaining as authorized by RCW 41.80.001 and 41.80.010 through 41.80.130, the public employment relations commission created by chapter 41.58 RCW shall have authority to adopt rules, on and after June 13, 2002, relating to determination of appropriate bargaining units within any agency. In making such determination the commission shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees. The public employment relations commission created in chapter 41.58 RCW shall adopt rules and make determinations relating to the certification and decertification of exclusive bargaining representatives. . . .

RCW 41.80.070 BARGAINING UNITS - CERTIFICATION. (1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, unless the unit does not meet all the requirements of . . . this subsection. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modification of existing units, the commission shall consider: the duties, skills and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. . . .

Before the PSRA was enacted, the Commission's policy concerning part-time employees had been codified in its rules, as follows:

WAC 391-35-350 UNIT PLACEMENT OF REGULAR PART-TIME EMPLOYEES - EXCLUSION OF CASUAL AND TEMPORARY EMPLOYEES.  
(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). Because eligibility for collective bargaining rights under the PSRA is directly tied to status as a "classified" employee under the state civil service law, the Commission adopted the following special rule:

WAC 391-35-356 SPECIAL PROVISION -- STATE CIVIL SERVICE EMPLOYEES. (1) For *employees covered by chapter 41.06 RCW* who work less than full-time, it shall be presumptively appropriate to *include those employees in the same bargaining unit with full-time employees performing similar work.*

(2) The presumption set forth in this section is intended to avoid excessive fragmentation and a potential for conflicting work jurisdiction claims which would otherwise exist in separate units of full-time and less than full-time employees.

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

(emphasis added). Thus, the primary responsibility for interpretation of Chapter 41.06 RCW as to who has rights under the State Civil Service Law was left to the WPRB which is created within the State Civil Service Law and charged with its interpretation.

On October 21, 2003, the WPRB amended its WAC 251-04-035, to read as follows:

WAC 251-04-035 EXEMPTIONS. The provisions of this chapter do not apply to positions listed in RCW 41.06.070 and to the following:

(2) The following definitions are hereby established as the criteria for identifying positions occupied by student, part-time or temporary employees, and part-time professional consultants that are exempt from the provisions of this chapter.

(a) Students employed by the institution at which they are enrolled . . . .

(b) Students participating in a documented and approved programmed internship . . . .

(c) Students employed through . . . work/study programs.

(d) Persons employed to work one thousand fifty hours or less in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later. . . .

(i) *Employees . . . exempt under WAC 251-04-035(2)-(d) . . . who work more than three hundred fifty hours in any twelve consecutive month period from the original date of hire or January 1, 2004, whichever is later, exclusive of overtime or time worked under subsection (2)(a) of this subsection, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. . . .*

(emphasis added). The rule amendment was made effective on January 1, 2004.<sup>4</sup>

WAC 391-35-020 generally limits accretions to "change of circumstances" situations, but the Commission has long recognized changes

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<sup>4</sup> The WPRB rule is mathematically similar to the "one-sixth" test historically used by the Commission. The 350 hour threshold is 16.827% of a 2,080-hour work year. The minimal difference from 16.667% is easily justified or condoned by considerations of ease of administration.



of administrative or judicial interpretation of a statute as changes of circumstances warranting a unit clarification. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

#### Analysis

WAC 391-35-356 is applicable here. The change of interpretation of the State Civil Service Law by the WPRB constitutes a change of circumstances, and the employees at issue in these cases work more than 350 hours annually doing the same work as the employees historically included in the bargaining units. The stipulations and information submitted by the parties are sufficient to constitute basis for rulings, and nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the accretions requested by the union.

The employer does not oppose clarifying the bargaining units to include the employees working between 350 and 1050 hours annually, and including them in the existing bargaining units will particularly address the anti-fragmentation policy enunciated in RCW 41.80.070. Indeed, these bargaining units are the only appropriate units for those employees. The stipulations supplied by the parties are thus incorporated into the findings of fact set forth below.

#### Use of Appropriate Terminology -

The Hearing Officer noted a problem with the "temporary" terminology used by the parties in their stipulations, and both parties have responded in defense of their historical practices. The Executive Director has considered their statements, and recognizes that their use of "temporary" is likely in conformity with civil service practice, but that is not binding here. These parties need to conform with their current/future environment.

These parties are about to embark on a greatly-expanded collective bargaining process under the PSRA that will supplant the civil service system in some (or perhaps many) ways. It is appropriate that terminology used in the collective bargaining process be used henceforth. The Public Employment Relations Commission is directed to provide "uniform" administration of state collective bargaining laws,<sup>5</sup> and the determination and modification of bargaining units of state civil service employees is now a function delegated by the Legislature to the Commission.<sup>6</sup> The "regular part-time" and "casual" terms that appear in WAC 391-35-350 and WAC 391-35-356 are uniformly used by the Commission as generic antonyms distinguishing employees who are properly included in bargaining units from those who are properly excluded from bargaining units. Notwithstanding the preferences of the parties, the Executive Director uses terms that are appropriate under Commission precedents developed in a collective bargaining context.<sup>7</sup> The use of the appropriate unit description terminology does not change the collective bargaining rights or bargaining unit status of any individual employee.

Technical Correction -

While these cases were pending, the bargaining units involved in Cases 17128-C-03-1074 and 17129-C-03-1075 were merged. *University of Washington*, Decision 8464 (PSRA, 2004). The parties stipulate that the case concerning the separate "media" unit can now be dismissed.

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<sup>5</sup> RCW 41.58.005.

<sup>6</sup> RCW 41.06.340; RCW 41.80.070.

<sup>7</sup> Similarly, the Commission prefers to describe bargaining units in generic terms tied to bodies of work, even where the parties may prefer to refer to the specific classification titles used at the time the bargaining unit is created or modified. *City of Milton*, Decision 5808-B (PECB, 1995).

FINDINGS OF FACT

1. The University of Washington is an "institution of higher education" within the meaning of RCW 41.56.030(8) and RCW 41.80.005(10).
2. Service Employees International Union, Local 925, a bargaining representative within the meaning of RCW 41.56.060 and an employee organization within the meaning of RCW 41.80.005(7), has filed five petitions seeking clarification of various existing bargaining units of classified employees of the University of Washington.
3. By operation of civil service rules adopted by the Washington Personnel Resources Board (WPRB) and/or its predecessors under Chapter 41.06 RCW and/or its predecessors, the bargaining units represented by the union have historically included only employees in specified classifications who work more than 1,050 hours in any 12-month period.
4. By an amendment of WAC 251-04-035 that was effective on January 1, 2004, the WPRB eliminated the exclusion of employees who work between 350 hours and 1,050 hours in any 12-month period from the coverage of the state civil service law.
5. The union and employer have entered into stipulations concerning classified employees who work more than 350 hours but less than 1,050 hours during any 12-month period measured from January 1, 2004, or the original date of "temporary" employment with the employer, whichever is later, in classifications which are included within the bargaining units represented by the union.

6. Subsequent to the filing of the petitions to initiate these proceedings, the Commission issued an order as *University of Washington*, Decision 8464 (PSRA, 2004), which merged the media services bargaining unit and all of the bargaining units covered by the clerical campuswide non-supervisory contract into a single bargaining unit of non-supervisory support employees.
7. Subsequent to the filing of the petitions to initiate these proceedings, the Commission issued an order as *University of Washington*, Decision 8463 (PSRA, 2004), which merged all of the bargaining units covered by the clerical campuswide supervisory contract into a single bargaining unit of supervisory support employees.
8. The parties stipulated that the employees who work more than 350 hours but less than 1,050 hours during any 12-month period share duties, skills, working conditions, and a community of interest with the employees in the historical and/or merged bargaining units represented by the union.
9. The parties stipulated that, upon accretion of the employees described in paragraph 8 of these findings of fact, the bargaining units will continue to be appropriate units for the purposes of collective bargaining.
10. The parties further stipulated that, upon clarification of the bargaining units as described above and continuing until July 1, 2005, the employer will endeavor to periodically provide the union with lists of the names, job classifications, work location, and appointing departments of employees affected by these proceedings, as follows: (a) on a date already passed for the quarter ending March 31, 2004; (b) by July 30, 2004,

for the quarter ending June 30, 2004; (c) by October 29, 2004, for the quarter ending September 30, 2003; (d) by January 31, 2005, for the quarter ending December 31, 2004; and (e) by April 29, 2005, for the quarter ending March 31, 2005.

11. The parties further stipulated that, upon clarification of the bargaining units as described above, the schedule by which the employer will provide information about employees to the union after July 1, 2005, will be a subject of bargaining in their collective bargaining under Chapter 41.80 RCW.
12. The parties further stipulated that the employees accreted to the bargaining units in these proceedings will not be covered by the collective bargaining agreements negotiated by the parties under the State Civil Service Law, Chapter 41.06 RCW.
13. The parties further stipulated that the petition in Case 17129-C-03-1075 should be dismissed, in light of the previous merger of that bargaining unit as described in paragraph 6 of these findings of fact.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.023, RCW 41.06.340, and RCW 41.80.070, and under Chapter 391-35 WAC.
2. The employees described in paragraph 8 of the foregoing findings of fact are employees within the meaning of RCW 41.80.005(6), who are properly categorized as "regular part-time employees" under the rules, practices and precedents of the Public Employment Relations Commission.

3. The regular part-time employees at issue in this proceeding will be eligible for collective bargaining rights under Chapter 41.80 RCW on and after July 1, 2004, leading to collective bargaining agreements to be effective no sooner than July 1, 2005.
4. The existing bargaining units represented by the union are properly clarified, under RCW 41.80.070, to include the regular part-time employees described in paragraph 8 of the foregoing findings of fact and in paragraph 2 of these conclusions of law.
5. The stipulations submitted by the parties concerning the accretion of regular part-time employees into the bargaining units appear to conform with the rule adopted by the Washington Personnel Resources Board as WAC 251-04-035(2)(d)(1), by which those employees acquired rights under the State Civil Service Law, Chapter 41.06 RCW, and provide an orderly method for a transition to be completed by July 1, 2005.

ORDER

1. CASE 17127-C-03-1073; DECISION 8606 - PSRA: The bargaining unit of supervisory support personnel described in *University of Washington*, Decision 8463 (PSRA, 2004) is modified to read as follows for the purpose of negotiating collective bargaining agreements under Chapter 41.80 RCW:

All full-time and regular part-time supervisory civil service employees of the University of Washington in the employer's academic and medical areas of operation, excluding confidential employees, internal auditors, non-supervisory employees, casual employees, and employees included in any other bargaining unit.

Employees working more than 350 hours per annum are included in that bargaining unit as regular part-time employees.

2. CASE 17128-C-03-1074; DECISION 8607 - PSRA: The bargaining unit of non-supervisory support personnel described in *University of Washington*, Decision 8464 (PSRA, 2004) is modified to read as follows for the purpose of negotiating collective bargaining agreements under Chapter 41.80 RCW:

All full-time and regular part-time non-supervisory civil service employees of the University of Washington performing technical, administrative, office-clerical, and support functions in the employer's academic and medical areas of operation, excluding confidential employees, internal auditors, supervisors, casual employees, and employees included in any other bargaining unit.

Employees working more than 350 hours per annum are included in that bargaining unit as regular part-time employees.

3. CASE 17129-C-03-1075; DECISION 8608 - PSRA: The petition concerning the former media services unit is DISMISSED.
4. CASE 17149-C-03-1089; DECISION 8609 - PSRA: The bargaining unit described in *University of Washington*, Decision 7811 (PSRA, 2002) is modified to read as follows for the purpose of negotiating collective bargaining agreements under Chapter 41.80 RCW:

All full-time and regular part-time research technologists and scientific instructional technicians of the University of Washington, excluding supervisors, confidential employees, casual employees, and all other employees.

Employees working more than 350 hours per annum are included in that bargaining unit.

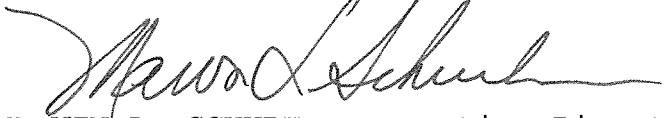
5. CASE 17550-C-03-1090; DECISION 8610 - PSRA: The bargaining unit of supervisory research technicians described in Department of Personnel case RC-174 is modified to read as follows for the purpose of negotiating collective bargaining agreements under Chapter 41.80 RCW:

All full-time and regular part-time supervisory research technologists and scientific instructional technicians of the University of Washington, excluding non-supervisory employees, confidential employees, casual employees, and all other employees.

Employees working more than 350 hours per annum are included in that bargaining unit.

Issued at Olympia, Washington, on the 21<sup>st</sup> day of June, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.