STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
JEREMY GILL	)	CASE 10854-D-93-105
	)	
for a declaratory order concerning collective bargaining between:	)	DECISION 4668 - PECB
	)	
UNIVERSITY OF WASHINGTON	)	
	)	
and	)	ORDER FOR FURTHER PROCEEDINGS
	)	
CLASSIFIED STAFF ASSOCIATION, SEIU DISTRICT 925	)	
	)	
	)	

Jeremy Gill appeared pro se.

Daniel P. Kraus, Labor Relations Officer, appeared on behalf of the employer.

Terry Costello, SEIU Legal Assistant, appeared on behalf of the union.

On December 21, 1993, Jeremy Gill filed a petition for declaratory order with the Public Employment Relations Commission, seeking an interpretation of RCW 41.56.201 with respect to several issues. Supplemental materials were filed by Mr. Gill on December 28, 1993, January 20, 1994 and February 9, 1994.[1] The matter was considered by the Commission at an open, public meeting held on February 28, 1994, for the purpose of making a determination as to whether a declaratory order should be issued. Comments were received from the petitioner, the employer and the union. After taking the matter under advisement, the Commission voted on the matter. This written order is issued pursuant to WAC 10-08-252.

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[1] Unfair labor practice charges filed by Mr. Gill on February 24, 1994 and supplemented on February 28, 1994 have been docketed separately as Case 10989-U-94-2558.

BACKGROUND

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, was first enacted in 1967. The statute originally covered "local government", but has been the subject of numerous legislative amendments and judicial interpretations which have broadened its coverage to include some groups of "state" employees. The Public Employment Relations Commission was created by the Legislature in 1975, to consolidate the impartial administration of several state collective bargaining laws. The Commission commenced administering Chapter 41.56 RCW on January 1, 1976.

The University of Washington is a state institution of higher education, headquartered in Seattle. It has been a "public employer" under Chapter 41.56 RCW since 1987, but only with respect to the printing craft employees in its department of printing.[2]

From approximately 1969 to 1993, the "classified" (non-teaching) employees at certain state institutions of higher education were covered by a civil service system administered by the Higher Education Personnel Board (HEPBoard) under Chapter 28B.16 RCW. Office-clerical and related employees of the University of Washington were covered by that system. A form of collective bargaining was available under RCW 28B.16.100(10), (11) and (12), but the scope of bargaining was limited to personnel matters over which the institution could properly exercise discretion. In particular, wages and wage-related benefits were not subjects for collective bargaining. Union security was not a subject for bargaining, but was regulated by statute:

> RCW 28B.16.100 RULES--SCOPE. The higher education personnel board shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of

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[2] See, RCW 41.56.022.

personnel administration, regarding the basis and procedures to be followed for:

...

(11) Certification and decertification of exclusive bargaining representatives: *Provided,* That **after certification of an exclusive bargaining representative and upon the representative's request, the director shall hold an election among employees in a bargaining unit to determine by a majority whether to require as a condition of employment membership in the certified exclusive bargaining representative on or after the thirtieth day following the beginning of employment or the date of such election, whichever is the later, and the failure of an employee to comply with such condition of employment constitutes cause for dismissal: *Provided further,* That no more often than once in each twelve-month period after expiration of twelve months following the date of the original election in a bargaining unit and upon petition of thirty percent of the members of a bargaining unit the director shall hold an election to determine whether a majority wish to rescind such condition of employment:** *Provided further,* That for purposes of this clause, membership in the certified exclusive bargaining representative is satisfied by the payment of monthly or other periodic dues and does not require payment of initiation, reinstatement, or any other fees or fines and includes full and complete membership rights: *And provided further,* That in order to safeguard the right of non-association of public employees, based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member, such public employee shall pay to the union, for purposes within the program of the union as designated by such employee that would be in harmony with his individual conscience, an amount of money equivalent to regular union dues minus any included monthly premiums for union-sponsored insurance programs, and such employee shall not be a member of the union but is entitled to all the representation rights of a union member;

[*Italics* in original; emphasis by **bold** supplied.]

Essentially similar civil service rights and limited-scope collective bargaining rights were provided for the "classified" employees of state agencies under RCW 41.06.150(12). The State Personnel Board (SPB) and the Department of Personnel (DOP) administered Chapter 41.06 RCW.

The Classified Staff Association (CSA) has represented certain office-clerical and related employees of the University of Washington since approximately 1972. In about 1983, the CSA affiliated with District 925 of the Service Employees International Union, AFL-CIO. Prior to the events giving rise to this proceeding, the HEPBoard had certified the CSA as exclusive bargaining representative for four separate bargaining units encompassing more than 3000 employees under Chapter 28B.16 RCW: A campus-wide "non-supervisory clerical" unit;[3] a "supervisory clerical" unit; a "data processing" unit; and a "media" unit. None of those bargaining units had voted to make union security a condition of employment under RCW 28B.16.100.

Jeremy Gill is employed by the University of Washington as a classified employee within the "non-supervisory clerical" bargaining unit represented by the CSA.

During its 1993 session, the Legislature adopted "civil service reform" provisions in 1993 ch. 281 (Engrossed Substitute House Bill 2054). The HEPBoard and the SPB were abolished, a new Washington Personnel Resources Board (WPRB) was created to adopt some civil service rules, and the director of personnel was given rulemaking authority. Chapter 28B.16 RCW was repealed, and the civil service rights of higher education "classified" employees were transferred to Chapter 41.06 RCW, under the administration of the Department of Personnel and the WPRB.

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[3] This unit by itself consists of approximately 2500 employees.

During its 1993 session, the Legislature also adopted certain "efficiency" provisions relating to state institutions of higher education, in 1993 ch. 379 (Engrossed Substitute House Bill 1509). Chapter 41.56 RCW was amended by that legislation, as follows:

> RCW 41.56.023 APPLICATION OF CHAPTER TO EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to institutions of higher education with respect to the employees included in a bargaining unit that has exercised the option specified in RCW 41.56.201.
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> [1993 c 379 §301.]
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> ...
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> RCW 41.56.030 DEFINITIONS As used in this chapter:
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> (1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter ((~~as designated by RCW 41.56.020~~)), or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.
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> ...
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> (8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.
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> [1993 c 379 §302.][4]

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[4] RCW 41.56.030 was amended three times during the 1993 legislative session, each without reference to the other. The excerpt quoted here is as found in 1993 ch. 379, using "legislative style" showing additions by underline and deletions by ((~~strikeout~~)).

...

RCW 41.56.201 EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION--OPTION TO HAVE RELATIONSHIP AND OBLIGATIONS GOVERNED BY CHAPTER. (1) At any time after July 1, 1993, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees classified under chapter 28B.16 or 41.06 RCW as appropriate may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of this chapter by complying with the following:

(a) The parties will file notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement permitted by this section recognizing the notice of intent. The parties shall provide the notice to the higher education personnel board or its successor and the commission;

(b) **During the negotiation of an initial contract between the parties under this chapter, the parties' scope of bargaining shall be governed by this chapter and any disputes arising out of the collective bargaining rights and obligations under this subsection shall be determined by the commission.** If the commission finds that the parties are at impasse, the notice filed under (a) of this subsection shall be void and have no effect; and

(c) **On the first day of the month following the month during which the institution of higher education and the exclusive bargaining representative provide notice to the higher education personnel board or its successor and the commission that they have executed an initial collective bargaining agreement recognizing the notice of intent filed under (a) of this subsection, chapter 28B.16 or 41.06 RCW as appropriate shall cease to apply to all employees in the bargaining unit covered by the agreement.**

(2) All collective bargaining rights and obligations concerning relations between an institution of higher education and the exclusive bargaining representative of its employees who have agreed to exercise the option permitted by this section shall be determined under this chapter, subject to the following:

(a) The commission shall recognize, in its current form, the bargaining unit as certified by the higher education personnel board or its successor and the limitations on collective bargaining contained in RCW 41.56-.100 shall not apply to that bargaining unit.

(b) If, on the date of filing the notice under subsection (1)(a) of this section, there is a union shop authorized for the bargaining unit under rules adopted by the higher education personnel board or its successor, the union shop requirement shall continue in effect for the bargaining unit and shall be deemed incorporated into the collective bargaining agreement applicable to the bargaining unit.

(c) Salary increases negotiated for the employees in the bargaining unit shall be subject to the following:

(i) Salary increases shall continue to be appropriated by the legislature. The exclusive bargaining representative shall meet before a legislative session with the governor or governor's designee and the representative of the institution of higher education concerning the total dollar amount for salary increases and health care contributions that will be contained in the appropriations proposed by the governor under RCW 43.88.060;

(ii) The collective bargaining agreements may provide for salary increases from local efficiency savings that are different from or that exceed the amount or percentage for salary increases provided by the legislature in the omnibus appropriations act for the institution of higher education or allocated to the board of trustees by the state board for community and technical colleges, but the base for salary increases provided by the legislature under (c)(i) of this subsection shall include only those amounts appropriated by the legislature, and the base shall not include any additional salary increases provided under this subsection (2)(c)(ii);

(iii) Any provisions of the collective bargaining agreements pertaining to salary increases provided under (c)(i) of this subsection shall be subject to modification by the legislature. If any provision of a salary increase provided under (c)(i) of this subsection is changed by subsequent modification of the appropriations act by the legislature,

> both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the modified provision.
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> (3) Nothing in this section may be construed to permit an institution of higher education to bargain collectively with an exclusive bargaining representative concerning any matter covered by: (a) Chapter 41.05 RCW, except for the related cost or dollar contributions or additional or supplemental benefits as permitted by chapter 492, Laws of 1993; or (b) chapter 41.32 or 41.40 RCW.

[1993 ch. 379 §304. Emphasis by **bold** supplied.][5]

The higher education "efficiency" package covered a variety of topics in addition to collective bargaining.[6] The legislation contained an emergency clause, causing it to take effect on July 1, 1993.[7]

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[5] Other than the previously-mentioned "civil service" laws, the statutes referred to in RCW 41.56.201 are summarized as follows:

* RCW 43.88.060 directs the governor to submit a proposed budget to the Legislature by December 20 of the year preceding the legislative session in which it is to be considered.
* Chapter 41.05 RCW provides for health care benefits for state employees.
* Chapter 492, Laws of 1993 provides for "health care reform".
* Chapter 41.32 RCW establishes the Washington "Teachers Retirement System".
* Chapter 41.40 RCW establishes the "Washington Public Employees' Retirement System".

[6] The intent of the Legislature was set forth in 1993 ch. 379 §1, as follows:

> The legislature acknowledges the academic freedom of institutions of higher education, and seeks to improve their efficiency and effectiveness in carrying out their mission. By this act, the legislature intends to increase the flexibility of institutions of higher education to manage personnel, construction, purchasing, printing and tuition.

[7] 1993 ch. 379 §408.

On August 26, 1993, the University of Washington and the CSA filed notice with the Commission, stating their intent to invoke the "option" made available to them under RCW 41.56.201(1)(a).[8] The Executive Director caused a case file to be opened on the Commission's computerized case docketing system, as Case 10652-E-93-1957.[9] On September 2, 1993, the Executive Director advised the parties of his action, and of his intent to close that "E" case administratively once an initial contract was ratified or an impasse was reached.

On December 15, 1993, the CSA filed a request for mediation with the Commission, concerning the parties' attempt to negotiate an initial collective bargaining agreement under Chapter 41.56 RCW. Mediation services were provided, and a tentative agreement was reached in January of 1994.

The CSA conducted a ratification vote on the tentative agreement, on February 11, 1994.[10] All of the employees in the four bargain-

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[8] The correspondence was jointly addressed to the Commission and to the WPRB.

[9] The Executive Director has subsequently reported to the Commission that he identified a need to preserve a historical record of the transaction. In the absence of any administrative rules adopted by the Commission for the interpretation or application of RCW 41.56.201, and of any separate facility within the Commission's computerized case docketing system for doing so, the "E" case type customarily used for representation cases was adapted to mark the onset of this bargaining relationship under Chapter 41.56 RCW. No petition for investigation of a question concerning representation was actually filed under Chapter 391-25 WAC, and no showing of interest was provided.

[10] At the request of the CSA, and with the concurrence of the employer, members of the Commission's staff were present at the polling place during the hours of voting and during the tally of ballots. This was done as an extension of the mediation effort, and the ratification election was not processed in the same manner as a representation election conducted by the Commission.

ing units were eligible to vote in that ratification election. In the "non-supervisory clerical" and "media" units, the majority of the ballots cast favored ratification of the tentative agreement. The "supervisory clerical" and "data processing" units failed to ratify the tentative agreement.

On March 14, 1994, the University of Washington and the CSA jointly filed their initial collective bargaining agreement concerning the "campus-wide non-supervisory clerical" and "media" units with the Commission. That agreement contains the following:

> ARTICLE 3
> UNION MEMBERSHIP, FAIR SHARE
> AND DUES DEDUCTION
>
> 3.1 Union Membership and Fair Share Fee. The Union shall fairly represent all employees covered by this Agreement. Therefore, as a condition of employment, employees who are covered under this Agreement shall, within sixty (60) days of the effective date of employment, or within sixty (60) days of the effective date of this Agreement (whichever is later) either execute a union membership and payroll deduction form or a fair share payroll deduction form and shall have the appropriate fee deducted from their payroll checks. Any employee who is a member of the Union may voluntarily withdraw their membership from the Union and pay a fair share fee by giving written notice to the Union within thirty (30) days prior to the expiration date of this Agreement.
>
> Employees who are determined by the Public Employment Relations Commission to satisfy the religious exemption requirements of RCW 41.56.122 shall contribute an amount equivalent to regular union dues and initiation fees to a charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the fair share fee.
>
> ...

ARTICLE 34
DURATION

> This Agreement shall become effective April 1, 1994 and remain in force through December 31, 1995. ....

The letter covering transmittal of the collective bargaining agreement included that the parties "assume" that, effective April 1, 1994, Chapter 41.06 RCW will cease to apply and Chapter 41.56 RCW will apply to the bargaining units covered under the agreement.

POSITIONS OF THE PARTIES

Jeremy Gill has asked the Commission to issue a declaratory ruling explaining employee rights during the interim between the giving of a notice of intent, pursuant to RCW 41.56.201, and the implementation of any collective bargaining agreement negotiated by CSA and this employer. Gill asserts that the provisions of Chapter 41.06 RCW should continue to govern the parties until any collective bargaining agreement is implemented, and he particularly argues that the full procedures for union security elections contained in the civil service law must apply to any ratification vote conducted by CSA, if the negotiations between the parties produce a proposed collective bargaining agreement that includes a union security clause. Gill asserts that those procedures would require the Commission to inform all bargaining unit members of the RCW 41.06.150(12) union security election procedures before the election, would grant all bargaining unit members a right to vote, would require that the Commission conduct the election, and would require a "majority vote of those eligible" test for ratification. Gill further requests that CSA be directed to inform all bargaining unit members of present and future dues obligations before any such election. During oral argument before the Commission, Gill also took issue with the union's decisionmaking process leading to the exercise of the option, particularly objecting that the decision to

exercise the option removing employees from the civil service system and the decision to seek a negotiated union security provision were made without involvement of the entire bargaining unit. Gill thus asked the Commission to require notice to the employees of the consequences of exercising the option made available under RCW 41.56.201.

The CSA opposed the acceptance of this case for a declaratory order, asserting that it is the duly certified exclusive bargaining representative of the employees involved, and that the "efficiency package" adopted by the Legislature in 1993 permits the removal of the CSA-represented bargaining units from the civil service system. The CSA asserts that it has followed the procedure set forth in RCW 41.56.201, and that union security is a mandatory subject of collective bargaining under Chapter 41.56 RCW. The CSA contends the statute authorizes the option to be exercised by the union per its own ratification rules. The CSA notes indicated that its bylaws would actually limit eligibility to vote on ratification of a contract to its members, and that it did more than was required when it let all of the employees vote on ratification. Finally, the CSA contends that Gill's complaint lies, if at all, with the Legislature, which left ratification of the initial contract as a matter of internal union affairs in RCW 41.56.201.

The University of Washington also contended that no declaratory order should be issued. It argued that jurisdiction to enforce the civil service system, including any representation and unit clarification matters, remains with the WPRB until the first of the month following execution and filing of the collective bargaining agreement, but that the employer and union lawfully agreed to a union security provision to be made effective in their initial collective bargaining agreement under RCW 41.56.201. It agrees with the CSA that there is no state regulation of the ratification of collective bargaining agreements made under RCW 41.56.201, and that the union did one of the things requested by Gill when it

permitted all bargaining unit members to vote. The employer asserts this was not a union shop election under the civil service system, and that no election is required to validate a union security provision under Chapter 41.56 RCW.

DISCUSSION

Some of the issues that Mr. Gill would have us rule upon are controlled by established precedent, or do not involve the interpretation or application of statutes which this Commission is authorized to administer. No declaratory order will be issued as to those matters, which are identified below.

We do conclude that there are some ambiguities in RCW 41.56.201, particularly concerning the interface between Chapters 41.06 and 41.56 RCW at various stages of the process outlined in RCW 41.56.201. Further proceedings will be conducted in this case on those matters, as identified below.

Certification of Exclusive Bargaining Representative

Mr. Gill appeared to attach some significance to the Executive Director's docketing of Case 10652-E-93-1957 in connection with this transaction, and/or to the presence of our staff members at the union's ratification election. Those events do not signify a representation proceeding.

The determination of appropriate bargaining units and the certification of exclusive bargaining representatives for higher education classified employees prior to the exercise of the RCW 41.56.201 "option" are matters reserved to the WPRB and the Department of Personnel under Chapter 41.06 RCW. The petitioner does not contest the status of the CSA as exclusive bargaining representative of the bargaining unit in which he is employed. Under RCW 41.56.201(2)-

(a), the Commission is bound to accept the bargaining units as they come to us. We find no room in the statute for this Commission to conduct a "representation" proceeding directly in connection with the exercise of the "option" by a bargaining unit, and the union ratification election which was conducted on February 11, 1994 did not purport to be a representation election under Chapter 391-25 WAC. This will not be a subject of a declaratory order in this proceeding.[11]

Formulation of Union Positions / Proposals

The union's procedures for deciding to exercise the RCW 41.56.201 "option", as well as for deciding to seek a union security provision in its initial collective bargaining agreement under Chapter 41.56 RCW, are matters of internal union affairs, and will not be a subject of a declaratory order in this proceeding.

In Lewis County, Decision 464 (PECB, 1978), the Executive Director dismissed an unfair labor practice complaint filed by an employer in an attempt to challenge a union's exclusion of non-members from participation in the formulation of bargaining proposals. While recognizing the existence of a "duty of fair representation" under Miranda Fuel Co., 140 NLRB 181 (1962) and Ford Motor Co. v. Huffman, 345 U.S. 330 (1957), the Executive Director cited State ex. rel. Givens v. Superior Court, 33 LRRM 2650 (Indiana Supreme Ct, 1975) and Branch 6000, Letter Carriers, 232 NLRB 263 (1977) as authority for the proposition that voting on union officers and the negotiation of contracts is a political right incident to the privileges of union membership. The Commission affirmed. Lewis County, Decision 464-A (PECB, 1978). That employer then refused to

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[11] We recognize the possibility that representation or unit clarification issues could arise after a unit has been completely transferred to our jurisdiction under RCW 41.56.201(1)(c). In the absence of a current case or controversy, however, we decline to journey into those uncharted waters.

bargain with the union. When the union filed unfair labor practice charges, Lewis County defended that it had no duty to bargain with a union that refused to permit nonmembers participation in the formulation of bargaining proposals to be laid before the employer. The Examiner in that case found the employer committed a refusal to bargain in violation of RCW 41.56.140(4). Lewis County, Decision 556 (PECB, 1978). In affirming the Examiner's decision in that case, the Commission stated:

> No law except, perhaps, its own bylaws directs the bargaining agent as to how to formulate its proposals. It need not consult all, or any, of its own members. **It certainly need not consult nonmembers**, ...
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> Lewis County, Decision 556-A (PECB, 1979) [Emphasis by **bold** supplied.]

The Commission went on to note that this proposition is so self-evident that few cases illustrating it have arisen under the National Labor Relations Act, and that its view as quoted here was consistent with the policy endorsed by the Supreme Court of the United States in NLRB v. Borg-Warner, 356 U.S. 342 (1957). Our research discloses no Department of Personnel or HEPBoard precedent under the civil service laws which would require nonmembers to be involved in a union's development of bargaining proposals. We see no reason to reopen that closed subject here.

Extent of Commission Jurisdiction

Some ambiguity may exist with respect to the scope of jurisdiction of this Commission under RCW 41.56.201(1)(b), and we will undertake to rule on that question in this case.[12] As already noted above

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[12] Gill attempted to initiate a proceeding before the WPRB, but that agency dismissed, holding that this Commission has jurisdiction to resolve "disputes arising out of the collective bargaining rights and obligations under RCW 41.56.201". WPRB Case 93 DEC 1 (12/1/93).

with respect to unit determination and representation matters, it appears that the Department of Personnel and/or the WPRB could have some ongoing authority over parties that have initiated the RCW 41.56.201 "option" procedure (or at least some aspects of their relationship) during the time between the giving of notice and the "first of the month" date on which civil service coverage ceases.

Bargainability of Union Security

Union security is a mandatory subject of collective bargaining under Chapter 41.56 RCW. RCW 41.56.122(1). As such, it is one of several subjects (along with wages and wage-related benefits) which distinguish full-scope collective bargaining under Chapter 41.56 RCW from the limited-scope bargaining process permitted under Chapter 41.06 RCW and its antecedents in repealed Chapter 28B.16 RCW. This principle is well-established, and will not be the subject of a declaratory order in this proceeding. There was nothing inherently wrong with the CSA and the university bargaining over and coming to agreement on the inclusion of a union security provision in an agreement made under Chapter 41.56 RCW.

Applicability of Union Security Election in "Option" Period

Union security provisions were authorized in Chapter 41.56 RCW by an amendment added in 1973. The statute provides:

> RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS--AUTHORIZED PROVISIONS. **A collective bargaining agreement may:**
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> (1) **Contain union security provisions:** PROVIDED, That nothing in this section shall authorize a closed shop provision: ... When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission,

> the terms of the collective bargaining agreement shall prevail.
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> [Emphasis by **bold** supplied.]

The statute we administer differs from Chapters 28B.16 and 41.06 RCW, in that there is no "election" procedure connected with union security.[13]

RCW 41.56.201(1)(c) reflects a legislative intent that at least some provisions of Chapter 41.06 RCW would remain applicable until the first month after a collective bargaining agreement negotiated under RCW 41.56.201 becomes applicable. An ambiguity may exist as to whether those applicable provisions include the union security election procedures contained in Chapters 28B.16 and 41.06 RCW, and/or as to whether employees who are not union members should be permitted to vote on ratification of a first contract negotiated under the RCW 41.56.201 "option". We will undertake to rule on that subject in this case.

Effective Date of First "Option" Contract

At the oral argument on this case, a colorable claim was made that there could be a period of double-coverage for employees, from the date of execution of an initial collective bargaining agreement negotiated under the RCW 41.56.201 "option" to the first of the month following the filing of that contract with this Commission and the WPRB. Although the collective bargaining agreement submitted to the Commission on March 14, 1994 has an effective date one month later than the contract draft presented at the oral

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[13] Chapter 41.56 RCW also differs from the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947. While union security is also a mandatory subject of collective bargaining under the federal law, Section 9(e) of the NLRA provides for "de-authorization" elections which have no counterpart in Chapter 41.56 RCW.

argument, we still deem it appropriate to get that matter clarified in this case.

Interim Procedures to be Followed

At the oral argument on this petition, Mr. Gill expressed concern that he would "turn into a pumpkin at midnight", if the contract between the CSA and the employer (which was then ratified, but unsigned) were to go into effect.[14] The Commission is not willing to entirely block or delay the "first of the month" effective date of the option expressly authorized by RCW 41.56.201, but neither do we view Mr. Gill's claims as becoming moot once the contract takes effect.

The viable questions raised in this case relate primarily to the negotiation and implementation of contract provisions which impose union security obligations on the employees in the affected bargaining units. The union security provisions of the collective bargaining agreement submitted by the employer and union on March 14, 1994 will go into effect no later than June 1, 1994. It is not certain that the Commission will be able to obtain a record and issue a decision by that time.

The customary method for enforcement of union security obligations under both the NLRA and Chapter 41.56 RCW is for the union to demand, and for the employer to effect, the discharge of a bargaining unit employee who fails or refuses to pay the dues and/or fees required of them under a lawful union security

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[14] The draft of the collective bargaining agreement supplied by the employer at that time contained a March 1, 1994 effective date. The oral argument was heard early in the afternoon on the last day of the month of February, 1994. There was thus some possibility that the employer and CSA could execute and file their contract by the close of business that day, so that the "first of the month" would occur the very next day. The quick transition feared by Gill did not actually occur.

provision. That could potentially put Mr. Gill and others at risk of loss of their jobs while this case remains pending before the Commission, but we conclude that the interests of all parties can be protected by an interim procedure adapted from the procedures specified in our rules for the processing of "non-association" cases.[15]

WAC 391-95-130 establishes an escrow procedure for employees who have initiated proceedings before the Commission to obtain a ruling on their union security obligations under the religious-based "right of non-association". Such employees may protect themselves from discharge for failure to pay union dues, by authorizing deduction of the disputed dues from their pay pending the outcome of the proceedings before the Commission. The employer holds the funds, at interest. If the union eventually prevails, the funds held in escrow will be released to it. Conversely, if the employee prevails, the funds held in escrow will be disposed of accordingly. The application of such a procedure seems appropriate in the present case.

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[15] RCW 41.56.122 includes the following exception to union security obligations:

> [A]greements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization.

NOW, THEREFORE, it is

ORDERED

1. Further proceedings shall be conducted in this case concerning the "extent of Commission jurisdiction", "applicability of election procedure during option period", and "effective date of first option contract" subjects, as described above.

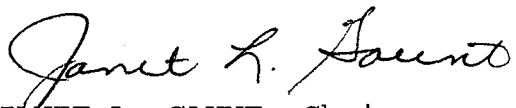
2. A member of the Commission's staff shall be designated as Hearing Officer, to receive evidence and argument on those limited issues, to be submitted to the Commission for a decision in this matter.

3. The University of Washington shall maintain an escrow account, comparable to that specified in WAC 391-95-130, to receive and hold funds deducted from the pay of bargaining unit employees who specifically request that their union dues and fees be held in escrow pending the outcome of this proceeding.

4. The Classified Staff Association shall take no steps to obtain the discharge of any bargaining unit employee who has authorized dues deduction to the escrow account maintained by the employer pursuant to the preceding paragraph.

Issued at Olympia, Washington, the 31st day of March, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson

DUSTIN C. McCREARY, Commissioner