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-A - PECB
	)	
UNIVERSITY OF WASHINGTON	)	
	)	
and	)	DECISION OF COMMISSION
	)	
CLASSIFIED STAFF ASSOCIATION, SEIU DISTRICT 925	)	
	)	
	)	

Jeremy Gill appeared pro se.

Christine Gregoire, Attorney General, by Nancy E. Hovis, Assistant Attorney General, appeared on behalf of the employer.

Webster, Mrak & Blumberg, by Christine M. Mrak, 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.[1] The petition was considered by the Commission at an open, public meeting on February 28, 1994. After receiving comments from the parties, the Commission issued an "Order for Further Proceedings" on March 31, 1994. While several issues raised by the petition were held to be inappropriate for a declaratory ruling, the order called for the designation of a member of the Commission staff to conduct further proceedings

[1] Gill has also filed several unfair labor practice complaints with the Commission. Proceedings in those matters, which have been docketed separately as Cases 10989-U-94-2558, 11056-U-94-2572 and 11057-U-94-2573, have been suspended until resolution of this petition.

concerning the issues of "extent of Commission jurisdiction", "applicability of election procedure during option period", and "effective date of first option contract" under RCW 41.56.201.

On April 19, 1994, the Commission appointed Mark S. Downing, Hearing Officer, to conduct a hearing concerning these issues. The parties were advised, through a "Notice of Hearing" issued on April 29, 1994, that a public hearing would be held at the University of Washington on May 18, 1994. At the hearing, the parties presented testimony concerning the legislative intent of RCW 41.56.201.[2]

BACKGROUND

Section 201 of Chapter 41.56 RCW is of recent origin, having been added by the 1993 Legislature through the passage of Engrossed Substitute House Bill (ESHB) 1509.[3] Section 201 provides the option for a state institution of higher education[4] and a bargaining representative of its classified employees[5], to have their relationship governed by the principles of collective bargaining under Chapter 41.56 RCW, rather than the civil service provisions of Chapter 28B.16 RCW.

The petition filed by Gill raises specific issues concerning exercise of the collective bargaining option by the University of

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[2] Gill did not call any witnesses, but presented 19 exhibits. By way of stipulation, four of those exhibits were considered as his opening statement. The union and employer each called one witness. The union presented 21 exhibits, while the employer submitted 9 exhibits.

[3] ESHB 1509 was codified as "chapter 379, Laws of 1993."

[4] RCW 41.56.030(8) defines this term as "the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges."

[5] The term "classified employee" is used to describe the non-teaching employees of institutions of higher education, state community colleges, and public school districts.

Washington (employer) and the Classified Staff Association (union) for the "non-supervisory clerical" bargaining unit.[6] The employer is a state institution of higher education, headquartered in Seattle. The union is the exclusive bargaining representative for employees in the non-supervisory clerical unit.[7] Gill is a classified employee of the University of Washington, and the position he occupies is contained within this unit.

Since 1969, classified employees at state institutions of higher education have been covered by a civil service system administered by the Higher Education Personnel Board (HEPB) under Chapter 28B.16 RCW and Chapter 251 WAC. Office-clerical and related employees of the University of Washington have been included within that system. Similar rules are provided for certain state employees under Chapter 41.06 RCW and Chapter 356 WAC, which have been administered by the State Personnel Board (SPB) and the Department of Personnel (DOP).

During the 1993 legislative session, the responsibilities of these several boards and the DOP were either shifted or eliminated. The civil service rights of higher education classified employees were transferred to Chapter 41.06 RCW, and Chapter 28B.16 RCW was repealed.[8] The HEP and the SPB were abolished, and a new Washington Personnel Resources Board (WPRB) was created to administer Chapter 41.06 RCW.

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[6] This campus-wide unit consists of approximately 2500 classified employees. The union also represents 733 employees in a "supervisory clerical" unit, 439 employees in a "data processing" unit, and 46 employees in a "media services" unit.

[7] The union has represented classified employees of the University of Washington since approximately 1972. In 1983, the union affiliated with District 925 of the Service Employees International Union (SEIU), AFL-CIO.

[8] These "civil service reform" provisions were contained in ESHB 2054. All rules of the HEPB and SPB were continued until acted upon by the WPRB.

Civil service rules for higher education classified employees cover an extremely wide range of subject matter, and include the following subjects: wages, hours of work, rest periods, overtime, holiday premium pay, shift differential, callback pay, standby pay, examinations, appointments, transfers, evaluations, probationary periods, promotions, holidays, vacations, leaves for the purposes of sickness, bereavement, maternity, military training, civil duty, childcare emergencies, and disability, etc., layoffs, contracting out, discipline, training, union security,[9] veteran's preference, affirmative action, internships, and personnel files. Due to the wide scope of these rules, exclusive bargaining representatives and employers are limited to a very narrow range of topics that are subject to collective bargaining. Civil service rules are so pervasive that the only matters subject to the collective bargaining obligation are those subjects that fall under the following criteria:[10]

> grievance procedures and ... personnel matters over which the institution ... may lawfully exercise discretion.

This limited scope of bargaining leaves precious few subjects that parties can negotiate. Of particular importance is the fact that wages and wage-related benefits are not subjects available for collective bargaining.

Passage of the collective bargaining option gave state institutions of higher education and bargaining representatives of their employees an opportunity to leave behind the limited collective bargaining world of the HEPB, and enter the brave new world of full-scope collective bargaining administered by the Public Employment Relations Commission. The new statute reads as follows:

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[9] The term "union security" is used generally to describe any of a variety of statutory and contractual mechanisms designed to satisfy the institutional interests of unions in having a steady income of funds from the employees that they represent.

[10] Before the repeal of Chapter 28B.16 RCW, this provision was contained at RCW 28B.16.100(12). After the passage of ESHB 2054, a similar provision is now found at RCW 41.06.150(13).

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 legisla-

> ture 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);
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> (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.
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> [1993 ch. 379 §304. Emphasis by **bold** supplied.][11]

This legislation took effect on July 1, 1993.

Although Chapter 28B.16 RCW was repealed when the HEPB was abolished, its demise was short-lived. In addition to the above amendments to Chapter 41.56 RCW, ESHB 1509 also revived Chapter 28B.16 RCW, adding the following sole provision of this chapter:

> RCW 28B.16.015 OPTION TO HAVE RELATIONSHIP AND OBLIGATIONS GOVERNED BY CHAPTER 41.56 RCW. 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 this chapter or chapter 41.06 RCW as appropriate may exercise their **option to have their relationship and corresponding obligations governed**

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[11] 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".

> **entirely by the provisions of chapter 41.56 RCW,** by filing notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement recognizing the notice of intent. The parties shall provide the notice to the board [HEPB] or its successor [WPRB] and the public employment relations commission. 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 board or its successor and the public employment relations commission that they have executed an initial collective bargaining agreement recognizing the notice of intent, this chapter shall cease to apply to all employees in the bargaining unit covered by the agreement, **and all labor relations functions of the board or its successor with respect to these employees shall be transferred to the public employment relations commission.**
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> [1993 ch. 379 §310. Emphasis by **bold** supplied.]

Except for the concluding phrase indicated by **bold**, this statute closely mirrors the provisions of RCW 41.56.201(1)(a) and (c).

On August 26, 1993, the employer and union jointly notified the Commission of their intention to implement the collective bargaining option for the four bargaining units represented by the union. The parties were unable to negotiate an initial agreement and on December 15, 1993, the union filed for mediation with the Commission. Executive Director Marvin L. Schurke and staff Mediator Pamela G. Bradburn provided mediation services to the parties, and a tentative agreement was reached in January 1994. In a ratification vote conducted on February 11, 1994, the tentative agreement was passed by a majority of employees in the non-supervisory clerical unit.[12]

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[12] Each of the four units took separate votes, with all employees in a particular unit being allowed to vote on the tentative agreement, regardless of union membership status. In addition to approval by the "non-supervisory clerical" unit, the tentative agreement was ratified by the "media services" unit. However, the agreement was not ratified by the "supervisory clerical" and "data processing" units. After further negotiations, these units ratified collective bargaining agreements, which were filed with the Commission on June 24, 1994. Those agreements became effective on July 1, 1994.

On March 14, 1994, the employer and union jointly filed their initial collective bargaining agreement with the Commission.[13] The length and effective date of the agreement were specified by the following provision:

> ARTICLE 34
> DURATION
>
> This Agreement shall become effective April 1, 1994 and remain in force through December 31, 1995. ....

The letter transmitting the collective bargaining agreement stated that the parties assumed that effective April 1, 1994, Chapter 41.06 RCW would cease to apply to the bargaining unit and that concurrently Chapter 41.56 RCW would apply to the unit.

Gill's petition raises particular questions concerning what effects the parties' exercise of the collective bargaining option has on the issue of union security. Under Chapter 41.06 RCW, union security is not a subject for collective bargaining, but is regulated as follows:[14]

> [A]fter 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 a condition of employment constitutes cause for dismissal ...
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> [RCW 41.06.150(12). Emphasis by **bold** supplied.]

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[13] This agreement also covers the "media services" unit. However, that unit is not at issue in these proceedings.

[14] This provision was previously found at RCW 28B.16.100(11) for higher education classified employees.

This language allows a union to request, and employees to approve through an election process, a "union shop" agreement.[15]

As the parties' previous agreement did not contain union security provisions, the 1994-95 agreement marked a substantial change in working conditions for unit employees on the subject of union security. The new contract contained the following provisions:

> 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 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.
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> 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.
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> [Emphasis by **bold** supplied.]

Under this "agency shop" language, employees were required as a condition of employment to join and pay dues to the union, or if

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[15] Under a union shop agreement, employees are required to join the union, as a condition of employment, within a specified period of time after commencing their employment or the effective date of the agreement, whichever is later. Union members are required, as a condition of employment, to remain members of the union. The union shop election procedure was added to Chapters 28B.16 and 41.06 RCW by "chapter 154, Laws of 1973." The constitutionality of these provisions was upheld in Powerhouse Engineers v. State, 89 Wn.2d 177 (1977).

choosing to be a non-member, to pay fair share fees to the union.[16] This requirement became operative on June 1, 1994, 60 days after the April 1, 1994 effective date of the parties' collective bargaining agreement.

The Commission, aware of the foregoing June 1, 1994 deadline, directed that unit employees be given notice of three options pending the outcome of these proceedings. First, employees could become union members and pay union dues to the union. Second, employees could choose to be non-members, and authorize the payment of fair share fees to the union. Third, non-members objecting to payment of fair share fees to the union could request, in writing to the employer, that their fair share fees be held in an escrow account maintained by the University of Washington, comparable to that specified in WAC 391-95-130.[17] In a letter filed with the Commission on May 11, 1994, the employer stated that it had established an escrow account and had provided the requisite notice to all unit employees.

In a letter of April 19, 1994 to the parties, the Commission noted that after June 1, 1994, the union was not precluded from seeking the discharge of employees who failed to comply with one of the specified three options, so long as the union gave the required notice specified in WAC 391-95-010, including notice of the availability of the escrow procedure.[18] The same April 19th letter

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[16] Under an agency shop agreement, employees who do not choose to join the union are required, as a condition of employment, to pay a fair share fee (also known as a service or representation fee) to the union.

[17] The notice to employees specified that if the union prevailed the funds, including interest, would be released to it. Conversely, the notice indicated that if Gill prevailed the funds, including interest, would be returned to affected employees.

[18] WAC 391-95-010 requires an exclusive bargaining representative desiring to enforce a union security provision contained in a collective bargaining agreement negotiated under the provisions of Chapter 41.56 RCW to provide each affected employee with a copy of the collective bargaining agreement, and to specifically advise each employee of their obligation under the agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

also addressed concerns raised by Gill about the further involvement of Executive Director Schurke in these proceedings. The letter noted that at the February 28, 1994 public meeting, Schurke had voluntarily disqualified himself from any further participation in this case. His action was in keeping with normal Commission practice that a staff member who mediates an agreement will not act as examiner in any subsequent litigation involving the same contract. Schurke has also disqualified himself from involvement in the pending unfair labor practice complaints filed by Gill. In accordance with WAC 391-08-630(5), the Commission's April 19th letter designated Rex L. Lacy, Senior Staff Member, to act in the place of Schurke for any remaining issues in these cases.[19]

The Commission's Order for Further Proceedings dated March 31, 1994 made the following rulings: (1) Since the Commission is bound to accept bargaining units in their current form as certified by the HEPB or its successor, determination of appropriate bargaining units and certification of exclusive bargaining representatives remains under civil service law prior to exercise of the collective bargaining option. There is no room for the Commission to conduct a "representation" proceeding. (2) A union's procedures for deciding to exercise the collective bargaining option and/or to seek a union security provision in its initial agreement under Chapter 41.56 RCW are internal union affairs. (3) Since union security is a mandatory subject of bargaining under Chapter 41.56 RCW, it is permissible for the union and employer to agree on the inclusion of a union security provision in their initial agreement.

That same order described the following matters as requiring an evidentiary hearing and declaratory order because of potential ambiguity regarding the scope of the Commission's jurisdiction

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[19] This rule specifies that in the event the executive director disqualifies himself from participation in a decision, the most senior member of the agency's mediation staff who has not been directly involved in the particular circumstances, shall make decisions and rulings otherwise required of the executive director.

under RCW 41.56.201, and the possibility that the Department of Personnel or the WPRB could have some authority over parties between the giving of the Notice of Intent and the date on which civil service coverage ceases: (1) In addition to determining the extent of Commission jurisdiction, a question exists as to whether the union shop election procedures of Chapter 41.06 RCW are available during the "option period", which covers the time period from the filing of the Notice of Intent until notice of execution of the initial collective bargaining agreement is given. (2) A related question is whether employees who are not members of the union should be permitted to vote on ratification of the initial agreement. (3) An issue also remains as to whether there is a period of double-coverage for employees, under Chapters 41.06 and 41.56 RCW, from the date of execution of an initial agreement to the first of the month following filing of the contract with the Commission and the WPRB.

POSITIONS OF THE PARTIES

Gill argues that the Legislature's intent in the passage of ESHB 1509 was to insure that all higher education classified employees, even those in units who exercise the collective bargaining option, would retain their right to a union shop election procedure if the exclusive bargaining representative sought to implement mandatory union membership as a condition of employment. Gill notes that nothing in ESHB 1509 precludes the applicability of the "agency shop representation election" requirements during the option period. Gill maintains that the transfer of collective bargaining rights from Chapter 28B.16 to Chapter 41.56 RCW does not take place until execution of the initial agreement, rather that upon filing of the Notice of Intent.

The union argues that upon filing of the Notice of Intent, the Commission acquires exclusive jurisdiction over all collective

bargaining issues, but for a limited exception. That exception allows the WPRB to retain jurisdiction over unit determination issues to define which employees are included in the bargaining unit opting out of Chapter 28B.16 RCW. During the option period, civil service rules operate to define the status quo terms of employment pending the completion of bargaining by the parties. The union contends that the collective bargaining option is subject to revocation until an initial agreement is reached, and if no agreement is reached, the parties revert to the "safety net" of civil service regulation.

After the Notice of Intent is filed, the union maintains that it is barred from requesting a union security election from the WPRB, as only union security clauses in existence at the time of filing are grandfathered into the parties' initial agreement. After filing the Notice of Intent, the union contends that it is in the land of full-scope bargaining under the Commission where union security is a bargainable issue. The union rejects the idea of double coverage by Chapters 41.06 and 41.56 RCW during the period between execution of the initial agreement and the first day of the following month, arguing that the collective bargaining option becomes permanent upon execution of the agreement.

Given the plain language as well as the legislative history of RCW 41.56.201, the employer argues that the Legislature intended to divest the WPRB of, and concurrently invest the Commission with, jurisdiction over collective bargaining issues once parties file their Notice of Intent to opt out of the civil service system. The employer would define the term "collective bargaining issues" to include the subject areas of wages, hours and working conditions. After filing the Notice of Intent, the WPRB is limited to administering the civil service rules in areas unrelated to collective bargaining. The employer believes that any declaratory order of the Commission should recognize that the collective bargaining option was modeled after the K-12 system, which provides flexibili-

ty and freedom for parties to bargain locally to address their own unique personnel needs.[20]

DISCUSSION

Legislative Intent

When construing a statute, the Commission must endeavor to ascertain and give effect to the intent of the Legislature. City of Yakima v. IAFF, Local 469, 117 Wn.2d 655 (1991). If a statute is clear and unambiguous, legislative intent can be derived from the face of the statute. Human Rights Commission v. Cheney School District 30, 97 Wn.2d 118 (1982); PUD of Clark County v. PERC, 110 Wn.2d 114 (1988). If the language of a statute is susceptible of more than one meaning, an ambiguity exists and resort may be had to other sources to determine its meaning. City of Yakima, supra. The Supreme Court in Green River Community College v. HEPB, 95 Wn.2d 108 (1980) listed the following sources for an agency to consider in determining legislative intent:

> [W]e must construe the statute by evaluating such indicia as the legislative history of the enactment of the statutes, and of subsequent amendments thereto, the interpretation given the statute by administrative agencies, and the expressions of legislative purpose, if any.
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> Green River Community College v. HEPB, at page 113.

The interpretation adopted by the agency should be consistent with the legislative purpose of the statute. Roza Irrigation District v. State, 80 Wn.2d 633 (1972).

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[20] A Motion to File an Amicus Curiae Brief and an attached Amicus Curiae Brief were filed by Don M. Running, Attorney at Law, on behalf of unit employee Meg Running on June 16, 1994. The Commission does not normally grant such requests, but under the circumstances of this case with a pro se petitioner and a brief filed by an attorney on behalf of a unit employee, the Commission decided to grant the Motion. After consideration of the Brief, the Commission finds that the issues it raises have been adequately addressed in this Decision.

The Birth of HB 1509

The primary initiators behind HB 1509 were the very employer and union participating in this proceeding. In the spring of 1992, the employer formed an internal committee to study its operations. In the face of tougher financial times, the employer was looking for ways to, in effect, do more with less. The employer viewed some state laws as burdensome, expensive to comply with, and although originally designed to assist it with various problems, instead causing more difficulties. The employer felt that it could become more efficient by increasing its flexibility under certain state laws. During the summer and fall of 1992, Representative Gary Locke visited the employer's campus soliciting ideas on how to create more flexibility for institutions of higher education. Locke later would become the prime sponsor of HB 1509.

The employer and union held their first face-to-face meeting to discuss HEPB issues on November 25, 1992. The meeting was more in the nature of a "brainstorming" format, and included the sharing of common problems and a search for shared solutions. Included among the problems identified were the cumbersome nature of HEPB rules and process, the limited nature of collective bargaining under the HEPB, and the parties' mutual frustrations with not being able to find local solutions to local problems.

On December 10, 1992, the parties met again to discuss conceptual ideas for draft legislation under a decentralized collective bargaining model. Those ideas reflected the type of structure that is provided for in the K-12 system.[21] The parties' developing ideas had two significant parts: 1) Collective bargaining and labor relations functions would be moved from the HEPB to the

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[21] The collective bargaining system for classified employees of public school districts, or the K-12 system, is contained in Chapter 41.56 RCW, the Public Employees' Collective Bargaining Act.

Commission. 2) Parties would be provided with an option to change from civil service to full-scope bargaining under the Commission.

On December 15, 1992, the parties met with Executive Director Schurke. The meeting was initiated by the parties to seek technical advice on how to write a short and succinct bill that would encompass the ideas that they had been developing.

One of the active participants for the union during these early discussions was Susan Johnson, director of governmental relations for the SEIU State Council. Johnson works with various local unions, including the union participating in this proceeding, to lobby for their concerns with the Legislature. Johnson is familiar with collective bargaining under the K-12 system, having negotiated labor contracts from 1979 to 1984 as a business representative for SEIU Local 6, before assuming her current duties with the State Council. Johnson is assisted in her lobbying efforts by Randy Parr, governmental relations representative.

The employer's point of view in these early meetings was presented by Robert Edie, who serves as its director of government relations. As its lobbyist, Edie represents the employer's interests before the Legislature. Edie is familiar with Chapters 41.56 and 41.59 RCW from his 10 years of experience working for the Washington State Senate.[22] The employer sought to achieve several objectives through the "Employment Relations" portion of HB 1509. First, it wanted to improve its labor management relations. As Edie stated:

> We had been becoming frustrated over time with the constraints of the civil service system and a severely constrained bargaining structure which left little room

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[22] Edie served as research analyst to the Senate Labor Committee from 1975 to 1980, senior analyst to the Senate Democratic Caucus from 1981 to 1982, and staff director of the Senate Ways and Means Committee from 1983 to 1985. Chapter 41.59 RCW was enacted in 1975. Its provisions are very similar to Chapter 41.56 RCW, which was passed in 1967. The Commission was created on September 8, 1975, and commenced its administrative functions on January 1, 1976.

> for the parties to negotiate and often led to a very unproductive type of bargaining, which is the union asking for changes that we considered to be management rights, the management of the University digging in its heels because it didn't have anything else to negotiate and becoming a very dysfunctional process between the two parties.

Transcript, at page 153.

The employer desired to improve the bargaining process by freeing itself up from the constraints of civil service. Second, the employer wanted to remove the administration of labor relations and collective bargaining matters from the HEPB to the Commission. The employer reasoned that the Commission was more experienced and better equipped to deal with collective bargaining issues than a personnel board like the HEPB. Third, the employer wanted a complete reform of the civil service system. The employer felt that the parties to a collective bargaining agreement could better decide the personnel rules under which they should live.

Early Drafts of Bill

Initial Draft by Parties -

The parties drafted some initial legislation, dated January 6, 1993, which read as follows:

> DRAFT LEGISLATION
> PERSONNEL
>
> Title: An Act Relating to labor relations for classified employees in institutions of higher education.
>
> Section 1. On and after the effective date of this Act, the labor relations functions of the Higher Education Personnel Board set forth in RCW 28B.16.100(10), (11) and (12)[23] shall be transferred to the Public Employees [sic] Relations Commission, which shall recognize in their current form all bargaining units certified by the Higher Education Personnel Board as of June 30, 1993.

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[23] Subsection 10 covers the determination of appropriate bargaining units. Subsection 11 provides for the certification and decertification of exclusive bargaining representatives, as well as the union shop election procedure. Subsection 12 specifies those limited matters which may be contained in a collective bargaining agreement.

> Section 2. (a) At any time following the transfer of duties and responsibilities referenced in Section 1, **a bargaining unit and an institution of higher education may agree to have their relationship and corresponding obligations governed in their entirety by the provisions of Chapter 41.56 RCW** by mutual adoption of a collective bargaining agreement stating the parties' intent and providing notice and copy of the collective bargaining agreement to the Higher Education Personnel Board and the Public Employees [sic] Relations Commission. Upon receipt of such notice, the provisions of Chapter 28B.16 RCW shall cease to apply to all employees in positions covered by such agreement.
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> (b) In the event a bargaining unit and institution of higher education mutually agree to the provisions set forth in paragraph (a) of this section, compensation funding for the employees in the bargaining unit shall continue to be appropriated to the institution by the legislature at the same time and in the same amount as it would have been had the parties not made the agreement, and funding for any compensation in addition to that provided by the legislature shall be the sole responsibility of the parties to the agreement and not the legislature.
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> Section 3. This Act shall take effect on July 1, 1993.
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> [Emphasis by **bold** supplied.]

Under Section 1, "labor relations functions" of the HEPB were transferred to the Commission for all higher education classified employees. Johnson testified that this term was used by the parties to describe the provisions of RCW 28B.16.100(10) through (12), including the issues of collective bargaining, unit clarification, grievance procedure, dues deduction, unfair labor practices, and mediation.[24] Section 2 provided that parties, upon mutual adoption of a collective bargaining agreement, could have their relationship governed entirely by the provisions of Chapter 41.56 RCW. Johnson testified that the initial draft reflected the following ideas from the parties' early meetings: 1) problems should be solved at the local level; 2) an option should be provided for full-scope bargaining under the Commission; 3) administration of collective bargaining functions should be moved to the Commission.

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[24] This citation was corrected in later drafts to also include subsection (13), covering the subjects of payroll deduction and strikes. This correction is consistent with Johnson's explanation of the parties' intent in usage of the term "labor relations functions".

Input from Legislative Staff and Agency Heads -
On January 12, 1993, two days after the start of the legislative session, Edie, Johnson, Parr, and Kimberly Cook, director of the Classified Staff Association, met with Chris Cordes, counsel to the House Commerce and Labor Committee, and Sherie Story, staff person with the House Appropriations Committee, to explain the purpose of the draft legislation. The parties clarified that section 1 would transfer jurisdiction over collective bargaining functions for all higher education classified employees to the Commission. The parties explained that under section 2, units agreeing to having their relationship governed by Chapter 41.56 RCW would have the ability to negotiate fully on numerous issues. Among the subjects referenced were salaries, classification, restructuring, union security and subcontracting. No suggestion was made by anyone at the meeting that the HEPB would retain any jurisdiction over issues such as union security or scope of bargaining for units coming under the jurisdiction of the Commission.

After this meeting, primary responsibility for drafting and re-drafting the bill was taken over by Cordes, Story, and the parties' lobbyists, Edie and Johnson. Cordes provided her first draft of the bill on January 15, 1993, and included an "opt out" provision for parties who agreed to have their relationship governed by Chapter 41.56 RCW in a collective bargaining agreement. Johnson testified that the parties supported the idea that the collective bargaining option would not become permanent until an initial agreement was reached. Under this arrangement, the civil service relationship would not be severed if no agreement could be reached, and the bargaining tension to reach an agreement would be present during the period of negotiations.

A suggested change from Schurke was included in the next draft of the bill, provided to the union and employer on January 25, 1993, in the following format:[25]

> On the first day of the month following the month during which notice is received by the agencies, chapter 28B.16 RCW shall cease to apply ...

As Johnson testified, Schurke's concern was that if "mutual adoption of a collective bargaining agreement" was the vehicle for transferring jurisdiction to the Commission, that jurisdiction might be interpreted by some to expire at the conclusion of a three-year agreement.[26] Schurke was concerned that this kind of procedure could lead to bargaining units operating in and out of the Commission's jurisdiction, or a union having to reestablish a mutuality of agreement with an employer and having to redo the whole collective bargaining option process.

House Action on Bill

Bill as Introduced in House -

On January 29, 1993, HB 1509 was introduced in the House by Locke. The bill contained the following provisions:

> NEW SECTION. **Sec. 1.** The legislature acknowledges the academic freedom of institutions of higher education, and seeks to improve their efficiency and effectiveness in carrying out their missions. By this act, **the legislature intends to increase the flexibility of institutions of higher education to manage personnel,** construction, purchasing, printing, and tuition.
>
> **PART I**
> **PURCHASING, PRINTING, AND CONSTRUCTION AUTHORITY**
>
> ...

---

[25] In this draft the bill acquired the title of "Higher Education Efficiency Act", as it included proposals to improve efficiency in the areas of construction, purchasing, printing and tuition, as well as employment relations.

[26] RCW 41.56.070 provides that "nor shall any [collective bargaining] agreement be valid if it provides for a term of existence for more than three years."

PART II
LOCAL TUITION AUTHORITY

...

PART III
EMPLOYMENT RELATIONS

...

NEW SECTION. **Sec. 304.** A new section is added to chapter 41.56 RCW to read as follows:

(1) On the effective date of this section, the commission shall recognize, in their current form, all bargaining units certified by the higher education personnel board as of June 30, 1993.

(2) At any time after the effective date of this section, a bargaining unit at an institution of higher education certified under this chapter or recognized under subsection (1) of this section and the public employer **may agree to have their relationship and corresponding obligations governed entirely by the provisions of chapter 41.56 RCW** by mutual adoption of a collective bargaining agreement stating the parties' intent to be so governed. The parties shall provide notice and a copy of the agreement to the higher education personnel board and the commission. On the first day of the month following the month during which notice is received by the agencies, chapter 28B.16 RCW shall cease to apply to all employees in the bargaining unit covered by the agreement, and the limitations on bargaining contained in RCW 41.56.100(1) shall cease to apply to the institution.

(3) If a bargaining unit and an institution mutually agree to a collective bargaining agreement permitted in subsection (2) of this section, salary increases for the employees in the bargaining unit shall be subject to the following:

...

Sec. 306. RCW 28B.16.100 and 1990 c 60 s 202 are each amended to read as follows:

[subsections (10) through (13) deleted]

...

NEW SECTION. **Sec. 308.** A new section is added to chapter 28B.16 RCW to read as follows:

At any time after the effective date of this section, a bargaining unit at an institution of higher education certified or recognized under chapter 41.56 RCW and the institution **may agree to have their relationship and corresponding obligations governed entirely by the provisions of chapter 41.56 RCW** by mutual adoption of a collective bargaining agreement stating the parties' intent to be so governed. The parties shall provide notice and a copy of the agreement to the board and the public employment relations commission. On the first day of the month following the month during which notice is received by the agencies, this chapter shall cease to apply to all employees in the bargaining unit covered by the agreement.

NEW SECTION. **Sec. 309.** (1) On the effective date of this section, the labor relations functions of the higher education personnel board set forth in chapter 36, Laws of 1969 ex. sess. shall be transferred to the commission.

...

PART IV
MISCELLANEOUS

...

NEW SECTION. **Sec. 403.** This act ... shall take effect July 1, 1993.

[Emphasis by **bold** supplied.]

As introduced in the House, section 304 closely followed the January 6, 1993 initial draft of the parties, and included Schurke's suggestion concerning "the first day of the month following the month during which notice is received". Section 308 merely added parallel provisions like Section 304 to Chapter 28B.16 RCW. However, the combined effect of Sections 306 and 309 saw the bill take a sharply different turn on the issue of union security. The parties' initial draft transferred labor relations functions of the HEPB to the Commission, including the union shop election procedure. However, the bill as introduced in the House deleted RCW 28B.16.100(11), completely doing away with this procedure. To make the parties' intent even clearer, the bill referenced the statutory citation for "labor relations functions" of the HEPB being transferred to the Commission as "chapter 36, Laws of 1969", an earlier version of RCW 28B.16.100 under which the HEPB had no authority to conduct union security elections. Under this version of the bill, union security became a subject of bargaining for all higher education classified employees.

Summary of Bill by House Legislative Staff -
Shortly after the introduction of HB 1509, a summary of the bill was prepared by House legislative staff. That summary read as follows:

HIGHER EDUCATION EFFICIENCY ACT

Increased Purchasing, Printing, and Construction Authority:

...

Tuition: Local Funds, Limited Rate Setting Authority, and Building Fees:

...

Collective Bargaining Option for Civil Service Employees:

* A campus bargaining unit and institution management, through mutual agreement, may opt out of civil service.
* The Higher Education Personnel Board (HEPB) continues to manage the civil service system for staff not opting out.
* Labor relations functions are transferred from the HEPB to the Public Employees [sic] Relations Commission (PERC).
* Appropriation policies for compensation are not changed for groups choosing to opt out of civil service.

RATIONALE FOR PERSONNEL PROVISIONS

* **This proposal** represents a collaborative civil service reform measure between management and labor. It **affords management and labor the opportunity to collectively bargain locally** and set up their own systems.
* This is not new. It is a system very similar to those utilized in the K-12 sector and by cities and counties.
* It moves decision making away from Olympia back to the campuses so personnel policies can be tailored to meet the employee and management needs of each campus. It recognizes the unique characteristics of management and the labor force on each campus.

[Emphasis by **bold** supplied.]

This summary by legislative staff explained that the option to utilize Chapter 41.56 RCW being created for higher education classified employees was not new, but in fact was similar to the collective bargaining system currently in effect for public school district classified employees.

Locke Press Conference -

On February 1, 1993, Locke held a press conference on HB 1509. A press release prepared by the House Democratic Legislative Services contained the following information:

OLYMPIA -- State **Rep. Gary Locke,** D-Seattle, today unveiled legislation designed to help state colleges and universities make more efficient use of limited funding by giving them greater independence from the state bureaucracy.

Titled **the Higher Education Efficiency Act**, Locke's three-pronged proposal **would give individual institutions**

> **greater flexibility in** purchasing supplies and printing services, managing tuition revenue and **negotiating contracts with classified employees.**
>
> Locke, chairman of the House Appropriations Committee, said the measures contained in House Bill 1509 would help colleges and universities hold down administrative costs at a time when the state's financial crisis could force cutbacks in higher education and other state-funded services.
>
> ...
>
> The third prong of **Locke's** proposal would give institutions greater flexibility in personnel matters. Specifically, his **bill would allow classified employees**, through mutual agreement of their bargaining unit and an institution's management team, **to opt out of civil service and negotiate directly over wages and working conditions.**
>
> Susan Johnson, director of government relations for the Service Employees International Union, said Locke's proposal enjoys support from labor and university management alike. She noted that most labor policies for higher education are currently set under civil service law by the state Higher Education Personnel Board for colleges and universities statewide.
>
> "That greatly limits our ability to work out local solutions to local problems," said **Kim Cook, director of the Classified Staff Association**, which represents 3,200 clerical workers at the University of Washington. "Rep. Locke's proposal would allow us to bargain directly with our employer, much as classified employees in the K-12 system do now."

[Emphasis by **bold** supplied.]

The press release evidenced the involvement of the employer and union participating in this proceeding. Edie was quoted concerning the need for better efficiencies in the area of printing. Except for statements in support of the legislation from the presidents of the University of Washington and Washington State University, no spokespersons other than Edie, Cook and Johnson were quoted on behalf of union or management constituencies affected by the bill.

Johnson spoke at the press conference, explaining that upon mutual agreement, HB 1509 provided parties with the same opportunities to reach agreement on issues at the local level as was provided for in the K-12 system. Johnson noted that the bill would allow parties to design "shoes of different sizes to fit different feet". The summary of HB 1509 prepared earlier by the House legislative staff,

absent the part entitled "Rationale for Personnel Provisions", was also passed out at the press conference.

Analysis of Bill by House Legislative Staff -

HB 1509 was assigned to the House Appropriations Committee. On February 5, 1993, Story prepared an analysis of the bill for committee members, containing the following information:

House Bill Analysis

HB 1509

BRIEF DESCRIPTION: Increasing the flexibility and efficiency of institutions of higher education.

BACKGROUND:

Part I: Purchasing, Printing and Construction Authority

...

Part II: Tuition Authority

...

Part III: Employment Relations

The Higher Education Personnel law is administered by the Higher Education Personnel Board (HEPB). The HEPB is responsible for civil service rules, classification for all higher education classified personnel, and collective bargaining procedures for classified personnel. Classified employees have the right to collectively bargain on grievance procedures and personnel matters over which the institution may "lawfully exercise discretion." Because the higher education personnel law administered by the HEPB provides rules for most major personnel functions, collective bargaining is limited. ...

...

The Public Employment Relations Commission is responsible for the administration of state collective bargaining statutes that cover many public employees, such as employees of cities, counties, municipal corporations, and political subdivisions; public school teachers; academic employees of community colleges; public utility districts; port district employees; and the Washington State Patrol.

SUMMARY:

Part I: Purchasing, Printing and Construction Authority

...

Part II: Tuition Authority

...

Part III: Employment Relations

The responsibility to administer collective bargaining procedures for classified higher education employees, regardless of whether they are covered by civil service,

> is transferred from the Higher Education Personnel Board to the Public Employees [sic] Relations Commission (PERC), including jurisdiction over cases in progress. Bargaining units in existence on the date of transfer under HEPB will be recognized by PERC. **The scope of bargaining will be limited by civil service provisions unless a campus bargaining unit and institution management, through mutual agreement, choose to opt out of civil service. Employee relations with units that opt out are wholly governed by the terms of the collective bargaining agreement; however, the scope of bargaining excludes health or retirement benefits.** The Higher Education Personnel Board (HEPB) continues to administer the civil service system for employees who do not opt out.
>
> ...
>
> **FISCAL NOTE:** Requested February 3, 1993.
>
> **EFFECTIVE DATE:** July 1, 1993.

[Emphasis by **bold** in text supplied.]

The staff analysis explained that administration over collective bargaining procedures, or as worded by the bill "labor relations functions", was being transferred for all higher education classified employees from the HEPB to the Commission. According to the foregoing analysis, units opting out would not be limited by civil service provisions, but would be wholly governed by the terms negotiated by the parties in their collective bargaining agreement.

Technical Amendments from Schurke -

On February 16, 1993, Schurke prepared a document entitled "Technical Amendments to HB 1509", suggesting various technical changes in the bill. As this document indicated, these changes were proposed "to avoid creating issues concerning other groups already covered by ... [Chapter 41.56 RCW]". The following changes to section 304 of the bill as introduced in the House were made:[27]

> (2) At any time after the effective date of this section, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees covered by chapter 28B.16 RCW ((~~at an institution of higher education certified under this chapter or recognized under subsection (1) of this section and the public employer~~)) may exercise their option ((~~agree~~)) to have their relationship and corresponding

[27] A "legislative style" format is used to describe these changes, with additions shown by underline and deletions by ((~~strikeout~~)).

> obligations governed entirely by the provisions of chapter 41.56 RCW, by mutual adoption of a collective bargaining agreement stating the parties' intent to be so governed. The parties shall provide notice and a copy of the agreement to the higher education personnel board and the commission. On the first day of the month following the month during which notice is received by the agencies, chapter 28B.16 RCW shall cease to apply to all employees in the bargaining unit covered by the agreement, and the limitation((~~s~~)) on collective bargaining contained in subsection (2) of this section ((~~RCW 41.56.100(1)~~)) shall cease to apply to that bargaining unit ((~~the institution~~)).

Schurke's document marked the first reference in actual language of the bill to the parties' "option" to have their relationship governed entirely by the provisions of Chapter 41.56 RCW.

House Appropriations Committee Hearing -

On February 17, 1993, a hearing on HB 1509 was held by the House Appropriations Committee.[28] Johnson testified in support of the bill, emphasizing that: 1) The bill would increase flexibility for parties at the local level to solve their problems. 2) The bill required a mutuality of agreement for parties to bargain fully under the Commission. 3) Parties did not permanently leave civil service until they had their "suitcase packed" with those elements of civil service that they wanted to take with them in the form of a labor contract. Edie also supported the bill, pointing out that: 1) True civil service reform is collective bargaining. 2) The parties did not want piecemeal reform. If the parties agreed, they would get totally out of civil service. There would be no overlap between the HEPB and collective bargaining. 3) Parties exercising the option would "dive into the deep end of the pool" and act like others under the K-12 or local government system, dealing directly with each other to reach an agreement.

---

[28] A tape of this hearing was obtained by the Commission from committee files that are open to the public. While it can be determined that Johnson and Edie testified at the hearing, the quality of the tape is so poor that it is impossible to ascertain specific remarks that were made. Information in the text of the Commission decision regarding testimony they gave at the committee hearing, was related by Johnson and Edie during their testimony at the May 18, 1994 hearing held by the Commission.

Passage of Bill by House -

The House Appropriations Committee reported HB 1509 out to the full House on March 6, 1993. As read for the first time in the House on March 8, 1993, Section 1 detailing the purpose of the bill, as well as "Part III: Employment Relations", remained identical to the draft previously introduced in the House. A "House Bill Report" was prepared by legislative staff members on March 10, 1993. The report contained sections on "Background" and "Summary" identical to the prior analysis prepared by Story. A new heading, "Substitute Bill Compared to Original Bill", did not mention any changes to the "Employment Relations" part of the bill. Testimony provided at the February 17 hearing was summarized as follows:

> **Testimony For:** ... The collective bargaining option for classified employees is unique in that it provides an option to bargain and leave civil service. This is a civil service reform measure in which **there is no overlap between civil service and collective bargaining.**
>
> **Testimony Against:** [none was indicated for the "Employment Relations" part of the bill]

[Emphasis by **bold** in text supplied.]

This bill report was before members of the House when it passed ESHB[29] 1509 on March 11, 1993. Johnson testified that during the entire course of proceedings in the House, no one ever suggested that the HEPB or its successor would have any jurisdiction over union security issues for units choosing to opt out of civil service.

Senate Action on Bill

On March 13, 1993, ESHB 1509 was introduced in the Senate. Senator Nita Rinehart, chair of the Senate Ways & Means Committee, shepherded the bill through the Senate. The bill was initially assigned to the Senate Higher Education Committee. A "Senate Bill

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[29] The original bill had been amended and was now designated as Engrossed Substitute House Bill (ESHB) 1509.

Report" was prepared by legislative staff members on March 16, 1993. This report was identical to the most recent House Bill Report, except that the headings of "Substitute Bill Compared to Original Bill", "Testimony For", and "Testimony Against" had been deleted from the report.

On March 16, 1993, Director John A. Spitz of the HEPB, wrote to members of the Senate Higher Education Committee, suggesting that bargaining units opting out of civil service be required to continue coverage by the HEPB classification plan, examination process, and affirmative action plans. He also recommended that an election be held among bargaining unit employees to determine whether or not the unit should sever from civil service. No senator agreed to sponsor any of these suggested changes.

Senate Higher Education Committee Hearing -
A hearing was held by the Senate Higher Education Committee on March 22, 1993. Representative Ken Jacobsen, chair of the House Higher Education Committee, made a few opening comments at the beginning of the hearing, indicating that both labor and management were frustrated with the current HEPB system. He stated that:

> if collective bargaining was done at the local level, it could be done in a faster manner and much more sensitive to the needs of an institution.
>
> [Tape of hearing, Washington State Senate, Higher Education Committee files, 1993.]

Scott Huntley, an analyst with the committee, provided committee members with a copy of the bill, as well as the Senate Bill Report of March 16, 1993. He summarized various provisions of the bill, and in relation to the "Part III: Employment Relations" portion of the bill, made the following comments:

> **Employee relations with units that opt out are to be wholly governed by the terms of the collective bargaining agreement** that they make with the institution, with the one exception that the scope of bargaining will exclude health or retirement benefits.

[Tape of hearing, Washington State Senate, Higher Education Committee files, 1993. Emphasis by **bold** supplied.]

Thus, in addition to language in the bill indicating that units choosing to opt out would be "governed entirely" by the provisions of Chapter 41.56 RCW, committee members were clearly told by their own staff that the bill provided opting out parties with the opportunity to be fully governed by the terms of a collective bargaining agreement negotiated by the parties.

Edie testified at the hearing, indicating that the employer had been meeting with the union to see how the parties could better deal with problems at the local level. His testimony included the following statements:

> What we came up with over the summer and fall was a provision that **upon agreement of both parties, we could voluntarily opt out of civil service and totally into collective bargaining under the Public Employment Relations Commission.** We think that that would be gradual but complete reform. In other words, **we would be left with** none of the classification system, **none of the rules and regulations of civil service** and we would be totally at risk on each side of the table to come up with our own solutions to those problems. **This is not a new concept. This is very much like the way collective bargaining works for classified staff in the K-12 system. That is the model we used** and we think it would work.

[Tape of hearing, Washington State Senate, Higher Education Committee files, 1993. Emphasis by **bold** supplied.]

Edie's testimony supports the argument that ESHB 1509 was intended to allow parties choosing to opt out of civil service to have their total agreement contained within a collective bargaining agreement, and that there would be no overlap between the civil service and collective bargaining systems.

Johnson also testified at the March 22 hearing, providing the Committee with the following information:

> **SEIU has experienced negotiating under the PERC system and K-12 system throughout the state**, and we recognize the risks inherent in the choice in this option. We believe that the magic in this section that is created here is that **both the bargaining unit representatives and the employer must reach agreement before deciding to jump**, if you will, **into the deep end of the pool. Also before reaching agreement to jump**, you have in your suitcase, if you will, to mix a metaphor here and a picture for you, **you have in your suitcase the collective bargaining agreement already agreed to. So you know in fact what you're leaving with before you go where you're going.**
>
> I think that's a useful tension. We all recognize that the world we have now is civil service. There are those of us who find that it's more of a burden than a benefit right now, mutually with our employer group, quite astonishingly. We recognize that though there are benefits, there are risks to be had when leaving. And we think that this sets up the useful tension for both sides to sit down and say, how much do we dislike it, how much do we want to leave, and what are the rules we want to take with us in our suitcase and can we agree.
>
> **We're willing to sit down at that table. We're willing to thrash it out. We do it every day in districts throughout the state. We want that option here.**

[Tape of hearing, Washington State Senate, Higher Education Committee files, 1993. Emphasis by **bold** supplied.]

Johnson's use of metaphors such as jumping into the "deep end of the pool" [the world of full-scope collective bargaining administered by the Commission] and packing your "suitcase" with those civil service rules that the parties agree to take with them in their collective bargaining agreement, provide further evidence that ESHB 1509 was intended to allow parties choosing to opt out of civil service to be governed entirely by the provisions of Chapter 41.56 RCW, and that there would be no overlap between the civil service and collective bargaining systems.

Executive Director Gary Moore of the Washington Federation of State Employees, raised two major concerns in his testimony at the March 22, 1993 Senate Higher Education Committee hearing. First, Moore did not want to deal with two agencies, the Commission and the HEPB, for bargaining units choosing not to opt out of civil service. Second, Moore was concerned that union security provisions for units not opting out would disappear. He expressed his concerns to the committee in the following manner:

> Under **this legislation**, the Higher Education Personnel Board no longer has any authority for labor relations. And if a bargaining unit did not want to opt out of civil service coverage, it's status is very questionable because the Board, the Higher Education Personnel Board, has absolutely no authority to create units, to allow collective negotiations over grievance procedures, and other terms and conditions of employment as they presently do. It **deletes the provision for a union shop condition of employment, or at least the authorization for that. That condition of employment is now questionable in all of the units that would elect not to opt out of civil service.** [There is] no provision for unfair labor practices to be filed by employees who elect not to opt out. Payroll deduction of union dues is deleted from this higher educ. law, so those who do not opt out may not have union dues deductions.
>
> [Tape of hearing, Washington State Senate, Higher Education Committee files, 1993. Emphasis by **bold** supplied.]

In a meeting with Johnson and Parr after the hearing, Moore explained that although his units did not want to opt out of civil service, they would not be able to achieve union shop provisions unless they did so. Moore was concerned that units with union security provisions who did choose to opt out would be vulnerable in their first negotiating session to that issue as an employer take-away item. To deal with this concern, Moore proposed an amendment to the bill grandfathering union security provisions already in place prior to the decision by a unit to opt out.

Schurke gave testimony at the March 22 hearing, and also presented a document of the same date to the committee entitled "Technical Amendments to ESHB 1509". The changes suggested for Section 304 in Schurke's February 16, 1993 memo had been further refined in the following manner:

> (2) At any time after the effective date of this section, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees classified under ((~~covered by~~)) chapter 28B.16 RCW may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of chapter 41.56 RCW, by filing notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement recognizing the notice of intent ((~~stating the parties' intent to be so governed~~)). The parties shall provide the notice ((~~and a copy of the agreement~~)) to the higher education personnel board and the commission. On the

> first day of the month following the month during which a collective bargaining agreement is executed by the parties recognizing the notice of intent and notice of the execution of the agreement and a copy of the agreement are ((~~is~~)) received by the higher education personnel board and commission ((~~agencies~~)), chapter 28B.16 RCW shall cease to apply to all employees in the bargaining unit covered by the agreement, and the limitations on collective bargaining contained in RCW 41.56.100 and subsection (2) of this section shall cease to apply to that bargaining unit.

This document introduced the idea of a two-step notice process, with the filing of a Notice of Intent to be governed by the provisions of Chapter 41.56 RCW, followed by the filing of notice of execution of the parties' initial collective bargaining agreement. Schurke's document included the following comments explaining these suggested changes:

> ...
>
> *** Union security will be a subject for bargaining under RCW 41.56.122, instead of imposed by means of an employee vote under RCW 28B.16.100(11).**
>
> ...
>
> The original bill made the notice part of the parties' initial collective bargaining agreement under Chapter 41.56 RCW. Because Chapter 41.56 RCW imposes a three-year limit on such contracts, it is necessary to effect the transition in two steps:
>
> First, a "notice of intent", which is a permanent action that does not expire in three years; and
>
> Second, an initial contract which will be subject to re-negotiation after no more than three years.

[Emphasis by **bold** supplied.]

This document made it clear that union security would be a subject for bargaining, and that the union shop election procedure would no longer be available for higher education classified employees.

Schurke's technical amendments also suggested the following related changes to Section 308 of the bill as passed by the House:

> NEW SECTION. **Sec. 308.** A new section is added to chapter 28B.16 RCW to read as follows:
>
> At any time after the effective date of this section, ((~~a bargaining unit at~~)) an institution of higher education ((~~certified or recognized under chapter 41.56 RCW and the institution~~)) and the exclusive bargaining representa-

> tive of a bargaining unit of employees classified under chapter 28B.16 RCW may exercise their option ((~~agree~~)) to have their relationship and corresponding obligations governed entirely by the provisions of chapter 41.56 RCW, by filing notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement recognizing the notice of intent ((~~stating the parties' intent to be so governed~~)). The parties shall provide the notice ((~~and a copy of the agreement~~)) to the board and the public employment relations commission. On the first day of the month following the month during which a collective bargaining agreement is executed by the parties recognizing the notice of intent and notice of the execution of the agreement and a copy of the agreement are ((~~is~~)) received by the board and the public employment relations commission ((~~agencies~~)), ((~~this~~)) chapter 28B.16 RCW shall cease to apply to all employees in the bargaining unit covered by the agreement.

Schurke gave the following explanation to the committee for his proposed technical amendments:

> [T]he transition as originally drafted in the bill was made part of the collective bargaining agreement, and that creates a technical problem because collective bargaining agreements have a maximum of three-year life under the local government bill. So **we suggested** some language to make it two documents, **a notice that they wanted to go, and that would be a permanent notice**, and then the second thing would be, it would be effective when they actually signed the collective bargaining agreement.

[Tape of hearing, Washington State Senate, Higher Education Committee files, 1993. Emphasis by **bold** supplied.]

Schurke explained that his suggestion for a two-step notice process was being made so that the initial collective bargaining agreement would not be the vehicle for severing civil service coverage.

ESHB 1509 was passed by the Senate Higher Education Committee on March 30, 1993. The purpose of the bill as set forth in Section 1 remained unchanged from previous drafts of the bill. Changes in Sections 304 and 308 as suggested in Schurke's technical amendments of March 22 were adopted by the committee.[30] Section 306 continued to propose the deletion of RCW 28B.16.100(10) through (13), and

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[30] The committee did make a minor alteration to Schurke's suggestions, changing his reference to "chapter 41.56 RCW" in Section 304(2), and his two references to "chapter 28B.16 RCW" in Section 308, to the generic phrase "this chapter".

Section 309 transferred labor relations functions of the HEPB to the Commission for all higher education classified employees.

Summary of Bill by Senate Legislative Staff -

The bill as passed by the Senate Higher Education Committee was summarized in a "Senate Bill Report" prepared by legislative staff members on April 3, 1993. The report was nearly identical to the previous "Senate Bill Report" of March 16, 1993. However, the report did contain the following new information:

> **SENATE COMMITTEE ON HIGHER EDUCATION**
>
> **Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.
>
> . . .
>
> **SUMMARY OF PROPOSED SENATE AMENDMENT:**
>
> . . .
>
> Technical corrections and clarifications are made to sections dealing with employment relations.
>
> . . .
>
> **TESTIMONY FOR:**[31]
>
> . . . The collective bargaining option for classified employees is unique in that it provides an option to bargain and leave civil service. **There will be no overlap between civil service and collective bargaining.**
>
> **TESTIMONY AGAINST:**
>
> [this information concerned issues not before the Commission in this proceeding.]

[Emphasis by **bold** supplied.]

The report indicated that a hearing was scheduled for the bill on April 5, 1993 before the Senate Ways & Means Committee.

Senate Ways & Means Committee Hearing -

At the April 5 Ways & Means Committee hearing, Edie again provided testimony on ESHB 1509 to the committee, commenting as follows:

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[31] While this was the first time that this information appeared in a Senate Bill Report, the information had previously been contained in a House Bill Report prepared by legislative staff members after the bill was reported out by the House Appropriations Committee to the House.

> **We feel the option to move out of civil service and into collective bargaining for our classified staff is a good idea and we particularly support it because it does not overlap the two systems. It says, in effect, one or the other, but not both.** We think that's a good approach and we have unions on our campus that are ready to do that.

[Tape of hearing, Washington State Senate, Ways & Means Committee files, 1993. Emphasis by **bold** supplied.]

Edie also fielded questions from the committee, answering those inquiries in the following manner:[32]

> Senator: Let me ask you. I guess I look at this as there would be a few things that you can't collectively bargain, like pensions. Is that correct? How about benefits?
>
> Edie: It's my understanding the way the bill is crafted that you cannot bargain the overall, either the health benefit or the pension package, that those would be determined by the Legislature.
>
> Senator: So what can you [bargain]?
>
> Edie: **You're looking at all of the things that are currently in civil service law, the hours and working conditions.** You're looking at all of those provisions that are currently tied up, everything from procedures for hiring, promotions, the way promotions are determined, etc., **all those would be open for negotiations.**
>
> Senator: OK, let me just ask this. **Will the level of salary increase be bargainable?**
>
> Edie: The way the bill is structured **the state-funded portion of the salary that you provide would be almost exactly the same as the way it is with [K-12] classified staff, where at the local level they would be determining in effect the grid on how that money would be divided up.** If there were any local monies that were bargained, there is specific language in the bill that says that that money cannot be added to the base that you consider when you do your biennial appropriation.
>
> Senator: OK, so that if you found extra money somewhere, then you could bargain that?
>
> Edie: You could bargain that, but it could not be included in the base that would be brought forward to you in the Legislature the following year.
>
> Senator: Well, the thing that occurred to me when we were going over this bill just an hour ago or so, **what is it you're bargaining** that would, that you would give up or whatever in order to get some of these concessions**?**
>
> Edie: Well, I think that the current system has wages totally controlled and then you have all of the provisions of civil service that are nonbargainable and there's very little left, and in fact, what happens is that the parties end up bargaining management rights predominantly which,

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[32] The specific senator asking these questions is unidentifiable on the tape of the hearing.

> in my judgment, is one of the worst forms of bargaining. **This would open up the hours and working conditions** that are currently set out in some exquisite detail in the civil service law, **and allow those procedures just as the way they are done in the K-12 classified system to be bargained. Issues from union security to other issues would all be open for negotiations** that are currently, many of those, set aside in civil service law.
>
> [Tape of hearing, Washington State Senate, Ways & Means Committee files, 1993. Emphasis by **bold** supplied.]

Edie's understanding of the bill was that parties choosing to opt out would make a clean break with the civil service system. Parties in this position would be entitled to full-scope collective bargaining under Chapter 41.56 RCW for the subject areas of wages, hours and working conditions, including union security, as are classified employees in the K-12 system.

Johnson testified at the April 5th hearing, again emphasizing that the model being proposed was not new, but was already present in the K-12 system. She repeated her "suitcase" metaphor, indicating that the magic of the bill was that parties did not opt out until they had already reached an agreement on what civil service provisions they were taking with them into their new full-scope collective bargaining world.

Ellie Menzies, employed with District 1199 NW (SEIU),[33] presented testimony at the Ways & Means Committee hearing concerning that portion of the bill transferring labor relations functions of the HEPB to the Commission for units choosing not to opt out. She made the following statements:

> We have given conditional support to this bill as long as it doesn't change the conditions for those who don't choose to opt out. **We're concerned that the bill as it is currently written does move non-opt out bargaining units under PERC for labor relations. This changes the bill for us and poses a problem, an aspect of which is the union**

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[33] District 1199 NW is the exclusive bargaining representative for registered nurses at Harborview Medical Center, which is affiliated with the University of Washington.

> **shop condition, which goes from an election process to negotiations.**
>
> [Tape of hearing, Washington State Senate, Ways & Means Committee files, 1993. Emphasis by **bold** supplied.]

Her comments are consistent with those of other witnesses, as well as specific language in the bill, indicating that the HEPB union shop election procedure was being deleted, to be replaced by negotiations between the parties on the subject of union security.

Moore also presented testimony at the April 5th hearing, raising the same concern that labor relations functions for units choosing not to opt out would be transferred to the Commission. His comments included the following statements:

> **What this does is repeal all of the labor relations authority of the Higher Education Personnel Board,** specifically their ability to create bargaining units which would be formed for purposes of bargaining over working conditions. **It deletes the authorization for a union shop condition of employment in higher education,** under the Higher Education Personnel Law. It deletes the provisions for dues deductions and for the Higher Education Personnel Board to adjudicate unfair labor practice complaints. **We would prefer to see an amendment so that all of those authorities remain with the Higher Education Personnel Board.**
>
> [Tape of hearing, Washington State Senate, Ways & Means Committee files, 1993. Emphasis by **bold** supplied.]

At the conclusion of the hearing, the Ways & Means Committee refused to address the concerns of Menzies and Moore or to make any changes in the bill, and instead issued a "do pass" recommendation based on the version of ESHB 1509 as previously amended by the Senate Higher Education Committee.

Revised Summary of Bill by Senate Legislative Staff -
Another Senate Bill Report was prepared by legislative staff members after the April 5th hearing. The report was identical to the previous Senate Bill Report of April 3, 1993, except for the following information summarizing testimony taken at the Ways & Means Committee hearing:

> **TESTIMONY FOR (Ways & Means):**
>
> The bill is supported by all six of the four-year higher education institutions. This legislation will allow better management of the institutions. It supports flexibility and local decision making, and will give managers the ability to apply management concepts to create changes and incentives.
>
> **The civil service provisions don't overlap sectors.** This provides local solutions to local problems and the ability to solve problems more quickly. Concern was expressed that all classified employees would be covered by the Public Employees [sic] Relations Commission whether they opt out of civil service or not. If groups wanted to stay under the current arrangement with the Higher Education Personnel Board they should be able to retain their services for labor relations disputes.
>
> **TESTIMONY AGAINST (Ways & Means):**
>
> None

[Emphasis by **bold** supplied.]

The "no overlap" statement was consistent with previous testimony to various committees that units choosing to opt out would be governed entirely by the provisions of Chapter 41.56 RCW.

Floor Striker Amendment -

On April 15, 1993, ESHB 1509 was brought to the Senate floor for action. A motion was made and passed that the Senate Higher Education Committee amendment not be adopted. Instead a motion was offered by Senator Albert Bauer, chair of the Higher Education Committee, to substitute a Floor Striker Amendment. The following one-page cover sheet was attached to the Floor Striker Amendment:

> ESHB 1509 - Floor Striker
> Difference between this Striker and the Committee Amd
>
> 1. In this amendment bargaining units which do not opt out of civil service will continue to have their labor relations activities governed by the Higher Education Personnel Board, or any successor to that agency. Only those bargaining units which opt out of civil service will have their labor relations governed by the Public Employment Relations Commission.
>
> 2. This amendment also retains the union shop provisions that have been established as a result of employee elections throughout the higher education system.

[Emphasis by underline in original.]

The Floor Striker Amendment made the following changes to Section 304 from the bill as passed by the Senate Higher Education, and Ways & Means Committees:

> (1((~~3~~))) At any time after July 1, 1993 ((~~the effective date of this section~~)), 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 ((~~ing~~)) 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 ((~~a collective bargaining agreement is~~)) executed an initial collective bargaining agreement ((~~by the parties~~)) recognizing the notice of intent filed under (a) of this subsection ((~~and notice of the execution of the agreement and a copy of the agreement are received by the higher education personnel board and commission~~)), chapter 28B.16 or 41.06 RCW as appropriate shall cease to apply to all employees in the bargaining unit covered by the agreement ((~~, and the limitations on collective bargaining contained in RCW 41.56.100 and subsection (2) of this section shall cease to apply to that bargaining unit~~)).

The Floor Striker Amendment organized this subsection into subparts (a), (b) and (c). Subparts (a) and (c) kept intact the two-step notice process for invoking the collective bargaining option. Subpart (b) was new, giving jurisdiction to the Commission over scope of bargaining disputes during the parties' negotiations for their initial agreement, and jurisdiction to settle any disputes concerning the rights and obligations of parties exercising the option. Also added was a provision allowing the Commission to void the option, if it finds that the parties are at impasse after completion of their negotiations.

New language was also added by the Floor Striker Amendment to Section 304 clarifying the rights of parties exercising the collective bargaining option. Those additional changes included the following revised language:

> (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((~~1~~))) The commission shall recognize, in its ((~~their~~)) current form, the ((~~all~~)) bargaining unit((~~s~~)) 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 ((~~as of the effective date of this section~~)).
>
> (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((~~4 ... s~~))Salary increases negotiated ((~~thereafter~~)) for the employees in the bargaining unit shall be subject to the following:
>
> ...

The addition of subpart (b) embraced an amendment previously proposed by Moore, requiring union security provisions obtained through a HEPB election prior to filing of the Notice of Intent, to be grandfathered into the initial collective bargaining agreement. The additional introductory language of subsection (2) echoed the language added above to subsection (1)(b), granting authority to the Commission to determine the rights and obligations of parties choosing to exercise the option.

The Floor Striker Amendment removed Section 306 from the bill, which had proposed the deletion of RCW 28B.16.100(10) through (13). Section 308 was renumbered as Section 307 by the Floor Striker Amendment, and the following changes were made:

> At any time after July 1, 1993 ((~~the effective date of this section~~)), an institution of higher education and

> the exclusive bargaining representative of a bargaining unit of employees classified under this chapter or chapter 41.06 RCW as appropriate may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of chapter 41.56 RCW, by filing notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement recognizing the notice of intent. The parties shall provide the notice to the board or its successor and the public employment relations commission. 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 board or its successor and the public employment relations commission that they have ((~~a collective bargaining agreement is~~)) executed an initial collective bargaining agreement ((~~by the parties~~)) recognizing the notice of intent ((~~and notice of the execution of the agreement and a copy of the agreement are received by the board and the public employment relations commission~~)), this chapter shall cease to apply to all employees in the bargaining unit covered by the agreement, and all labor relations functions of the board or its successor with respect to these employees shall be transferred to the public employment relations commission.

The Floor Striker Amendment deleted Section 309 from the bill, which had transferred labor relations functions of the HEPB (WPRB) to the Commission for all higher education classified employees. With the deletion of Section 309 and the added final phrase of Section 307, the intent of the bill was clear that only labor relations functions for units choosing to opt out would be transferred to the Commission. Bargaining units choosing not to opt out would remain under civil service rules. The Floor Striker Amendment was passed by the Senate on April 15, 1993.

Passage of Final Bill by House and Senate

Revised Summary of Bill by House Legislative Staff -
After Senate passage of ESHB 1509, an amended House Bill Report was prepared by legislative staff members. The report contained the following new information:

> **EFFECT OF SENATE AMENDMENT(S):** ... The ability to bargain additional or supplemental health benefits is added if permitted by ESSB 5304 (health care reform). Bargained salary increases that are different from those provided by the Legislature may only come from local efficiency savings. **Only those bargaining units that opt out of**

> **civil service will have their labor relations functions transferred to the Public Employees [sic] Relations Commission (PERC).** Bargaining units that opt out retain existing union security provisions. References are added so that any successor board to the Higher Education Personnel Board (HEPB) is referenced.

[Emphasis by **bold** supplied.]

Other information contained in previous bill reports for ESHB 1509 remained unchanged.

Conference Committee -

On April 20, 1993, the House refused to concur with ESHB 1509 as passed by the Senate, asking for a conference committee to work on the differences between the House and Senate versions of the bill. A conference committee was established. After deliberations the committee issued its report, leaving unchanged those portions of the Floor Striker Amendment relevant to this proceeding. On April 25, 1993, the conference committee report was adopted by the House and Senate as the final bill. At no time during the processing of ESHB 1509 through the Senate or conference committee did anyone ever suggest that the HEPB or its successor would have jurisdiction over union security issues for units choosing to opt out of civil service.

Events After Passage of Bill

Final Summaries Prepared by Legislative Staff -

After passage of ESHB 1509, another version of the House Bill Report was prepared by legislative staff members. The report was similar to previous reports, except for the following changes to the "Summary" portion of the report:[34]

> Bargaining units within the higher education personnel system are given an option to leave the civil service

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[34] Two additional summaries prepared by legislative staff members after ESHB 1509 was signed by the governor, entitled "Final Bill Report" and "1993 Final Legislative Report", also contained information similar to that found in this report.

> system and have their relationship and corresponding obligations governed by the Public Employees' Collective Bargaining Act (PECBA) as administered by ((~~The responsibility to administer collective bargaining procedures for classified higher education employees, regardless of whether they are covered by civil service, is transferred from the Higher Education Personnel Board to~~)) the Public Employees [sic] Relations Commission (PERC) ((~~, including jurisdiction over cases in progress~~)). The Higher Education Personnel Board (HEPB) or its successor board will continue((~~s~~)) to administer the civil service system, including collective bargaining over matters within agency discretion, for employees who do not opt out.
>
> **The parties choosing to exercise the option will file notice of intent with the HEPB or its successor board and the PERC.** The b ((~~B~~))argaining unit((~~s~~)) as certified by the ((~~in existence on the date of transfer under~~)) HEPB or its successor board will be recognized by the PERC and any union security agreement in effect for that unit will continue to apply to the unit. **The scope of bargaining will be governed by the PECBA, and will include wages, hours, and working conditions.** ((~~limited by civil service provisions unless a campus bargaining unit and institution management, through mutual agreement, choose to opt out of civil service. Employee relations with units that opt out are wholly governed by the terms of the collective bargaining agreement; h~~)) However, the scope of bargaining does not include ((~~excludes health or~~)) retirement benefits, or health or insurance benefits except for the related cost of these insurances or additional or supplemental health benefits as permitted under health care reform legislation. The option is effective, and the civil service system ceases to apply to the employees in the bargaining unit, when the parties have executed a collective bargaining agreement recognizing the notice of intent.

[Emphasis by **bold** supplied.]

An analysis of the changes that had taken place in the "Summary" portion of this report shows the major changes that ESHB 1509 had undergone throughout the legislative process. First, the explanation concerning the transfer of administration of collective bargaining procedures for all higher education classified employees from the HEPB to the Commission was deleted, replaced by language indicating that the HEPB would continue to administer civil service rules and limited collective bargaining procedures only for bargaining units not choosing to opt out. Second, bargaining units would have the option to leave civil service and have their relationship governed by Chapter 41.56 RCW. Third, details were added explaining how parties could exercise the collective bargaining option, including the two-step process of filing the

Notice of Intent and executing a collective bargaining agreement recognizing that Notice. Fourth, union security agreements in effect for units choosing to opt out would continue to apply. Fifth, the scope of bargaining for units choosing to opt out would include wages, hours, and working conditions under Chapter 41.56 RCW, but would not include retirement or insurance benefits except for the related cost of these or supplemental health benefits as permitted under health care reform legislation.

Signing of Bill -

On April 30, 1993, Executive Vice President Tallman Trask III of the University of Washington, wrote the following letter to Governor Mike Lowry urging his approval of ESHB 1509:

> I write to strongly encourage you to sign Engrossed Substitute House Bill 1509 in its entirety. The bill makes significant strides in improving our ability to better manage our resources and gives institutions of higher education opportunities for increased cost savings.
>
> ...
>
> ... **The bill allows higher education classified employees, upon the agreement of local university administration and individual unions, to opt out of civil service and move to a collective bargaining system similar to that already in place for K-12 classified employees.** ...

[Emphasis by **bold** supplied.]

Once again the bill was compared to the collective bargaining system [Chapter 41.56 RCW] already in place for public school district classified employees. On May 15, 1993, Governor Lowry signed ESHB 1509.[35]

Interpretations of ESHB 1509 by the WPRB

On November 2, 1993, nearly two months before initiating the instant matter with the Commission, Gill filed a Petition for

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[35] Lowry vetoed a section of the bill transferring funds remaining in institutional operating fee accounts at the end of fiscal year 1993 to institutional local accounts.

Declaratory Order with the WPRB. Gill's petition sought a ruling that the WPRB's union shop election procedures needed to be followed by a unit choosing to opt out when it ratified its initial collective bargaining agreement. Gill also sought a ruling requiring that all employees, not just members of the union, be allowed to participate in the ratification vote for the initial agreement. The WPRB dismissed Gill's petition in an order issued on December 1, 1993, stating as follows:

> HB 1509, passed by the 1993 Legislature, allows a bargaining unit in higher education, through its union, to agree to be bound solely by the conditions of a collective bargaining agreement and to exclude itself from civil service.
>
> ...
>
> HB 1509 as it related to the subject matter of the petition has been codified in RCW 41.56, Public Employees Collective Bargaining. This Board's scope of concern is the state civil service law, RCW 41.06 ... This Board should not issue a declaratory order interpreting provisions of RCW 41.56.
>
> Further, the language of HB 1509 itself appears to preclude this Board's review of these issues. RCW 41.56.201(1)(b) provides that:
>
> > During the negotiation of an initial contract between the parties under his 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 [Public Employment Relations] commission.**
>
> The University of Washington and the Classified Staff Association have given the Department of Personnel the required notice that they are negotiating toward an initial contract. Consequently RCW 41.56.201(1)(b) applies.

[Emphasis by **bold** in original.]

The WPRB recognized that a unit choosing to opt out is bound solely by the collective bargaining agreement negotiated between the parties. The WPRB's order also recognized that Gill's questions concerning union security properly fell within the topic of "scope

of bargaining",[36] and that disputes in that area are explicitly left to the Commission to resolve by the language of ESHB 1509.

Conclusions

Although RCW 41.56.201 provides detailed procedures for parties to follow to invoke the collective bargaining option, the statute is somewhat unclear as to the exact timing of the transfer of the parties' relationship from the WPRB to the Commission. Since an ambiguity does exist as to the meaning of the statute in this regard, the Commission will look to other sources in determining the intent of the Legislature. Those sources include the legislative history of ESHB 1509, the interpretation given the statute by the WPRB, and expressions of legislative purpose found in ESHB 1509.

Extent of Commission Jurisdiction under ESHB 1509 -
Under section 1 of ESHB 1509, the Legislature stated that one of the purposes of the bill was to increase the flexibility of institutions of higher education to manage their personnel issues. Under the current civil service system for higher education classified employees administered by the WPRB, there is little room for parties to devise local solutions to local problems. Civil service rules are by their nature inflexible, setting up precise standards to be followed by all similarly-situated employers. The flexible system of personnel administration for institutions of higher education is the full-scope collective bargaining world administered by the Commission. Except for constraints imposed by state or federal laws, parties under Chapter 41.56 RCW can negotiate any solution that both sides agree will help resolve a

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[36] The term "scope of bargaining" refers to those mandatory subjects of bargaining that unions and public employers are required to bargain over under the provisions of Chapter 41.56 RCW. Mandatory subjects of bargaining include the subject areas of "personnel matters, including wages, hours and working conditions" as defined in RCW 41.56.030(4). See, IAFF, Local 1052 v. PERC, 113 Wn.2d 197 (1989).

particular problem. The purpose exposed in section 1 of ESHB 1509 can best be implemented through the flexibility allowed under Chapter 41.56 RCW.

The parties disagree as to when the Commission acquires jurisdiction over parties exercising the collective bargaining option. There is specific language in ESHB 1509 supporting the argument that the Commission obtains jurisdiction over parties choosing to opt out of civil service when those parties file their Notice of Intent with the Commission. The initiators of ESHB 1509 sought a clean break between the civil service and collective bargaining systems. Subsection (1) of the bill states that parties exercising the collective bargaining option will be "governed entirely" by the provisions of Chapter 41.56 RCW. Under subsection (1)(b), upon the parties' filing of the Notice of Intent, authority is given to the Commission to decide disputes concerning scope of bargaining issues during the parties' negotiations, and to determine any disputes concerning exercise of the collective bargaining option. The authority of the Commission to determine the rights and obligations of parties exercising the option is reiterated in subsection (2) of the bill.

The immediate conferral of Commission jurisdiction upon filing of the Notice of Intent is also supported by the legislative history of ESHB 1509. The very initial draft of the bill, prepared by the union and employer in this proceeding, stated that those choosing to opt out would "have their relationship and corresponding obligations governed in their entirety by the provisions of Chapter 41.56 RCW." This statement was changed ever so slightly when the bill was first introduced in the House, when the phrase "governed in their entirety" was shortened to "governed entirely". A subsequent House bill report explained that "there is no overlap between civil service and collective bargaining" under the bill. An analyst with the Senate Higher Education Committee, when explaining the bill to that committee, repeated this statement.

Several witnesses as well testified at committee hearings that there would be no overlap between the civil service and collective bargaining systems.

While subsection (1) of the bill establishes a two-step notice procedure for parties to follow in exercising the collective bargaining option, that procedure does not negate the conferral of immediate jurisdiction on the Commission. Under subsection (1)(a), parties file their Notice of Intent to be governed by Chapter 41.56 RCW. After parties have executed an initial collective bargaining agreement, they file a second notice under subsection (1)(c). Two references in the statutory language point to the permanency of the Notice of Intent. Subsection (1)(a) notes that the parties' Notice of Intent must subsequently be followed by the mutual adoption of a collective bargaining agreement. Likewise, subsection (1)(c) indicates that the parties' second notice, indicating that they have executed an initial collective bargaining agreement, recognizes the Notice of Intent already filed.

Under subsection (1)(c), the civil service rules established by Chapter 41.06 RCW do not cease to apply to employees choosing to opt out until this second notice is filed. Those rules continue to provide a "safety net" for employees, as the Notice of Intent may be voided by the Commission under subsection (1)(b) if the parties are unable to reach an initial agreement and the Commission finds that the parties are at impasse. The corollary following from subsection (1)(b) is that if parties do successfully negotiate an initial agreement and give the notice under subsection (1)(c), the Notice of Intent they filed has been effective during their period of negotiations.

Another factor supporting the immediacy of Commission jurisdiction upon filing of the Notice of Intent, is the comparison found in documents prepared by legislative staff members of ESHB 1509 to the already existing collective bargaining system for public school

district classified employees provided by Chapter 41.56 RCW. This similarity was noted by the first summary of the bill prepared by legislative staff members shortly after ESHB 1509 was introduced in the House, which stated as follows:

> This is not new. It is a system very similar to those utilized in the K-12 sector and by cities and counties.

Similar comments were made in the press release distributed at Locke's press conference, by Edie and Johnson in their testimony before the Higher Education and Ways & Means Committees of the Senate, and by Trask in his letter urging Governor Lowry to sign the bill.

The provisions of subsection (2)(a) provide for the sole exception to the immediate conferral of Commission jurisdiction upon filing of the Notice of Intent. That subsection requires the Commission to recognize a bargaining unit choosing to opt out of civil service in its current form as certified by the WPRB. The Commission's earlier order in this matter acknowledged that the determination of appropriate bargaining units and certification of exclusive bargaining representatives remains under civil service law until the collective bargaining option is fully executed by the parties. The two-step notice process for opting out is not completed until the parties conclude their negotiations, sign their initial collective bargaining agreement, and provide notice to the Commission and WPRB. The WPRB has authority until completion of the collective bargaining option process to determine the precise parameters of the unit choosing to opt out.[37]

A question has also been raised as to whether employees who are not members of the union should be allowed to vote on ratification of

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[37] The WPRB used this authority to establish the parameters of the non-supervisory clerical bargaining unit at issue in this proceeding. On February 10, 1994, one day before the union held its ratification vote on the initial agreement, the WPRB adopted a petition accreting two classes, Fiscal Technician III and Book Production Coordinator, to the unit. At that time, eight individuals were employed in these classes.

the initial agreement. After the Notice of Intent is filed, parties are governed entirely by the provisions of Chapter 41.56 RCW. A collective bargaining relationship exists between a public employer and the union duly recognized or certified as exclusive bargaining representative of its employees. Nothing in Chapter 41.56 RCW requires employee ratification of the agreements reached between employers and unions. A union has the discretion to decide, under its own bylaws and constitution, whether or not it wishes to submit an offer to enter into a collective bargaining agreement to its membership for approval. There is no statutory basis to require a union to include in its ratification process, unit employees who are not members of the union. See, Naches Valley School District, Decision 2516-A (EDUC, 1987).

Applicability of Union Shop Election After Notice of Intent - Once the Notice of Intent is filed, parties begin their negotiations under Chapter 41.56 RCW. Those negotiations take place under the full-scope collective bargaining world administered by the Commission. Subsection (1)(b) of the bill provides that disputes concerning the parties' scope of bargaining shall be governed by the provisions of Chapter 41.56 RCW. There are no election procedures provided under Chapter 41.56 RCW for disputes concerning union security. On the contrary, as indicated in the Commission's previous order in this matter, union security is a mandatory subject of bargaining that must be negotiated by the parties. After the Notice of Intent is filed, the union shop election procedure administered by the WPRB is unavailable to parties choosing to opt out of civil service.

This conclusion is also supported by subsection (2)(b) of the bill. That language grandfathers certain union shop agreements authorized by the WPRB into the initial collective bargaining agreement of units choosing to opt out. However, only union shop agreements in effect when the Notice of Intent is filed enjoy this protection. Subsection (2)(b) is consistent with the provisions of subsection

(1)(b) granting immediate jurisdiction to the Commission upon filing of the Notice of Intent. Once the Notice of Intent is filed, parties are under the full-scope collective bargaining world administered by the Commission, and civil service rules such as the union shop election procedure are unavailable to alter employees' conditions of employment. After the Notice of Intent is filed, any changes in employees' wages, hours and working conditions must be negotiated and agreed upon by the parties.

Double-Coverage of Statutes After Execution of Initial Agreement - A question has been raised as to whether there is a period of double-coverage, under Chapters 41.06 and 41.56 RCW, from the date of execution of the parties' initial agreement to the first of the month following filing of the parties' second notice that the agreement has been executed. Under subsection (1)(c), Chapter 41.06 RCW does not cease to apply to employees in the unit opting out until this second notice is filed with the Commission and the WPRB. While filing of the Notice of Intent confers immediate jurisdiction over the parties on the Commission, subsection (1)(a) states that the Notice of Intent is "subject to the mutual adoption of a collective bargaining agreement."

The initial draft of the bill prepared by the parties to this proceeding provided that upon mutual adoption of a collective bargaining agreement, and notice of that fact provided to the appropriate agencies, civil service rules would cease to apply. Later drafts introduced the concept that civil service coverage would not end until the first of the month following the month during which notice of execution of the initial agreement is filed. In this proceeding the collective bargaining agreement was signed on March 11, 1994, and filed with the Commission on March 14, 1994. As specified by the terms of the agreement, it became effective on April 1, 1994. This set of circumstances was consistent with the provisions of subsection (1)(c).

The statute provides for the conferral of jurisdiction upon the Commission at the time the Notice of Intent is filed. However, jurisdiction remains with the WPRB to provide a "safety net" for employees until the first of the month following notice of execution of the parties' initial agreement. That safety net does not expire until the first of the month following filing of the second notice with the Commission and WPRB. Parties choosing to opt out should, as the parties did in this proceeding, make the effective date of their initial agreement coincide with the first of the month following notice of execution of the initial agreement to avoid any questions in this area.

Gill has done an admirable job arguing for a statutory framework which the Legislature in its discretion could have adopted, but our task is to decide what course of action the Legislature did in fact choose. We are convinced that the petition of Gill must be denied, based on the specific statutory language of ESHB 1509, references in the legislative record to the fact that there would be no overlap between the civil service and collective bargaining systems, expressions that the bill's intent was to establish a system that was similar to the one already in place for classified public school district employees under Chapter 41.56 RCW, as well as frequent mention of the negotiability of the subject of union security.

FINDINGS OF FACT

1. The University of Washington is a public employer within the meaning of RCW 41.56.030(1).

2. The Classified Staff Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative for an appropriate bargaining unit of non-supervisory clerical employees of the employer.

3. Jeremy Gill is a classified employee of the University of Washington, and is employed within the non-supervisory clerical bargaining unit.

4. The Washington Personnel Resources Board, pursuant to Chapter 41.06 RCW and Chapter 356 WAC, administers civil service rules for higher education classified employees.

5. Section 201 was added to Chapter 41.56 RCW by the 1993 Legislature through the passage of ESHB 1509. The passage of ESHB 1509 allows institutions of higher education and the exclusive bargaining representatives of their classified employees to exercise a collective bargaining option to have the parties' relationship and corresponding obligations governed entirely by the provisions of Chapter 41.56 RCW, which is administered by the Public Employment Relations Commission. ESHB 1509 took effect on July 1, 1993.

6. On August 26, 1993, pursuant to RCW 41.56.201(1)(a), the employer and union filed their Notice of Intent with the Commission and WPRB to have their relationship governed by Chapter 41.56 RCW.

7. On November 2, 1993, Gill filed a petition for declaratory order with the WPRB, seeking a ruling that the WPRB's union shop election procedures had to be followed by a unit choosing to opt out of civil service when it ratified its initial agreement containing union shop language under the provisions of Chapter 41.56 RCW. The WPRB dismissed the petition on December 1, 1993, holding that the Commission had authority to determine disputes concerning parties' rights and obligations in exercising the collective bargaining option provided by RCW 41.56.201.

8. On December 21, 1993, Gill filed a petition for declaratory order with the Commission seeking an interpretation of RCW 41.56.201.

9. After mediation services were provided by Commission staff members, the employer and union reached a tentative agreement in January 1994. On February 11, 1994, the tentative agreement was approved by a majority of employees in the non-supervisory clerical bargaining unit.

10. On March 14, 1994, the employer and union filed notice with the Commission and WPRB that they had executed an initial collective bargaining agreement recognizing the Notice of Intent.

11. On March 31, 1994, the Commission issued an "Order for Further Proceedings", making the following rulings: a) The Commission will not conduct a representation proceeding, as it is bound to accept the WPRB's determinations as to appropriate bargaining units and certification of exclusive bargaining representatives for units choosing to exercise the collective bargaining option provided by RCW 41.56.201. b) A union's procedures for deciding to exercise the collective bargaining option and/or to seek a union security provision in its initial agreement under Chapter 41.56 RCW are internal union affairs. c) Since union security is a mandatory subject of bargaining under Chapter 41.56 RCW, it is permissible for the union and employer to agree on inclusion of union security language in their initial agreement. The order called for further proceedings concerning the issues of "extent of Commission jurisdiction", "applicability of [union shop] election procedure during option period", and "effective date of first option contract".

12. In its order of March 31, 1994, the Commission directed that unit employees be given three options pending the outcome of declaratory order proceedings. These options, as subsequently clarified by a Commission notice, were as follows: First, employees could become union members and pay union dues to the union. Second, employees could choose to be non-members, and authorize the payment of fair share fees to the union. Third, non-members objecting to payment of fair share fees to the union could request, in writing to the employer, that their fair share fees be held in escrow pending the outcome of this proceeding. The Notice specified that if the union prevailed in this proceeding, the funds held in escrow, including interest, would be released to the union. Conversely, the Notice indicated that if Gill prevailed the funds, including interest, would be returned to affected employees.

13. The parties' initial collective bargaining agreement became effective on April 1, 1994. The agreement contained "agency shop" language, requiring unit employees as a condition of employment to join and pay dues to the union, or if choosing to be a non-member, to pay fair share fees to the union. The agency shop requirement became effective on June 1, 1994.

14. In a letter of April 19, 1994 to the parties, the Commission noted that after June 1, 1994, the union was not precluded from seeking the discharge of employees who failed to comply with one of the specified three options, so long as the union gave the required notice specified in WAC 391-95-010, including notice of the availability of the escrow procedure.

15. A public hearing was held on May 18, 1994 at the University of Washington to accept testimony from the parties concerning the legislative intent of RCW 41.56.201.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapters 34.05 and 41.56 RCW, and Chapter 10-08 WAC.

2. An institution of higher education and the exclusive bargaining representative of a unit of its classified employees may exercise a collective bargaining option to have the parties' relationship and corresponding obligations governed entirely by the provisions of Chapter 41.56 RCW. After the parties file their Notice of Intent to be governed by the provisions of Chapter 41.56 RCW with the Commission and WPRB under RCW 41.56.201(1)(a), the Commission acquires jurisdiction over their relationship.

3. The sole exception to immediate conferral of Commission jurisdiction upon filing of the Notice of Intent, is the retention of jurisdiction by the WPRB to determine appropriate bargaining units and certify exclusive bargaining representatives. The WPRB retains jurisdiction over these matters until the collective bargaining option is fully completed by the parties. The option is completed, pursuant to RCW 41.56.201-(1)(c), on the first day of the month following the month during which parties provide notice to the Commission and WPRB that they have executed an initial collective bargaining agreement recognizing the Notice of Intent.

4. Under the provisions of Chapter 41.56 RCW, an exclusive bargaining representative is not required to submit an offer for a collective bargaining agreement to its membership, or to unit employees, for approval.

5. After parties file their Notice of Intent to be governed by the provisions of Chapter 41.56 RCW, the scope of bargaining applicable to their contract negotiations includes the mandatory subjects of wages, hours and working conditions, including the subject of union security. The union shop election procedure administered by the WPRB is unavailable to parties after filing of their Notice of Intent.

6. Under RCW 41.56.201(1)(c), the civil service rules of Chapter 41.06 RCW cease to apply to parties exercising the collective bargaining option on the first day of the month following the month during which parties provide notice to the Commission and WPRB that they have executed an initial collective bargaining agreement recognizing the Notice of Intent.

ORDER

The University of Washington, its officers and agents, shall immediately take the following actions to effectuate the rulings issued in this Decision regarding issues arising under RCW 41.56.201 in connection with the collective bargaining agreement negotiated between the Classified Staff Association and the University of Washington, effective April 1, 1994, for the non-supervisory clerical bargaining unit:

1. Release to the Classified Staff Association all funds, including interest, held in escrow pursuant to paragraph 3 of the Commission's order of March 31, 1994. After the disburse-

ment of said funds to the union, the escrow account shall be closed.

ISSUED at Olympia, Washington, this 23rd day of September, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANET L. GAUNT, Chairperson

DUSTIN C. McCREARY, Commissioner

SAM KINVILLE, Commissioner