

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

AMERICAN FEDERATION OF
TEACHERS OF WASHINGTON

Involving certain employees of:

UNIVERSITY OF WASHINGTON

CASE 23255-E-10-3558

DECISION 10909 - PSRA

ORDER TO SHOW CAUSE

Robert M. McKenna, Attorney General, by *Mark Yamashita*, Assistant Attorney General, for the employer.

Schwerin Campbell Barnard Iglitzin & Lavitt LLP, by *Terrance Costello*, Attorney at Law, for the union.

The issue pending before this agency in Case 23255-E-10-3558 concerns the question of whether the petitioned-for extension lecturers have collective bargaining rights. In *University of Washington*, Decision 10150-A (PECB, 2008), based upon both parties' clear and unambiguous assertions that the extension lecturers at issue were not covered by Chapter 41.06 RCW, I found that the extension lecturers at issue in that petition did not appear to have collective bargaining rights under existing statutes. The Commission also relied upon the parties' assertions when affirming my decision in *University of Washington*, Decision 10150-B (PECB, 2009).

The union has now changed its stance based upon new evidence, a letter dated May 10, 2010 from the Department of Personnel, which in part, states: The "Department of Personnel views all positions in state government to be either covered by civil service law (i.e. Chapter 41.06 RCW) or exempt from civil service law. As such, there are no overlooked employees or positions." Thus, based upon that new evidence and the filing of the instant petition, we are revisiting the issue of the status of the extension lecturers employed by the University of Washington.

The university argues that it is inappropriate for this agency to again consider this matter due to *res judicata* and/or the *estoppel* doctrines.

With respect to the *res judicata* argument, the university believes that this agency may not again consider the collective bargaining status of the extension lecturers because the matter was already decided and there are no changed circumstances among the employees at issue. I note, however, that the earlier decisions emanating from this agency were based upon assertions by the employer and the union that the employees at issue were not covered by state civil service statutes. Thus, should the employees at issue be covered by civil service rules, and subsequently found to have collective bargaining rights, it would be disingenuous for either party to argue that a prior decision should stand when that decision may have relied upon misinformation provided by either party. This is particularly true where the collective bargaining rights of employees are concerned. Employees' collective bargaining rights are not a "one time" opportunity but are continuing rights that should not be abridged by a single mistake made by either or both parties. Clearly, this situation must be distinguished from a complaint filed against either party for misconduct or a violation of law. To forever deny employees the right to determine whether they wish to engage in collective bargaining because of inaccurate information that this Commission relied upon would be a grave injustice. Surely, neither party would wish to mistakenly deprive employees of these rights.

With respect to the university's *estoppel* argument, the university would argue that the union may not change its position regarding the civil service status of the petitioned-for employees despite the fact that the union obtained new information from the Department of Personnel concerning these employees. Again, what an injustice it would be to forever preclude eligible employees of their rights to determine whether they wish to be represented for purposes of collective bargaining on this basis.

I have reviewed the briefs of both parties that were submitted following the hearing in this matter. The parties agree on one major issue: The Department of Personnel and its Director have sole statutory authority under RCW 41.06 to determine the civil service status of employees.

Accordingly, I intend to defer the matter of the civil service status of the petitioned-for extension lecturers to the Washington State Department of Personnel. Parties may file any arguments contrary to, or in support of, my intention to do so by no later than the close of business on Wednesday, November 18, 2010. Absent good cause shown, I will forward this issue to the Department of Personnel for a determination regarding the civil status of the employees at issue and retain jurisdiction over other matters related to collective bargaining.

Dated at Olympia, Washington, this 4th day of November, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director