

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-A - PSRA

ORDER OF REFERRAL TO THE
WASHINGTON STATE DEPARTMENT
OF PERSONNEL

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.

On May 28, 2010 the American Federation of Teachers Washington (union) filed a petition seeking to represent a group of approximately 60 full-time and part-time English as a Second Language Extension Lecturers employed by the University of Washington (employer). Hearing Officer Claire Nickleberry conducted a hearing in this matter on July 19, 2010. During the hearing the union advanced a letter from the Washington State Department of Personnel which indicates that the petitioned-for employees may be civil service employees under RCW 41.06. Arguing the principles of *res judicata* and *estoppel*, the employer argues that this matter has already been decided by the Executive Director and the Commission in an earlier case involving the same employees, *University of Washington*, Decisions 10150-A (PECB, 2009) and 10150-B (PECB, 2010) respectively, and cannot now be raised.

The Order to Show Cause issued on November 4, 2010, notes that the earlier decisions were based upon the parties' clear and unambiguous agreement that the Extension Lecturers are not civil service employees. Thus, if the parties' earlier positions were incorrect, it would be a grave injustice of employee rights should the Commission's reliance upon such an error wrongly

preclude employees from enjoying the benefits of civil service status and the accompanying right to engage in collective bargaining should they so choose. It is also noted that both parties, in their briefs submitted following the hearing, argue that the Department of Personnel has exclusive authority to determine whether employees hold civil service status.

Both parties responded to the Order to Show Cause. The union filed no arguments concerning referral of this matter to the Department of Personnel. The employer agreed that the Department of Personnel has exclusive authority to determine civil service status, but argues that the Commission's Executive Director is not privileged to request review by the Director of the Department of Personnel; that only affected employees have the right to seek review of their civil service status pursuant to WAC 357-52-015.

Previously, the parties agreed that Extension Lecturers are not civil service employees, but the employer has also asserted that it did not exempt these employees from civil service pursuant to RCW 41.06.070(2). Thus, it appears that these employees are stuck in "limbo", a status that forever denies, or at least blurs, their rights. As long as these employees remain in this status, they are unable to enjoy rights provided under RCW 41.80.050 or RCW 41.56.021. Although it is to its advantage, it is disingenuous for the employer to argue that employees whose status is in limbo should remain in limbo and that only employees can seek a finding from the Department of Personnel under WAC 357-52-015.

Pursuant to RCW 41.80.070 and RCW 41.56.060, the Legislature empowered this Commission with the responsibility of determining appropriate bargaining units for purposes of collective bargaining. I shall exercise authority under WAC 391-08-003 by referring the matter of the status of employees performing work as English as a Second Language Extension Lecturers to the Director of the Washington State Department of Personnel, the penultimate expert in such matters. Following a finding from the Director of Personnel, I shall resume processing of this case consistent with RCW 41.80.070.

ORDER

The matter of the civil service status of English as Second Language Extension Lecturers employed by the University of Washington is hereby referred to the Director of the Washington State Department of Personnel.

Dated at Olympia, Washington, this 24th day of November, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Cathleen Callahan".

CATHLEEN CALLAHAN, Executive Director



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ ROBBIE CUFFIELD

CASE NUMBER: 23255-E-10-03558 FILED: 05/28/2010 FILED BY: PARTY 2
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