

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

UW POSTDOCS UNITED/
INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL
UNION 4121

Involving certain employees of:

UNIVERSITY OF WASHINGTON

CASE 129731-E-17

DECISION 12838 - PECB

DIRECTION OF ELECTION

Paul Drachler, Jacob Metzger, and Martha Barron, Attorneys at Law, Douglas Drachler McKee & Gilbrough, LLP, for the UW Postdocs United/International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121.

Jennifer K. Schubert, Assistant Attorney General, Attorney General Robert W. Ferguson, for the University of Washington.

On October 3, 2017, the UW Postdocs United/International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121 (union) filed a petition to represent postdoctoral employees at the University of Washington (university). The petitioned-for employees hold the job titles of research associate, research associate trainee, senior fellow, and senior fellow trainee.¹

The parties agree that the senior fellows and senior fellow trainees can appropriately be included in the petitioned-for bargaining unit. The parties disagree about the status of the research associates and research associate trainees. The employer asserts that the research associates and research associate trainees are faculty and covered by a separate act. The parties filed prehearing

¹ The union also seeks to represent 29 positions in the acting instructor, acting assistant professor, and visiting scientist job classes. The status of these positions will be resolved after the election.

declarations. Representation Case Administrator Dario de la Rosa conducted a limited hearing on the record, and the parties filed post-hearing briefs.

Inclusion of the research associates and research associate trainees in the petitioned-for bargaining unit is appropriate. Postdoctoral employees, including those designated with faculty status by the university, are excluded from the definition of faculty under RCW 41.76.005(5). Postdoctoral employees are granted collective bargaining rights under RCW 41.56.513. This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

BACKGROUND

The university confers more than 12,000 bachelors, masters, doctoral, and professional degrees annually through multiple colleges and schools, including an academic medical center. The more than 1,800 academic courses offered each quarter are largely taught by individuals designated by the university as “faculty.”

Faculty

The university maintains the authority to designate positions with faculty status. The university’s faculty consists of approximately 4,700 members, including the president, the provost, professors, associate professors, assistant professors, principal lecturers, senior lecturers and senior artists in residence, professors of practice, lecturers and artists in residence, instructors, and teaching and research associates. The university has considered research associates and research associate trainees to be faculty since at least 1958.

The university’s Faculty Code and Governance controls the terms and conditions for faculty such as appointments, reappointments, compensation, and performance standards. The faculty code is based upon a strong model of shared governance and was created by the faculty with the concurrence of the university president under the authority of Chapter 28B.20 RCW.

Postdoctoral Employees

Among the educational training programs offered by the university is the postdoctoral program. Participants in the postdoctoral program, or postdoctoral fellows, are considered employees. A postdoctoral employee is “an individual who has received a doctoral degree and is engaged in a temporary and defined period of mentored advanced training to enhance the professional skills and research independence needed to pursue his or her chosen career path.” Declaration of David Parsons, Ex. 1 (University of Washington Handbook for Postdoc Fellows) at 11. Generally, postdoctoral employees engage in research, scholarship, and teaching functions and author research papers for publication and presentation. They may work under the direction of a principal investigator for the benefit of a research program, their respective department’s educational program, or their own personal growth.

The university’s Office of Postdoctoral Affairs coordinates postdoctoral activities, such as employee orientation and the establishment of mentorships; oversees university policies that apply to postdoctoral employees; facilitates best practices for postdoctoral employees; and tracks and reports the activities of postdoctoral employees to ensure that they are accountable to their program requirements.

The university recognizes four types of postdoctoral employees: senior fellow, senior fellow trainee, research associate, and research associate trainee. Senior fellows and senior fellow trainees have never been designated with faculty status by the university, and the terms and conditions for those job classes are set through university policy. In contrast, the research associates and research associate trainees have been designated with faculty status by the university, and their terms and conditions are currently governed by the faculty code. Other job classes at the university may also qualify as postdoctoral, such as acting instructor or acting assistant professor. The university states that “[t]hose job classes are considered ‘faculty’ and [an employee’s] benefits information would track with that of the Research Associate.” Declaration of David Parsons, Ex. 1 (University of Washington Handbook for Postdoc Fellows) at 23.

ANALYSIS

Applicable Legal Standards

The creation and maintenance of appropriate bargaining units is a function of this agency. *Tacoma Community College*, Decision 12543 (PECB, 2016). The purpose of that function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Central Washington University*, Decision 9963-B (PSRA, 2010); *Quincy School District*, Decision 3962-A (PECB, 1993).

Collective bargaining laws are remedial in nature and are to be liberally construed to effectuate their purpose. See *Nucleonics Alliance, Local 1-369 v. Washington Public Power Supply System*, 101 Wn.2d 24, 29 (1984). Accordingly, exceptions to the laws are to be narrowly confined. *Id.*

The words used within a statute must be given the full effect intended by the Legislature. *State – Transportation*, Decision 8317-B (PSRA, 2005). A statute’s subject matter and the context in which a word is used must also be considered. *Id.*; *Chamberlain v. Department of Transportation*, 79 Wn. App. 212, 217 (1995). Statutes must be interpreted and construed so that all the language used is given effect and no portion is rendered meaningless or superfluous. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537 (1996). Absent a specific definition, contrary legislative intent, or ambiguity, words in statutes are accorded their plain and ordinary meaning. *State v. Gonzalez*, 168 Wn.2d 256, 263 (2010). Statutes are not ambiguous merely because different interpretations are conceivable. *State – Transportation*, Decision 8317-B.

Collective Bargaining Statutes for Faculty and Postdoctoral Employees

The Faculty Collective Bargaining Act, Chapter 41.76 RCW, grants collective bargaining rights to faculty at the university and other public four-year institutions of higher education. Faculty eligible to bargain under Chapter 41.76 RCW is defined as follows:

“Faculty” means employees who, at a public four-year institution of higher education, are designated with faculty status or who perform faculty duties as defined through policies established by the faculty governance system, excluding casual or temporary employees, administrators, confidential employees, graduate

student employees, *postdoctoral* and clinical employees, and employees subject to chapter 41.06 or 41.56 RCW.

RCW 41.76.005(5) (emphasis added). Those positions specifically excluded in RCW 41.76.005(5) have no collective bargaining rights under Chapter 41.76 RCW even if they may otherwise be designated with faculty status by the university.

In 2012 the Legislature enacted RCW 41.56.513 to apply the provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, "to postdoctoral and clinical employees as excluded in chapter 41.76 RCW at the University of Washington and at Washington State University." RCW 41.56.513 does not define what constitutes postdoctoral employees.

RCW 41.76.005(11) requires all eligible faculty members from all schools, colleges, and campuses of a university to be in a single bargaining unit.² In contrast, the unit determination criteria found in RCW 41.56.060 applies to any bargaining unit containing postdoctoral and clinical employees. Thus, there could be any number of bargaining unit configurations for postdoctoral and clinical employees.

Application of Standards

The research associates and research associate trainees are indisputably faculty as designated by the university. The research associates and research associate trainees are also indisputably postdoctoral employees. As such, they are expressly excluded from coverage under Chapter 41.76 RCW and have collective bargaining rights under Chapter 41.56 RCW.

The university argues that existing agency precedent requires all employees designated with faculty status to be included in a single bargaining unit under RCW 41.76.005(11). RCW 41.76.005(11) only requires a single bargaining unit that contains all *eligible* faculty members from all schools, colleges, and campuses of a university. *See Central Washington University, Decision 8127-A (FCBA, 2004), and Western Washington University, Decision 8871-A*

² Currently, no bargaining unit of faculty exists at the University of Washington.

(explaining that temporary or casual faculty or administrators who also serve as faculty members are excluded from the coverage of Chapter 41.76 RCW).

Symmetry between the faculty governance system and the exercise of collective bargaining rights is not required, because Chapter 41.76 RCW grants collective bargaining rights to some but not all faculty of a public four-year institution of higher education. *Western Washington University*, Decision 8871-A (FCBA, 2005). Should the faculty organize for purposes of collective bargaining, employment matters that were once established through the faculty governance system, such as wages, hours, and working conditions, would be handled through the collective bargaining process. *Id.* The faculty governance system would continue to exist and could continue to deal with matters not subject to collective bargaining. *Id.* Furthermore, faculty members precluded from exercising collective bargaining rights may nevertheless have voting rights under the faculty governance system. *Id.* Similarly, faculty members who lack voting rights in the faculty governance system may be included in a bargaining unit. *Id.*

Excluding postdoctoral employees designated with faculty status and including them in a bargaining unit under RCW 41.56.513 is consistent with the tenet of statutory construction that requires precise terms to modify, influence, and restrict the interpretation of general terms when both are used in a sequence or collocation in legislative enactments. *See Simpson Investment Co. v. State*, 141 Wn.2d 139, 156–57 (2000). The university's interpretation that postdoctoral employees designated with faculty status are not excluded by the language of RCW 41.76.005(5) renders the specific exclusion in that provision meaningless.

CONCLUSION

The senior fellows, senior fellow trainees, research associates, and research associate trainees are all postdoctoral positions that would appropriately be included in a bargaining unit of postdoctoral employees under RCW 41.56.513. This matter is remanded to the Representation Case Administrator for further processing. Because this decision concerns the appropriate collective

bargaining statute for a considerably large number of employees, any appeal of this decision—including the time to file an appeal—is governed by WAC 391-25-660.

ORDER

1. The senior fellows and senior fellow trainees are postdoctoral employees within the meaning of RCW 41.76.005(5) and RCW 41.56.513.
2. The research associates and research associate trainees are postdoctoral employees within the meaning of RCW 41.76.005(5) and RCW 41.56.513.
3. The matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 1st day of March, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-660.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12838 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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