

University of Washington, Decision 12838-B (PECB, 2018)

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-B – PECB

ORDER DENYING MOTION TO
INTERVENE

Jacob Metzger and Paul Drachler, 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.

John Hodges-Howell and Henry Farber, Attorneys at Law, Davis Wright Tremaine LLP for the University of Washington.

Paul M. Ostroff, Attorney at Law, Lane Powell PC for the Fred Hutchinson Cancer Research Center.

On October 3, 2017, the UW Postdocs United/International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 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. On March 1, 2018, a direction of election was issued finding that the senior fellows, senior fellow trainees, research associates, and research associate trainees are all postdoctoral positions that would be appropriately included in a bargaining unit of postdoctoral employees under RCW 41.56.513. On May 22, 2018, an interim certification was issued for the postdoctoral employees.

The case was remanded for further proceedings on the eligibility issues related to certain employees for inclusion in the bargaining unit. On September 27, 2018, prior to scheduling a hearing on the matter, Fred Hutchison Cancer Research Center (FHCRC) filed a motion to intervene, arguing the FHCRC was the employer of certain postdoctoral students. FHCRC's motion to intervene is denied based on WAC 391-25-170 and 391-25-190, but it will be allowed to specially appear before the Public Employment Relations Commission in this matter.

ANALYSIS

Applicable Legal Standards

Representation hearings are conducted under the Administrative Procedures Act, Chapter 34.05 RCW and under the Representation Case Rules, Chapter 391-25 WAC. The Administrative Procedures Act provides the process for intervention generally. RCW 34.05.443. Intervention may be granted at any time, upon a hearing officer determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

Because the present case is a representation case, Chapter 391-25 WAC also applies. Intervention is allowed by rule in representation cases under two circumstances. *Snohomish County*, Decision 12217-A (PECB, 2015). First, an organization may intervene in a representation case if that organization has been the exclusive bargaining representative of the petitioned-for bargaining unit during the year preceding the filing of the petition. *Id.*; WAC 391-25-170. Second, an organization other than the incumbent representative may intervene in a representation proceeding if it can demonstrate a 10 percent showing of interest among the employees in the petitioned-for unit. *Snohomish County*, Decision 12217-A; WAC 391-25-190.

In instances where intervention is not granted, a party may be allowed to specially appear. *North Mason School District*, Decision 2428-A (PECB, 1986). The Commission has granted special appearance in instances where the Commission has had to determine whether there is an employer-

employee relationship. *Id.* The party filing the motion is allowed to appear specially in the proceeding to contest the jurisdiction of the Commission.

Application of Standards

In the present case FHCRC filed a motion to intervene in the present representation proceedings. FHCRC alleges it is the employer of approximately 28 individuals included in the representation proceedings. It did not allege it has been the exclusive bargaining representative of part of these individuals during the year preceding the filing of the petition. It also did not demonstrate a 10 percent showing of interest among the employees in the petitioned-for unit. While under the general intervention rules of the Administrative Procedures Act, FHCRC may be allowed to intervene, WAC 391-25-170 and 391-25-190 require that the motion to intervene be denied.

While Chapter 391-25 WAC requires denial of the motion for intervention, FHCRC has alleged it is the employer of the approximately 28 individuals. It has also alleged that the Public Employment Relations Commission (PERC) does not have jurisdiction over it. Because a question remains as to whether an employer-employee relationship exists for the approximately 28 individuals and whether PERC has jurisdiction, FHCRC will be allowed to specially appear in this matter.

ORDER

1. The motion of Fred Hutchinson Cancer Research Center for intervention is DENIED.
2. The Fred Hutchinson Cancer Research Center will be allowed to specially appear.

3. The case is remanded to the Representation Administrator to conduct proceedings on the reserved eligibility issues.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 11/01/2018

DECISION 12838-B - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 129731-E-17

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