

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PUBLIC SCHOOL EMPLOYEES OF  
WASHINGTON

Involving certain employees of:

CENTRAL WASHINGTON  
UNIVERSITY

CASE 131265-E-19

DECISION 13079 - PECB

DIRECTION OF ELECTION

*Elyse B. Maffeo*, General Counsel, for Public School Employees of Washington.

*Alan Smith*, Assistant Attorney General, Attorney General Robert W. Ferguson, for Central Washington University.

*Eric R. Hansen*, Attorney at Law, for United Faculty of Central Washington University.

On January 22, 2019, Public School Employees of Washington (PSE) filed a petition seeking to represent all full-time and regular part-time junior flight instructors employed by Central Washington University. United Faculty of Central Washington University (UFC) intervened in the proceeding by claiming that the petitioned-for unit was inappropriate because the junior flight instructors were part of its employer-wide faculty bargaining unit. The employer did not take a position at hearing on the issue.<sup>1</sup> Hearing Officer Michael Snyder conducted a hearing on the

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<sup>1</sup> In its initial list of employees submitted to the agency, the employer appeared to argue that hourly flight instructors must be included in any unit with junior flight instructors. At hearing, the employer agreed that hourly flight instructors would be excluded from any unit found appropriate.

matter on June 13 and 14, 2019.<sup>2</sup> The parties submitted briefs by August 16, 2019, to complete the record.

The petitioned-for bargaining unit of junior flight instructors is an appropriate bargaining unit of civil service exempt employees under RCW 41.56.021 and chapter 41.56 RCW. The junior flight instructors are employees who do not meet the definition of faculty set out at RCW 41.76.005(5). The junior flight instructors are not designated by the employer as faculty, and they do not perform faculty duties as defined within the meaning of the Faculty Collective Bargaining Act, chapter 41.76 RCW. As exempt employees, the junior flight instructors cannot be included in the faculty bargaining unit. RCW 41.76.005(5). This matter is remanded to the Representation Case Administrator for further processing.

### BACKGROUND

The employer is a four-year university located in Ellensburg, Washington. It offers a wide range of programs culminating in various degrees. Faculty are primarily responsible for providing student instruction. The employer's co-governance model for faculty is similar to other institutions of higher education. Issues relating to academic duties are addressed in the faculty code. The code is approved by the faculty senate and the employer's board of trustees. The code defines faculty as individuals who conduct scholarship; who teach, coach, or supervise students or who engage in similar academic endeavors in which students receive credit or academic benefit; and who hold the academic rank of professor, associate professor, assistant professor, emeritus professor, or the professional designation of senior research associate, research associate, senior lecturer, lecturer, visiting professor, or coach.

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<sup>2</sup> On the first day of hearing, a representative of an organization called Flight Instructors of Central Washington University moved to intervene. The organization's stated purpose in intervening was to be listed on a ballot for an election among all senior and junior flight instructors, as well as the flight school's chief and assistant chief. The Hearing Officer, citing WAC 391-25-190, denied the organization's motion on the grounds that it was not timely and was not accompanied by a sufficient showing of interest among the unit sought.

The code describes faculty duties and enumerates various areas of collective and individual faculty responsibility. Generally, faculty are responsible for formulating academic policies and standards on such subjects as curriculum, subject matter, methods of instruction, research, and faculty status. Individual faculty responsibilities include managing assigned teaching and student advising duties, revising course content to ensure it reflects the current development in the relevant field, and participating in the operation and governance of the department, college, and university.<sup>3</sup> Included within this latter category of duties is the responsibility to participate in the assessment and evaluation of students, faculty, staff, and academic administrators.

The UFC represents all full-time and regular part-time employees of Central Washington University who either are designated with faculty status by the faculty code or perform faculty duties as defined in the resolution adopted by the faculty senate in a university-wide bargaining unit. *Central Washington University, Decision 8127-C (FCBA, 2004)*. Faculty enjoy collective bargaining rights under chapter 41.76 RCW. The faculty senate resolution referenced in the certification is explained in more detail in *Central Washington University, Decision 8127-A (FCBA, 2004)*. In 2003, the faculty senate passed a resolution defining faculty as:

Tenured, tenure-track, other full-time non-tenure track, and adjunct faculty whose instructional load average for the most recent 3 academic year quarters (fall, winter, and spring) equals or exceeds .50 of full time. (% full time is to be determined based on an instruction load of 45 contact hours and will include both instructional assignments and non-teaching academic assignments w/ equivalent instructional load specific to the individual contract of employment.

The resolution defined faculty duties in terms of “instructional load” and “instructional assignments and non-teaching academic assignments [with] equivalent instructional load.” *Id.*

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<sup>3</sup> The code also refers to a range of duties not unique to faculty members, such as complying with university policies and working collaboratively with colleagues. Responsibilities common to nearly all university employees are not discussed in detail here as they bear little weight in determining whether an employee meets the statutory definition of faculty.

The UFC and the employer have entered into a series of collective bargaining agreements, the most recent of which is effective September 1, 2017, through August 31, 2020. The contract more fully defines and describes the concept of an instructional workload.

#### Aviation Department

The employer has offered degrees relating to aviation for over 40 years. These currently include bachelor of science degrees in aviation management and as a professional pilot.<sup>4</sup> The aviation department provides instruction in support of these degrees and is part of the employer's College of Education and Professional Studies. By the end of the 2018–19 school year, close to 200 students were participating in the program.

Students interested in becoming pilots pursue the professional pilot degree. The path to achieving the degree involves classroom instruction and hands-on flight training. Classroom instruction may occur at the employer's main campus in Ellensburg or at the airfield training center located at Bowers Field, depending on the size of the class. Some instruction is also performed in flight simulators located at Bowers Field. All academic courses, including the flight simulator courses, are taught by university employees designated as faculty. These employees are included in the faculty bargaining unit. During the flight training, students are paired with a flight instructor who teaches them the mechanics of flying.

In the past, the employer contracted with a private company to provide the flight training component of the program. Because the contractor was having difficulty meeting the university's needs, the employer's board of trustees approved a plan to take the work in-house in June 2017. University employees worked alongside contracted employees to provide flight training during the

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<sup>4</sup> There are two specialties included within the professional pilot program—professional pilot and commercial pilot. The differences are not important for the purpose of this proceeding. The term 'professional pilot' is used here to describe the pilot training program as a whole.

latter half of the 2017–18 school year. The 2018–19 school year was the first full year that the employer provided flight training to students exclusively utilizing its own employees.

The structure and content of the flight training program are regulated by the Federal Aviation Administration (FAA). Although other paths are available to individuals interested in becoming a pilot, participating in a program governed by the FAA allows those individuals to achieve an airline transport pilot's license with fewer flight hours than would otherwise be necessary.

The outline of the employer's professional pilot program was developed by two faculty members and the chief pilot. The curriculum divides instruction into phases. In order to ensure that the content of each phase complied with federal regulations, the employer purchased syllabi from a private vendor. The phases of the flight program include, in order of increasing level of complexity: private pilot, instrumentation pilot, and commercial pilot. Each phase roughly corresponds to students' freshman, sophomore, and junior years.<sup>5</sup> A phase involves classwork and a two-credit flight lab each quarter. Each phase prepares a student for a test administered by an FAA agent for a particular certification. The FAA tests, known as check rides, are typically taken by students near the end of each phase.

To prepare for the check rides, the curriculum for the flight labs divides each phase into a series of lessons. At three different points throughout a given phase, students undergo "stage checks." During a stage check, students are requested to demonstrate the knowledge and skills learned to date from the various lessons within the particular phase. The stage checks are utilized by the employer to test students' progression through the program and ensure that they are prepared to learn more advanced skills. Stage checks are graded on a pass/fail basis. A student's grade for the flight lab is dependent on the number of attempts made to pass a stage check. Each time a student fails a stage check, the student's grade for the flight is lowered one level. Grades are ultimately determined and entered into the employer's grading system by the tenured or

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<sup>5</sup> In their senior year, students often take upper level courses to achieve endorsements authorizing them to fly multi-engine aircraft or to become a certified flight instructor.

tenure-track faculty member. While they do not directly teach the flight labs, faculty members are considered the instructors of record for the course.

### Junior Flight Instructors

The employer employs three senior flight instructors and close to 20 junior flight instructors to help run its flight training program. The junior flight instructors perform the vast majority of flight instruction in the employer's aviation program. Each junior flight instructor is assigned between eight and ten students per quarter. These instructors meet with their assigned students approximately three times per week. The instructors review previously covered material, explain the goal for the particular session, allow the students to conduct various necessary pre-flight checks, and ride along while the students work through the course material. The junior flight instructors' primary job is to "accomplish safe, efficient and student-satisfying flight training that complies with University policies and procedures and FAA regulations." They are not responsible for the academic advising of students or providing classroom instruction.

The junior flight instructors do not create or modify the curriculum. The content of each session is largely dictated by the various syllabi the employer purchased from a vendor. The junior flight instructors assist students in completing particular lessons. Each lesson is composed of a series of tasks or maneuvers. If time remains after completing a lesson, instructors may help students review older material with which they struggled. When adverse weather conditions make flying impossible, a junior flight instructor may either have a student use one of the flight simulators or provide general instruction on the ground.

Students do not receive letter grades for flights with junior flight instructors. Rather, an instructor rates the student's performance on each area within a given lesson on a scale from one to five. There are no adverse consequences for a student receiving a poor rating during a flight. Instead, a poor rating is treated as a signal of an area on which the student needs work. Grades for the flight lab are determined exclusively by the student's ability to successfully pass stage checks. Those grades are then entered into the employer's grading system by the faculty member designated as the instructor of record for the course.

A small number of junior flight instructors are qualified and authorized by the FAA to perform stage checks similar to the senior flight instructors. This work is not a condition of their employment.

The employer considers junior flight instructors to be unrepresented civil service exempt employees. RCW 41.060.070(2). When the employer began hiring junior flight instructors in late 2017, they were not classified or hired as faculty because the employer did not contemplate them performing classroom instruction. It also did not expect them to grade student performance. The junior flight instructors do not participate in the employer's faculty co-governance structure. As a result of their exempt status, many of the terms and conditions of their employment are set out by the employer's exempt employees' code. The employer has also established a series of regulations interpreting this code that is similarly applicable to the junior flight instructors. Junior flight instructors receive appointment letters outlining their monthly salaries and the terms of their employment. While the start dates vary, the end date of each appointment coincides with the end of the spring quarter.

All junior flight instructors share similar terms and conditions of employment. They typically work Monday through Saturday. Their hours vary considerably and depend on when they are scheduled to meet with students. The earliest instruction block begins at 7:00 a.m., while instructional flights may end at 10:00 p.m. or later. All have office space near Bowers Field. They are all supervised and periodically evaluated by the chief pilot.

#### Senior Flight Instructors

The senior flight instructors have a range of responsibilities, including providing classroom and flight instruction to students, supporting airfield operations, and mentoring junior flight instructors. The majority of the classroom instruction is done by one of the six tenured, or tenure-track faculty members in the aviation department. Some classes, however, are taught by senior flight instructors who split time between the classroom and flight training operations at Bowers Field. The senior flight instructors are designated by the employer as non-tenure-track lecturers and are included in the bargaining unit represented by the UFC.

The senior flight instructors are not permanent employees. Instead, they receive appointment letters for each academic year. The appointment letters explain that they are considered fixed term employees and are assigned “45 workload units of instruction and release time assignments.” Of the three senior flight instructors, only two taught courses in the 2018–19 academic year. The third senior flight instructor, although not assigned to teach a course, served as a substitute classroom instructor. As is the case with other faculty, when teaching a course, the senior flight instructors have the authority to develop and implement their own curriculum provided that it meets certain FAA requirements.

In addition to classroom work, each senior flight instructor is responsible for providing flight instruction as part of the flight labs. Each senior flight instructor is assigned from two to six students each quarter. Their role with respect to the students is identical to that of the junior flight instructors. The senior flight instructors have other responsibilities including performing stage checks for students. Stage check duties occupy a substantial portion of each senior flight instructor’s time.

## ANALYSIS

### Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. RCW 41.56.060; *Central Washington University*, Decision 10215-B (PSRA, 2010). The goal in making unit determinations is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

In making bargaining unit determinations, this agency is directed to consider “the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.” RCW 41.56.060. The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). Not all factors will arise in every case, and where they do exist, any one factor could be more important



than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d 435 (1984).

This agency's role is to determine whether there is a community of interest, not the *best* community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015), *citing Snohomish County*, Decision 12071 (PECB, 2014), *and City of Winslow*, Decision 3520-A (PECB, 1990).

#### Application of Standards

The petitioned-for bargaining unit of junior flight instructors is appropriate under RCW 41.56.060 because the junior flight instructors are not faculty. The junior flight instructors also share a community of interest that is appropriate for collective bargaining.

The first step in the analysis is to determine whether the petitioned-for junior flight instructors are faculty. This is not a case where the parties may mutually agree to exclude individuals who meet the statutory definition of faculty. The Faculty Collective Bargaining Act requires that all faculty be included in the same bargaining unit. RCW 41.76.005(11); WAC 391-25-217. If the junior flight instructors are faculty, they must be included in the UFC's faculty bargaining unit. The starting point for the analysis is the terms of the statute itself.

The terms of the relevant statute serve as the framework for evaluating whether a petitioned-for unit is appropriate. 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. The courts grant “great deference” to this agency’s interpretation of collective bargaining statutes. *See Public Employment Relations Commission v. City of Kennewick*, 99 Wn.2d 832, 841–842 (1983). When interpreting a statute, it is an appropriate function of the agency to “fill in the gaps” where necessary in order to effectuate the legislative framework. *State – Office of the Governor*, Decision 10353 (PSRA, 2009).

The Faculty Collective Bargaining Act grants collective bargaining rights to faculty employed at public four-year institutions of higher education. Faculty are defined in the legislation as

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). The “or” contained in the definition of faculty is read in the disjunctive. *Western Washington University*, Decision 8871-A (FCBA, 2005).

The test for faculty status contains two prongs. First, employees are faculty if they are designated as such by the university. Under the second prong, employees are considered faculty if they perform faculty duties, as defined by the faculty governance system. The duties performed by a purported faculty member, however, must be unique to that member’s role in the operation of a university. Employees do not become faculty merely by fulfilling an obligation common to all university employees. To hold otherwise would permit the faculty to self-define their own bargaining units. This result would be contrary to law. *See* RCW 41.76.025 (granting this agency the exclusive jurisdiction to create and modify faculty bargaining units); *City of Richland*, Decision 279-A (PECB, 1978), *aff’d*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The employee must also perform more than one of the duties the faculty have defined for themselves. This requirement gives full meaning to the plural word “duties,”

used by the legislature. *See Green River Community College*, Decision 4491-A (CCOL, 1994) (discussing the significance of the use of plural words in statutory construction). It is also consistent with this agency's certification of various nonfaculty bargaining units of employees that perform a limited number of tasks traditionally associated with faculty. *University of Washington*, Decision 12838 (PECB, 2018) (postdoctoral research associates and fellows); *University of Washington*, Decision 10909-B (PECB, 2011) (lecturers); *Eastern Washington University*, Decision 11674 (PECB, 2013) (academic advisors); *Eastern Washington University*, Decision 12763 (PECB, 2017) (senior student advisors).

The junior flight instructors do not meet the first prong of the test for faculty status. They are not designated by the employer, or any other authoritative source, as faculty. Pursuant to the faculty code, employees are considered faculty if they hold the academic rank of professor in some form, or the professional designation of lecturer or research associate. The senior flight instructors are designated as lecturers and, hence, faculty. In contrast, the junior flight instructors are considered full-time civil service exempt, salaried employees working under temporary contracts. As civil service exempt employees, they are expressly excluded from the definition of faculty contained in the faculty code. The junior flight instructors, therefore, are not designated as having faculty status.

The junior flight instructors also do not perform faculty duties as contemplated by the statute. Under RCW 41.76.005(5), employees are considered faculty if they perform faculty duties, as defined by the faculty themselves via the faculty senate. The UFC argues that the appropriate source of the definition of faculty duties lies within the definition of faculty itself. In its view, individuals perform faculty duties if they conduct scholarship; teach, coach or supervise students; or engage in similar academic endeavors in which students receive academic credit. The UFC's approach, however, inappropriately conflates the two prongs of the test for faculty status. Accepting this definition would ignore the broader range of duties that faculty, through the code promulgated by the senate, have identified for themselves and would render the second prong of the test for faculty status meaningless.

Thus it is necessary to look beyond the mere definition of faculty in order to determine faculty duties. The duties of faculty are described in two places: the faculty senate resolution discussed in *Central Washington University*, Decision 8127-A, and the faculty code itself. The faculty senate resolution defines the duties of faculty as carrying an instructional load, which is composed of both instructional assignments and non-teaching academic assignments with equivalent instruction load. In contrast to the senior flight instructors who carry 45 workload units of instruction and release time assignments, the working time of the junior flight instructors is not calculated in terms of workload units. They do not carry an instructional load as defined by the faculty senate resolution.

Other faculty duties are described in the faculty code and include areas of collective and individual responsibility, such as developing academic policies and standards. No evidence establishes that the junior flight instructors are responsible for these duties. Rather, they are only responsible for implementing the curriculum selected by the faculty.

Faculty are also individually responsible for such various tasks as student advising; participating in the governance of the department, college and/or university; and performing professional activity for continual updating of course content. Junior flight instructors perform almost none of these duties. The only areas of individual responsibility arguably relevant to the junior flight instructors involve fulfilling assigned teaching duties and participating in the assessment and evaluation of students, faculty, staff, and academic administrators.

Junior flight instructors perform different types of assessments than those performed by faculty members. Students receive a numerical score from one to five for each flight taken with a junior flight instructor. These scores serve only as a barometer of a student's ability to perform a particular lesson. They do not impact the ultimate grade for the flight lab course. Instead, students' grades are determined by their ability to successfully pass stage checks. Junior flight instructors are not required to perform stage checks as a condition of employment. The junior flight instructors do not play a role in determining a student's academic grade.

The fact that instructing and evaluating students are also duties of faculty is insufficient, by itself, to render the junior flight instructors faculty within the meaning of the Faculty Collective Bargaining Act.<sup>6</sup> Having determined that the junior flight instructors are not faculty within the meaning of RCW 41.76.005(5), the next step is to determine whether the petitioned-for bargaining unit of junior flight instructors is appropriate under RCW 41.56.060.

The petitioned-for bargaining unit is appropriate under the statute. As noted above, the junior flight instructors all share similar terms and conditions of employment. They typically work Monday through Saturday, but their hours vary considerably depending on when they are scheduled to meet with students. All junior flight instructors have office space near Bowers Field and are supervised and periodically evaluated by the chief pilot.

As the junior flight instructors are the only classified exempt employees in the employer's workforce who perform flight instruction duties, a bargaining unit of just the junior flight instructors would not fragment the employer's workforce. As classified exempt employees, the junior flight instructors enjoy collective bargaining rights under chapter 41.56 RCW. See RCW 41.56.021 (“[i]n addition to the entities listed in RCW 41.56.020, this chapter applies to employees of institutions of higher education who are exempted from civil service pursuant to RCW 41.06.070(2)”).

Although the senior flight instructors perform some similar duties as the junior flight instructors, the senior flight instructors are considered faculty and are included in the UFC's faculty bargaining unit. Accordingly, the junior and senior flight instructors are statutorily precluded from being in the same bargaining unit. RCW 41.76.005(5). While there may be overlap in duties between the

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<sup>6</sup> In a previous decision involving this employer in 2004, the Executive Director noted that “[i]ndividuals can qualify for inclusion in the bargaining unit if they perform any faculty duty . . .” *Central Washington University*, Decision 8127-A. The statement was made in the context of determining whether part-time employees should be included in the faculty unit. It is not applicable to the analysis of whether other full-time employees meet the statutory definition of faculty.

senior and junior flight instructors, that overlap cannot render the petitioned-for bargaining unit inappropriate based upon the statutory scheme.

### CONCLUSION

The junior flight instructors are not faculty within the meaning of chapter 41.76 RCW and are not included in the existing faculty bargaining unit represented by the UFC. The petitioned-for bargaining unit shares a community of interest and is appropriate for the purposes of collective bargaining. The matter is remanded to Representation Case Administrator Dario de la Rosa for further processing consistent with this decision.

### FINDINGS OF FACT

1. Central Washington University (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. Public School Employees of Washington (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The United Faculty of Central Washington (UFC) is an exclusive bargaining representative within the meaning of RCW 41.76.005(8).
4. The UFC represents all full-time and regular part-time employees of Central Washington University who either are designated with faculty status by the faculty code or perform faculty duties as defined in the resolution adopted by the faculty senate in a university-wide bargaining unit.
5. The employer has offered degrees relating to aviation for over 40 years. These currently include bachelor of science degrees in aviation management and as a professional pilot. The aviation department provides instruction in support of these degrees and is part of the employer's College of Education and Professional Studies.

6. Students interested in becoming pilots pursue the professional pilot degree. The path to achieving the degree involves classroom instruction and hands-on flight training. Classroom instruction may occur at the employer's main campus in Ellensburg or at the airfield training center located at Bowers Field, depending on the size of the class. Some instruction is also performed in flight simulators located at Bowers Field. All academic courses, including the flight simulator courses, are taught by university employees designated as faculty. These employees are included in the faculty bargaining unit.
7. In the past, the employer contracted with a private company to provide the flight training component of the program. Because the contractor was having difficulty meeting the university's needs, the employer's board of trustees approved a plan to take the work in-house in June 2017.
8. The outline of the employer's professional pilot program was developed by two faculty members and the chief pilot. The curriculum divides instruction into phases. In order to ensure that the content of each phase complied with federal regulations, the employer purchased syllabi from a private vendor. The phases of the flight program include, in order of increasing level of complexity: private pilot, instrumentation pilot, and commercial pilot. Each phase prepares a student for a test administered by an FAA agent for a particular certification. The FAA tests, known as check rides, are typically taken by students near the end of each phase.
9. To prepare for the check rides, the curriculum for the flight labs divides each phase into a series of lessons. At three different points throughout a given phase, students undergo "stage checks." During a stage check, students are requested to demonstrate the knowledge and skills learned to date from the various lessons within the particular phase. Grades are ultimately determined and entered into the employer's grading system by the tenured or tenure-track faculty member.
10. The employer employs three senior flight instructors and close to 20 junior flight instructors to help run its flight training program.

11. The junior flight instructors perform the vast majority of flight instruction in the employer's aviation program. Each junior flight instructor is assigned between eight and ten students per quarter. These instructors meet with their assigned students approximately three times per week. They are not responsible for the academic advising of students or providing classroom instruction.
12. The junior flight instructors do not create or modify the curriculum. The content of each session is largely dictated by the various syllabi the employer purchased from a vendor. The junior flight instructors assist students in completing particular lessons.
13. Students do not receive letter grades for flights with junior flight instructors. Rather, an instructor rates the student's performance on each area within a given lesson on a scale from one to five. There are no adverse consequences for a student receiving a poor rating during a flight.
14. Grades for the flight lab are determined exclusively by the student's ability to successfully pass stage checks. Those grades are then entered into the employer's grading system by the faculty member designated as the instructor of record for the course.
15. The employer considers junior flight instructors to be unrepresented civil service exempt employees. RCW 41.060.070(2). When the employer began hiring junior flight instructors in late 2017, they were not classified or hired as faculty because the employer did not contemplate them performing classroom instruction.
16. The junior flight instructors do not participate in the employer's faculty co-governance structure. As a result of their exempt status, many of the terms and conditions of their employment are set out by the employer's exempt employees' code. The employer has also established a series of regulations interpreting this code that is similarly applicable to the junior flight instructors. Junior flight instructors receive appointment letters outlining their monthly salaries and the terms of their employment. While the start dates vary, the end date of each appointment coincides with the end of the spring quarter.



17. All junior flight instructors share similar terms and conditions of employment. They typically work Monday through Saturday. Their hours vary considerably and depend on when they are scheduled to meet with students. The earliest instruction block begins at 7:00 a.m., while instructional flights may end at 10:00 p.m. or later. All have office space near Bowers Field. They are all supervised and periodically evaluated by the chief pilot.
18. The senior flight instructors have a range of responsibilities, including providing classroom and flight instruction to students, supporting airfield operations, and mentoring junior flight instructors.
19. The majority of the classroom instruction is done by one of the six tenured, or tenure-track faculty members in the aviation department. Some classes, however, are taught by senior flight instructors who split time between the classroom and flight training operations at Bowers Field. The senior flight instructors are designated by the employer as non-tenure-track lecturers and are included in the bargaining unit represented by the UFC.
20. In addition to classroom work, each senior flight instructor is responsible for providing flight instruction as part of the flight labs. Each senior flight instructor is assigned from two to six students each quarter. Their role with respect to the students is identical to that of the junior flight instructors.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 5 through 20, the petitioned for employees are not faculty and are not included within the existing faculty bargaining unit.
3. Based upon findings of fact 5 through 20, the petitioned-for bargaining unit of junior flight instructors is an appropriate bargaining unit under RCW 41.56.070.

ORDER

The case is remanded to the Representation Case Administrator Dario de la Rosa for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 3rd day of October, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-590.



# RECORD OF SERVICE

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ISSUED ON 10/03/2019

DECISION 13079 - 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 131265-E-19

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