

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 925,

Involving certain employees of:

UNIVERSITY OF WASHINGTON

CASE 132072-E-19

DECISION 13149-A - PECB

ORDER ON ELIGIBILITY

*Kathleen Phair Barnard*, Attorney at Law, Barnard Iglitzin & Lavitt LLP, for  
Service Employees International Union, Local 925.

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

The Service Employees International Union, Local 925 (union) filed a petition to represent a bargaining unit of full and regular part-time nonsupervisory employees exempt from chapter 41.06 RCW who work for the University of Washington (employer) at the Institute for Health Metrics and Evaluation (IHME). The union originally sought to include employees in the Engagement Officers and Media Relations Officers job classes as part of the bargaining unit. The employer objected to the inclusion of these positions. The employer claimed both positions were exempt from collective bargaining under RCW 41.56.021(1)(b)(iii) because they are managers with substantial responsibility for public information. The employer also claimed that the Engagement Officers are supervisors. An interim certification was issued pending the determination on the status of the Engagement Officers and Media Relations Officers. *University of Washington*, Decision 13149 (PECB, 2020).

The parties were directed to submit evidence, declarations, and arguments concerning the identified issues. Following the submission and review of documentary evidence and arguments, the Engagement Officers are not exempt under RCW 41.56.021(1)(b)(iii) because those positions

do not have substantial responsibility for IHME's public information as envisioned by the statute. Those positions are appropriately included in the bargaining unit. The Media Relations Officer is exempt from collective bargaining because that position has substantial responsibility for public information under RCW 41.56.021(1)(b)(iii).

## BACKGROUND

IHME is a global health research center whose mission is to help ensure policymakers have the best available data when making decisions regarding how to help people live longer and healthier lives. IHME carries out a range of projects within different research areas including the Global Burden of Diseases, Injuries, and Risk Factors; Future Health Scenarios; Costs and Cost Effectiveness; Local Burden of Diseases; Resource Tracking; and Impact Evaluations. The aim is to provide policymakers, donors, and researchers with the highest quality quantitative evidence to make decisions that achieve better health.

IHME partners with more than 5,000 collaborators in more than 150 countries and provides them with data on globally important health problems. IHME evaluates strategies used to assess those problems, and it makes its data freely available to the public and actively encourages dissemination and publication of its data so that policymakers have the evidence to make informed decisions about allocating resources to improve population health.

IHME employs approximately 400 people. Christopher Murray is the Director. IHME's senior management includes the Chief Marketing Officer, the Chief Strategy and Operations Officer, the Director of Research Management, the Director of Organizational Development, the Senior Director of Organizational Development and Training, the Director of Enterprise Data Management, and the Director of Infrastructure. Additionally, several professors serve as department directors, including the Director of Subnational Burden of Disease Estimation, Director of Research Strategy, Director of Health Systems, and Director of Science and Engineering.

Greg Amroffell is the Chief Marketing Officer. Reporting to Amroffell are Assistant Director – Visualization and Web Development Brian Dart, Senior Marketing and Communication Manager Dean Owen, Assistant Director of Scientific Communications Kate Muller, and Assistant Director of Engagement Meghan Mooney. Mooney oversees four Engagement Managers/Public Information Specialists. Three of the Engagement Managers oversee six Engagement Officers. Owen oversees one Media Relations Officer, Amelia Apfel.<sup>1</sup>

### *Engagement Officers*

The Engagement Officers are a part of IHME’s Network Engagement Team that, in turn, is part of IHME’s large Global Engagement Team. IHME assigns portfolios to Engagement Officers based on country and/or geographic region.

The Engagement Officers work to grow and engage with the IHME collaborator network to facilitate the uptake, use, localization, and improvement of the assigned project and associated research. They independently develop and manage relationships with a wide variety of collaborators, including foreign, state, and local governments, multilateral organizations, health care delivery agencies, nonprofit organizations, and academic researchers and research institutions. The Engagement Officers identify relevant individuals or institutions within their portfolio that can provide data to inform estimates that are capable of validating IHME’s research. The Engagement Officers serve as a conduit between IHME faculty members, leadership, and research teams and IHME collaborators from external academic, governmental, and public health institutions. In this capacity, they facilitate conversations, the exchange of information, and collaboration in disseminating information.

The ultimate goal of the Engagement Officers is to build trust with these entities to facilitate their use of IHME findings, methods, and other publicly available data. The Engagement Officers organize and implement external workshops, trainings, presentations, webinars, and meetings with

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<sup>1</sup> At the time the petition was filed there were seven Engagement Officers and two Media Relations Officers.

audiences from a variety of cultures and professional backgrounds. This requires the Engagement Officers to prepare their own materials and coordinate with others in the preparation and delivery of materials. They also perform other duties as needed, including assisting in the management of the public email inbox that has received thousands of inquiries and comments on IHME work related to projections during the COVID-19 pandemic.

#### *Media Relations Officer*

The Media Relations Officer is part of IHME's Marketing and Communications Team. The position develops and fosters relationships across media channels in order to distribute IHME findings to a variety of audiences. When the IHME produces significant findings, the Media Relations Officer participates in the development of and implements the communication plan that is designed to maximize distribution of those findings.

The Media Relations Officer works with IHME faculty and staff to translate science into consumable and comprehensible packets of information that are palatable to the media and illustrate the policy-relevance of IHME's findings and methods. The Media Relations Officer may author stories for public consumption, create fact sheets, press releases, media pitches, and infographics to demonstrate the relevance of IHME results and methods.

The Media Relations Officer works with team members to create press releases that outline points of interest on current research being done by IHME collaborators. When creating a press release, Apfel will read the research paper and talk with researchers about their work. Apfel will then work with Owen to draft the messaging platform and form themes and phrasing of those themes that they believe are important to communicate. They will also add supporting points to assist message comprehension. In doing so, they gather information that journalists and the general public might find interesting. The draft messaging platform is submitted to Amroffell for approval.

Apfel uses the messaging platform as a basis for drafting a press release. Amroffell and the research lead will review and comment on the draft press release. After issuing the press release, Apfel works to publish articles in the desired media channels. Apfel will talk with journalists interested in publishing articles about the research. Apfel will not editorialize or answer questions without

first internally verifying the answers. If there are more probing questions, Apfel will refer the journalist to the paper's author.

The Media Relations Officer also fields inquiries from the media, conducts interviews, or coordinates interviews with experts within IHME. During the current COVID-19 pandemic, Apfel had responded to voluminous media inquiries.

## ANALYSIS

### Applicable Legal Standards

#### *RCW 41.56.021*

RCW 41.56.021 provides collective bargaining rights for higher education staff exempt from chapter 41.06 RCW.<sup>2</sup> *Tacoma Community College*, Decision 12872 (PSRA, 2018). That statute also exempts a number of staff. RCW 41.56.021(1)(b) exempts managers who formulate, develop, or establish institutional policy, or direct the work of an administrative unit, or who manage, administer, and control a program, including its physical, financial, or personnel resources. RCW 41.56.021(1)(b)(i) and (ii). Also exempt are managers who have substantial responsibility for human resources administration, legislative relations, public information, internal audits and investigations, or the preparation and administration of budgets. RCW 41.56.021(1)(b)(iii). Finally, managers at institutions of higher education above the first level of supervision are also exempt from collective bargaining. RCW 41.56.021(1)(b)(iv). Both parties concede there is no evidence of legislative history for RCW 41.56.021 or for the virtually identical RCW 41.06.022—a statute defining manager under the state civil service law.

The individual provisions of RCW 41.56.021 must be read disjunctively. *Everett Community College*, Decision 10392 (PECB, 2009), *aff'd*, *Everett Community College*, Decision 10392-B (PECB, 2010). The title of a position is not dispositive of the unit placement of a position because

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<sup>2</sup> The history of exempt employees and RCW 41.56.021 can be found in *University of Washington*, Decision 9410 (PSRA, 2006) and *Everett Community College*, Decision 10392, respectively.

the actual duties are examined when determining whether a position is included or excluded from a bargaining unit. *Everett Community College*, Decision 10392; *Washington State University*, Decision 9613-A (PSRA, 2007); *City of Winslow*, Decision 3520-A (PECB, 1990).

This case presents the first instance where this agency has been asked to rule upon the “public information” employee exemption found at RCW 41.56.021(1)(b)(iii). Certain tenants of statutory interpretation guide the analysis of the meaning of RCW 41.56.021(1)(b)(iii).

Statutory provisions that preclude employees from collective bargaining rights must be construed narrowly. *International Association of Firefighters, AFL-CIO, Local 469 v. Yakima*, 91 Wn.2d 101, 109 (1978). When interpreting statutes administered by this agency, the meaning of the words used in a statute are given the full effect intended by the legislature. *Washington State – Transportation*, Decision 8317-B (PSRA, 2005). The statute’s subject matter and the context in which the 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).

#### *Determination of Bargaining Units*

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *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), *rev. denied*, 96 Wn.2d 1004 (1981). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997). The goal in making bargaining unit determinations is to group together employees who have sufficient similarities (community of interest) that indicate they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

Application of Standards*Engagement Officers*

The Engagement Officers are not exempt from collective bargaining under RCW 41.56.021(b)(iii) because they do not have substantial responsibility for public information. Their main work is to cultivate and manage relationships with collaborators within their assigned area or subject matter. The Engagement Officers are also not supervisors who must be excluded from the bargaining unit.

The chief duty of the Engagement Officers is to facilitate, establish, and manage relationships with collaborators. The Engagement Officers identify relevant individuals or institutions that can provide data to inform estimates that are capable of validating IHME's research. The Engagement Officers serve as a conduit between IHME and IHME collaborators for external academic, governmental, and public health institutions. In this capacity, they facilitate conversations, the exchange of information, and collaboration in disseminating information. The Engagement Officers may also design and deliver workshop sessions.

The employer argues that these duties meet the literal definition of "substantial responsibility for public information." The union asserts that, given the purpose of chapter 41.56 RCW, exemptions like those found in RCW 41.56.021 are to be narrowly construed. In that light, the union claims that the Engagement Officers do not have "substantial responsibility" for public information. Rather, the union contends that the supervisors and managers of the Engagement Officers are the individuals with substantial responsibility for public information. The union asserts that the intent of the term "public information" relates to public relations or broader institution communication functions. The union argues that dissemination by the Engagement Officers of public information to collaborators does not meet the exemption because there is no element of public or media relations in their duties.

The union also contends that the phrase "substantial responsibility for public information" should be read through the same prism as other exemptions or bargaining unit exclusions in chapter 41.56 RCW. The root premise of those exemptions is that there is a conflict between the employee's job duties and their fellow employees. The union essentially argues that the phrase

should be read to require that the substantial responsibility for public information also poses a conflict between the employee and other employees.

There is nothing in the language of RCW 41.56.021 to indicate that the exemption requires substantial responsibility for public information that creates a conflict between the employee and other employees. Like other rejected attempts to add elements to other exclusions, the attempt to add elements to this exclusion fails. *See, e.g., State – Ecology, Decision 12565 (PSRA, 2016)* (rejecting attempt to find Communication Consultants as confidential employees on the basis that the employees may have access to confidential information because there was no labor nexus). Even though those attempts involved trying to expand the application of an exclusion, this attempt to add an element beyond the language to narrow an exclusion should similarly fail.

The parameters of what is meant by “substantial responsibility for public information” can be inferred by looking at the other categories listed in RCW 41.56.021(b)(iii): human resources administration, legislative relations, internal audits and investigations, and the preparation and administration of budgets. Each category contains discrete roles or functions within institutions of higher education. Although the legislature did not define the term “public information” as used within the statute, adopting a literal meaning of public information would result in an overly broad exemption because many types of university employees are responsible for public information. Not only would this result in an incongruous interpretation of the statute, it would also run afoul of the principal that exemptions are to be narrowly construed.

When examined in context with the other types of employees who are excluded under RCW 41.56.021(1)(b)(iii), a logical interpretation of “public information” consists of those employees who have substantial responsibility for public and media relations and communications similar to a public information officer or a press secretary.

Accordingly, for the exemption to apply the position needs to function more in the role of working with the media, conveying information to a wider public audience, or working in public relations. To apply the exemption to positions that disseminate information that is public in conjunction with their collaborator development and collaborator management role is too expansive a reading of



RCW 41.56.021(1)(b)(iii). That the position operates as a conduit of information between the IHME and IHME collaborators does not mean they have substantial responsibility for public information as contemplated by the statute.

The employer's assertion that the Engagement Officers are supervisory employees who should be excluded from the bargaining unit pursuant to WAC 391-35-340 is without merit. An employee must perform the preponderance of supervisory duties or perform one or more statutory supervisory duties a preponderance of the time in order to be excluded from the bargaining unit as a supervisor. *King County*, Decision 12079 (PECB, 2014). The authority of a person to hire, terminate, suspend without pay, or to effectively recommend such actions is considered the paramount criteria of supervisory duties. *Okanogan County*, Decision 6142-A (PECB, 1998); *Thurston County*, Decision 12727 (PECB, 2017). An employee's exercise of authority to assign and direct work, grant time off, authorize overtime, issue oral or written reprimands, and evaluate and train subordinate employees may be insufficient when that individual does not have authority to hire, terminate, suspend without pay, or effectively recommend such actions. *Okanogan County*, Decision 6142-A.

In this instance, none of the Engagement Officers currently supervise, although the employer contends they may be asked to do so. At most, the Engagement Officers may currently serve on hiring committees and, as part of the committee, make hiring recommendations. Participation on a committee that provides hiring recommendations is generally insufficient to render one a supervisor for bargaining unit exclusion. *Thurston County*, Decision 12727. The employer provided no evidence that the Engagement Officers engage in any supervisory activities. They do not hire, terminate, suspend without pay, or effectively recommend such action. The Engagement Officers are not supervisors and shall not be excluded from the bargaining unit on that basis.

#### *Media Relations Officer*

The Media Relations Officer is exempt from collective bargaining under RCW 41.56.021(1)(b)(iii) as a manager with substantial responsibility for public information. The Media Relations Officer develops and fosters relationships with various media channels to distribute IHME findings to a variety of audiences. The Media Relations Officer may author stories for public consumption as

well as field inquiries from the media. The Media Relations Officer plays a role in the development and implementation of the IHME communication plan.

The employer argues that the Media Relations Officer has substantial responsibility for public information in managing its relationships with and disseminating information to the media. The union asserts that the Media Relations Officer does not have a sufficient level of responsibility to merit the exemption. The union contends that the Media Relations Officer merely executes a plan that is largely developed by managers and supervisors.

The Media Relations Officer may not solely develop the communication plan but has given input. Apfel works closely with Owen and others in the digital marketing team as well as the Assistant Director of Scientific Communications who manages IHME's publications, scientific writing, and marketing and communications teams.

The Media Relations Officer works with team members to create press releases that outline points of interest in current research being done by IHME collaborators. To do so, the Media Relations Officer, Apfel, will read the research paper and talk with researchers about their work. Apfel will then work with Owen to draft the messaging platform and form themes and phrasing of those themes that they think are important to communicate. They will also add the supporting points to assist message comprehension. In doing this they pull things that journalists and the general public might find interesting. Once Apfel and Owen have created a draft messaging platform, it is reviewed for comment by the copy editor and fact checker. The researcher and Owen then review the content again, and it is submitted to Amrofell for approval.

Apfel uses the messaging platform as a basis as for drafting a press release. That press release is reviewed and commented on by the research lead and Amrofell before being released. Once the press release is issued, Apfel works to get articles published in the desired media channels. Apfel will talk with journalists who are interested in publishing articles about the research. In those discussions, Apfel does not stray from the paper's contents. Apfel will not editorialize or answer questions without first internally verifying the answers. If there are more probing questions Apfel will refer the journalist to the paper's author.

The Media Relations Officer clearly has substantial responsibility for public information. Apfel is not solely responsible for public information, but that is not the test. Apfel does more than just disseminate information. Apfel uses professional judgment and experience from a background in IHME's communications.

The facts that Apfel's work may be reviewed by managers and that Apfel does not editorialize or answer questions without first verifying the answers do not negate the position's substantial responsibility for public information. One would reasonably expect IHME management to want to have final say on what is distributed to the media and how it is distributed, particularly on high-profile matters. Under RCW 41.56.021(1)(b)(iii), the Media Relations Officer is exempt from collective bargaining as a manager with substantial responsibility for public information.

### CONCLUSION

The Engagement Officers are not exempt from collective bargaining as managers with substantial responsibility for public information. The Engagement Officers may convey information that is public as part of their duties in engaging, growing, and facilitating the IHME's network of collaborators. The Media Relations Officer is exempt from collective bargaining under RCW 41.56.021(1)(b)(iii) as a manager with substantial responsibility for public information. The Media Relations Officer works with the Senior Marketing and Communications Manager to develop themes and craft communications regarding IHME work and findings to share across media channels.

### FINDINGS OF FACT

1. The University of Washington (employer) and the Institute for Health Metrics and Evaluation (IHME) are public employers within the RCW 41.56.030(13).
2. The Service Employees International Union, Local 925 is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union represents a bargaining unit of employees exempt from chapter 41.06 RCW at the IHME.
4. IHME is a global health research center whose mission is to help ensure policymakers have the best available data when making decisions regarding how to help people live longer and healthier lives. IHME partners with more than 5,000 collaborators in more than 150 countries and provides them with data on globally important health problems. IHME evaluates strategies used to assess those problems, and it makes its data freely available to the public and actively encourages dissemination and publication of its data so that policymakers have the evidence to make informed decisions about allocating resources to improve population health.
5. Greg Amroffell is the Chief Marketing Officer. Reporting to Amroffell are Assistant Director –Visualization and Web Development Brian Dart, Senior Marketing and Communication Manager Dean Owen, Assistant Director of Scientific Communications Kate Muller, and Assistant Director of Engagement Meghan Mooney. Mooney oversees four Engagement Managers/Public Information Specialists. Three of the Engagement Managers oversee six Engagement Officers. Owen oversees one Media Relations Officer, Amelia Apfel.
6. The Engagement Officers are a part of IHME’s Network Engagement Team that, in turn, is part of IHME’s large Global Engagement Team. IHME assigns portfolios to Engagement Officers based on country and/or geographic region.
7. The Engagement Officers serve as a conduit between IHME faculty members, leadership, and research teams and IHME collaborators from external academic, governmental, and public health institutions. In this capacity, they facilitate conversations, the exchange of information, and collaboration in disseminating information.
8. The Engagement Officers organize and implement external workshops, trainings, presentations, webinars, and meetings with audiences from a variety of cultures and professional backgrounds. They also perform other duties as needed, including assisting in

the management of the public email inbox that has received thousands of inquiries and comments on IHME work related to projections during the COVID-19 pandemic.

9. The Media Relations Officer is part of IHME's Marketing and Communications Team. The position develops and fosters relationships across media channels in order to distribute IHME findings to a variety of audiences. When the IHME produces significant findings, the Media Relations Officer participates in the development of and implements the communication plan that is designed to maximize distribution of those findings.
10. The Media Relations Officer works with IHME faculty and staff to translate science into consumable and comprehensible packets of information that are palatable to the media and illustrate the policy-relevance of IHME's findings and methods.
11. The Media Relations Officer works with team members to create press releases that outline points of interest on current research being done by IHME collaborators. When creating a press release, the Media Relations Officer will read the research paper and talk with researchers about their work.
12. After issuing the press release, the Media Relations Officer works to publish articles in the desired media channels. The Media Relations Officer will talk with journalists interested in publishing articles about the research.
13. The Media Relations Officer also fields inquiries from the media, conducts interviews, or coordinates interviews with experts within IHME.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 6 through 8, the Engagement Officers are not managers who have substantial responsibility for public information within the meaning of RCW 41.56.021(1)(b)(iii).

3. Based upon findings of fact 6 through 8, the Engagement Officers are not supervisors within the meaning of WAC 391-35-340.
4. Based upon findings of fact 9 through 13, the Media Relations Officer is a manager who has substantial responsibility for public information within the meaning of RCW 41.56.021(1)(b)(iii).

ORDER

The Engagement Officers are appropriately included in the bargaining unit described in finding of fact 3.

The Media Relations Officer is excluded from the bargaining unit described in finding of fact 3.

ISSUED at Olympia, Washington, this 13th day of October, 2020.

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 391-25-660.



# RECORD OF SERVICE

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ISSUED ON 10/13/2020

DECISION 13149-A - 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 132072-E-19

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