

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

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

Involving certain employees of:

UNIVERSITY OF WASHINGTON

CASE 134711-E-21

DECISION 13519-A - PECB

ORDER ON ELIGIBILITY
REGARDING COMMUNITY OF
INTEREST

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The UW Researchers United/UAW 4121 (union) filed a petition to represent a bargaining unit of approximately 1,900 Research Scientist/Engineers (RSEs) who work for the University of Washington (employer). The petitioned-for unit includes all employees of the employer in the RSE Assistant (RSE-A), RSE-1, RSE-2, RSE-3, and RSE-4 job classifications. The employer objected to the inclusion of approximately 214 employees on three grounds: a lack of community interest for two groups of employees, statutory exclusions pursuant to RCW 41.56.021(1)(b)(i-iv), and supervisory objections.

An election was conducted, and an interim certification was issued pending the status of the objected-to employees. *University of Washington*, Decision 13519 (PECB, 2022). After six days of hearing, the parties agreed that the record was complete for the community of interest of objections.

The employer asserts that the approximately 40 RSEs working at the Applied Physics Laboratory (APL) and the four RSEs working at the Arizona Breeding Colony (ABC) do not share a community of interest with the rest of the bargaining unit. This partial decision deals only with those objections. The RSEs working at the APL and the ABC share a sufficient community of interest with the horizontal bargaining unit of RSEs.

BACKGROUND

The employer is Washington State's largest university. The employer's human resources, compensation, and research grant compliance functions are centralized. Individual facilities and departments report to and get approval from the centralized system for hiring, termination, and other personnel decisions.

In addition to its academic departments, the employer operates a number of scientific research and engineering facilities. The employer's Office of Research oversees pre-award aspects of research and administers all the regulatory aspects of grants and contracts. The employer receives and relies upon grant funding for several of these facilities—some of which impose obligations on the employer. RSEs perform a wide variety of scientific and engineering work across the employer's departments and facilities. This work is done in numerous settings including clinics or laboratories, in the field, and aboard research vessels. Some of the employer's workers perform work outside Washington State. This includes approximately 364 represented employees, 43 of whom are RSEs.

RSE-As perform the following type of work: solving well-defined problems using accepted methods and techniques; conducting experiments or tests in the laboratory or in the field making measurements and recording data; contributing data for use in reports or publications; working with others to accomplish team objectives. RSE-As generally do not have a defined role in identifying or securing research funding. RSE-As generally do not direct others in their work. RSE-As are required to have a bachelor's degree in an appropriate field or equivalent education experience.

RSE-1s perform similar work to RSE-As except that they may exercise more judgment in selecting the methods and techniques to apply to a given project. RSE-1s may direct work of peer technicians or other support staff to achieve specific assignments. RSE-1s are required to have a bachelor's degree in an appropriate field or equivalent education experience.

RSE-2s perform more complex tasks than the RSE-As and RSE-1s. They may lead specific tasks on projects; assist in the preparation of reports, papers, or presentations; and participate in the planning of projects and procurement of funding. RSE-2s monitor the work of more junior staff and provide them direction. RSE-2s are required to have a bachelor's or master's degree in an appropriate field and two to four years' experience in a related area or equivalent.

RSE-3s operate more independently. They evaluate, select, and apply standardized scientific or engineering procedures to assignments of moderate complexity. They manage projects and author or coauthor papers and identify and develop new funding sources. RSE-3s are required to have a bachelor's or master's degree in an appropriate field and three or more years' experience in a related area or equivalent. Many RSE-3s hold PhDs.

RSE-4s are fully independent researchers. They plan and execute laboratory research. They may devise new approaches to problems, and they use a wide application of complex principles, theories, and concepts in their specific field. They may chair technical meetings and manage multiple or significant projects. They initiate new projects and seek funding for them. RSE-4s are required to have a master's degree or higher in an appropriate field or a PhD in a specific area and four or more years' experience in a related area or equivalent.

There are two additional steps in the RSE classification system: RSE Senior and RSE Senior Principal. These classifications are not in the bargaining unit. They perform work such as managing research departments.

Some RSEs serve as principal investigators. A principal investigator is the individual with ultimate authority and responsibility for leading, directing, and reporting on a research grant or award on

behalf of the employer. This includes design, management, and conduct of the project, including budgeting and financial compliance.

All RSEs have historically been covered by the employer's Professional Staff Program (PSP). The PSP covers certain employees exempt from the state civil service system who are not represented by a union. The PSP dictates among other things, how employees covered by the program are hired, how wages are set, how performance is evaluated, and how employee complaints are handled. The PSP also sets forth the policies for leave, benefits, and accommodation for disability and pregnancy. The PSP is part of the employer's human resources structure, which requires centralized approval for compensation and disciplinary decisions.

Applied Physics Laboratory

The APL is a non-academic research facility operated by the employer in affiliation with the United States Department of Defense, which provides about 50 percent of the APL's funding. The APL is located on the employer's Seattle campus. It is one of 14 University Affiliated Research Centers (UARC) across the United States receiving funding from the military. The Executive Director of the APL reports to the employer's Vice Provost for Research and to the United States Navy UARC Program Director. The employer makes all personnel decisions for the APL.

RSEs at the APL work on a number of different research and engineering projects for the Navy and other sponsoring organizations. This includes work in the following departments: Air-Sea Interaction and Remote Sensing, Polar Science, Ocean Physics, Acoustics, Ocean Engineering, Industrial and Medical Ultrasound, Environmental and Information Systems (EIS), and Electronic and Photonic Systems (EPS). None of the 40 RSEs at issue in this case currently serve as principal investigators.

Some work performed by the employer requires a security clearance from the federal National Industrial Security Program. The employer is the secured entity, and employees who work on a classified project or will need access to classified material are required to have a security clearance in order to work on that project. Ninety percent of the employer's classified work is performed by employees of the APL. Approximately 170 of the APL employees have a security clearance, and

14 of the 40 RSEs at the APL have a security clearance. The security clearance process is lengthy, and it imposes a duty of confidentiality on employees related to their work at the APL. The employer's security compliance officer works at the APL.

The APL facility has more robust security than many other areas of the employer's Seattle campus. Employees who do not have security clearances but who have access to controlled unclassified information are required to sign a non-disclosure agreement.

RSEs at the APL have often worked and progressed in their career between the eight departments at APL. They can, but have rarely, worked for the employer outside APL. In addition to RSEs, the APL employs post-doctoral researchers and office workers. These employees are part of campus-wide bargaining units.

John Hamann is an RSE-4 at APL. Hamann began working at the APL as an RSE-3. Hamann's work involves converting signal processing algorithms between computer languages to improve efficiency and to enable the algorithms to work on a wider variety of hardware. Hamann works from home and in Henderson Hall on the employer's Seattle campus. Hamann has a security clearance. This means Hamann is not able to talk about specific details about some of his work outside the APL. Some of Hamann's work is unclassified. Hamann uses a security classification guide to tell him which parts of his work are classified. Hamann also is able to speak with a sponsor about classification issues and takes part in regular trainings regarding classification issues. Hamann does not work with RSEs outside of APL.

Arizona Breeding Colony

The employer operates a primate breeding colony located near Mesa, Arizona, on the land of the Salt River Pima-Maricopa Indian Community (SRPMIC). The breeding colony is part of the employer-run Washington National Primate Research Center (WaNPRC) which is based on the employer's Seattle campus. The WaNPRC conducts research on nonhuman primates. There are four RSEs employed at the ABC and approximately 20 RSEs located at the WaNPRC headquarters. These two groups of RSEs have limited contact with each other. They are supervised by different people, and they perform different work. At the ABC, the RSEs' primary duties

include a behavioral management program for the psychological well-being of the primates bred at the facility. Other research related to primates takes place at the WaNPRC Seattle headquarters. The RSEs in the two locations occasionally work together to deal with sick primates, and they also occasionally review each other's draft publications.

Jessica Toscano is an RSE-3 working at the ABC. Toscano has worked at the breeding colony for three years. Toscano began as an RSE-1 and was reclassified at an RSE-3 in 2021. Toscano's primary duties include overseeing the behavioral management program for the primates at the Arizona facility. One RSE-1 reports to Toscano, and Toscano is the hiring manager for another RSE-1 who will report to her. In Toscano's three years of employment at the ABC, there has been one work-related visit by Seattle area RSEs to the Arizona facility. Toscano has consulted via video with staff in Seattle regarding primates at either facility. The Seattle and ABC RSEs do not cover for or backfill each other's work. Toscano has looked at draft publications of work by Seattle staff and has periodically (two to three times a year) asked Seattle staff to review her draft research publications. Toscano's supervisor, Jim Murphy, is based in Arizona. Toscano does not report to anyone in Seattle. Murphy interviewed and recommended Toscano for hire.

The employer's lease for the ABC contains provisions obligating the employer to follow hiring preferences for SRPMIC or other tribal members and requiring the employer to follow SRPMIC ordinances. Article 36 of the lease between the employer and SRPMIC provides that SRPMIC members and qualified members of other federally recognized Indian Tribes be given a preference for hiring and promotion. The employer is obligated to notify the SRPMIC of all job openings and the job requirements for those openings for any position permanently located within the leased premises. The employer is not to employ a person who is not a member of the SRPMIC or another federally recognized Indian Tribe without giving the SRPMIC three days' notice.

Article II, Section 23 of the SRPMIC Code of Ordinances establishes that the SRPMIC is a "right to work" community. Article II, Section 23-25 provides that no person working for the SRPMIC or working on SRPMIC lands shall be required to join, affiliate, refrain from joining or affiliating with a labor organization, or pay dues or fees to a labor organization. Article II, Section 23-27(a) provides that employees may deduct union dues or fees from employee wages upon submission of

written authorization, and that the written authorization may be revoked at any time by the employee. Section 23-27(b) provides that the employer is not required to comply with an employee's request to deduct union dues or fees. Instead, the "(e)mployer[] shall determine, at [its] discretion, whether to accept the administrative burden of making such voluntary deductions."

Examples of RSE Work in Other Facilities

Department of Chemistry—Technical Services

Nicholas Breen is an RSE-4 working as the Director of Technical Services in the Department of Chemistry on the Seattle campus. Technical Services includes all the shared research support services for the department. This includes nuclear magnetic resonance (NMR) instruments, an electronics shop, mass spectrometry instruments, computer services, and an X-ray crystallography laboratory. Breen supervises the workers in these areas and consults with them about the various projects they are working on. Breen occasionally participates in the work. Breen is the principal investigator on a grant for a new NMR spectrometer. Breen does all financial reporting and budgeting for all parts of Technical Services and is ultimately responsible for setting and enforcing the policies for Technical Services. Breen conducts performance reviews of the employees in Technical Services. During the time that Breen has been the director, one hire has been made. Breen's recommendation to hire was followed by the Department of Chemistry and the employer's centralized human resources.

Rajan Paranji is an RSE-4 working as the facilities manager of the NMR instruments. These instruments are used to study molecules and are used by a range of users including students, faculty, researchers, and private sector users. NMR is used in a wide variety of scientific endeavors including chemistry, physics, biochemistry, and biology. Users are charged a rate to use the NMR facilities, which is set at the department level. Paranjji trains users on the safe and efficient use of the instruments and manages a calendar system to allocate usage of the instruments. Paranjji works with an associate manager, Adrienne Roehrich, an RSE-4 who also manages other work outside the NMR facility. A graduate student assistant reports to Roehrich.

Rachael Huffman is an RSE-3 and is an electrical engineer in charge of the electronics shop. Huffman assists users in getting older equipment to work and designing and building new

equipment for researchers. The shop also allows users to use the shop's equipment to make their own repairs. Huffman provides information to Nicholas Breen that is used to set the rates for the shop, such as current and projected spending and usage. Huffman manages the assignment of work in the shop and performs some of that work. The shop has historically had three people working it, but there are only two there now: Huffman and an RSE-1, William Beaty. Huffman is currently part of the hiring process to fill the additional position, which will be an RSE-2. Huffman wrote the job description for the new position and is taking the lead role on the hiring panel. Huffman reports to Nicholas Breen who is also on the hiring panel. Breen has assured Huffman that she will have final say on who is hired.

Martin Sadilek is an RSE-4 and is the manager of the mass spectrometry facility. Mass spectrometers measure the molecular weight and charge of materials. There are 12 spectrometers in the facility Sadilek manages. The facility is mainly used by chemistry graduate students, but some undergraduates and people from the private sector also use it. Sadilek manages the sign-ups for use of the facilities and provides training on the use of the equipment. Normally, Sadilek works with a colleague, but that position is currently not filled. Sadilek is part of the hiring process for a new person and is working with Nicholas Breen on this process. Sadilek provides Breen information needed to set rates for use of the mass spectrometer.

Werner Kaminsky is an RSE-3 and is an X-ray crystallographer. Kaminsky manages the use of two X-ray reflectometers that are used to create pictures of the crystal structure of various molecules. Kaminsky primarily works one-on-one with a graduate student assistant to process materials that various other researchers from around the world want to have analyzed. Kaminsky does not select the assistant and does not supervise the assistant for the purposes of human resources. Kaminsky reports to Nicholas Breen and provides information to set the budget for X-ray crystallography, but Kaminsky does not actually prepare the budget.

W.M. Keck Microscopy Center

Nathaniel Peters is an RSE-4 and is the manager of W.M. Keck Microscopy Center located on the employer's Seattle Campus. The Keck Center is operated by the Departments of Physiology and Biophysics and Pharmacology in the School of Medicine. It houses confocal microscopes that take

diagnostic images used in basic science research. The Keck Center is primarily used by principal investigators, faculty members, and other laboratory members in the School of Medicine. The Keck Center is a recharge center, meaning its services are billed to the various users. The rates are set by the employer's Management Accounting and Analysis department. Peters supplies the data needed to calculate the rates so that the Keck Center remains relatively revenue neutral. Peters is responsible for managing the day-to-day operations of the Keck Center, including training users on safe and efficient use of the electron microscopy equipment and managing a calendar reservation system. Peter carries out the mission of the Keck Center as defined by its managing departments He can make recommendations on changes but does not have the ultimate authority to implement changes.

ANALYSIS

Applicable Legal Standard

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). The purpose of this function is to ensure that there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

In making bargaining unit determinations, this agency considers 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(1). These criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). Not all of the 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 Standard

The starting point for unit determinations is the configuration proposed by the petitioner. *Sequim School District*, Decision 13337 (PECB, 2021). In this case, that is a certified, horizontal, employer-wide bargaining unit of all employees in the RSE-A through RSE-4 job classes. The RSEs working in both the APL and the ABC share a community of interest with the horizontal bargaining unit of all RSEs working for the employer. The RSEs at the APL and the ABC share sufficient duties, skills, and working conditions to enable the bargaining unit to effectively bargain with their employer. The differences between the employees in these two facilities with the other 1,700 RSEs in the bargaining unit do not erase that community of interest.

The RSEs at the APL, the ABC, and in other employer departments all perform scientific and/or engineering work. This work involves managing and using scientific and engineering instruments, documenting observations, creating new scientific knowledge, and disseminating that knowledge to others. For example, at the APL, John Hamann works on computer algorithms used by electronic equipment to improve the algorithms' efficiency and allow the algorithms to work with different equipment. The work performed by Hamann is not dissimilar to the work Rachael Huffman performs in Technical Services in repairing and reengineering older equipment to allow the equipment to continue to be used. Both Hamann and Huffman are required to report the results of their work to others in their department and both spend time working with hardware. Hamann is a computer engineer and Huffman is an electronic engineer; they both do engineering work. This is sufficient to form a community of interest based on common work.

At the ABC, Jessica Toscano observes and reports on primate behavior. This basic scientific research is not dissimilar to the observation and reporting on crystallography images performed by Werner Kaminsky in Technical Services. While these two areas of research are different in

content, they share the similarity of being basic scientific research. The ABC RSEs collaborate with the Seattle-based RSEs, albeit on a limited basis. The evidence also shows that the employer treats the ABC RSEs substantially the same as all other RSEs despite their geographic distance from the employer's other employees. This is sufficient to form a community of interest.

In addition to performing scientific and engineering work, broadly defined, all RSEs have historically been subject to the employer's centralized human resources and compensation policies. This suggests that the employer is able to effectively form policies that apply to all RSEs and, thus, would be able bargain collectively with all of them in one unit.

By their nature, the RSEs work in silos that are generally defined by their particular assignment. The degree of interaction between the RSEs outside the boundaries of their particular assignment and/or unit is limited and irregular. There is no evidence that the infrequent interaction between the RSEs in the APL or ABC with the rest of the RSEs in the bargaining unit is markedly dissimilar to that between the RSEs presently in the bargaining unit.

The employer contends that the nature of the APL as a UARC facility, the requirement for security clearances for some work, and the different security requirements for APL facilities disrupt any community of interest. These differences do not disrupt an otherwise sufficient community of interest. As a UARC facility, the APL is not so different from other parts of the employers' operation that are funded by grants and may have special conditions attached to them. The evidence presented suggests that the employer has always maintained the right to make personnel decisions despite the existence of grant funding or contracts.

Similarly, the requirement for security clearances surrounding some of the work at the APL is not, by itself, sufficient to disrupt a community of interest between RSEs at the APL and the other RSEs in the bargaining unit. While this agency has not expressly addressed the singular impact of the existence of a security clearance, the National Labor Relations Board (NLRB) has concluded that the existence of a security clearance alone does not disrupt a community of interest. *See Exemplar, Inc.*, 363 NLRB 1500 (2016) (citing *Cal-Central Press*, 179 NLRB 162, 164 (1969) (finding community of interest among employees with similar working conditions even though

some of the employees possessed security clearances and those who did not had to be isolated from classified projects)).

Additionally, not all RSEs at the APL possess or are required to possess a security clearance. Approximately 14 of 40 RSEs at the APL have a security clearance. There are also a handful of RSEs or other employees outside the APL whose work requires them to have the same type of security clearance or other similar limiting clearances. The security clearance, even as a condition of employment, does not fundamentally alter their work as scientists and engineers, which is the basis of the community of interest between them and the other RSEs.

While the employer speculates about potential problems with bargaining and representation related to security clearances, it did not identify any specific problems that have occurred. Hamann testified that his security clearance does not change the work he does; it merely affects his communication about it.

The employer is familiar with managing employees in other job classes in the APL in horizontal bargaining units. While those employees may not possess security clearances, they are still subject to the additional security requirements of the APL facilities. The employer's security officer testified there have not been any security-related issues with the unionized postdocs at APL who are subject to the many of the same security requirements as the APL RSEs.

Finally, with respect to the APL, the challenges asserted by the employer exist now—perhaps to a lesser degree given the current status of the employees. Like the employees in the ABC, the employer is not asserting that the RSEs in the APL are excluded from bargaining. So, these challenges would exist regardless of the unit configuration and do not erase the community of interest to the bargaining unit.

With respect to the RSEs at the ABC, the employer also contends that there is no community of interest to the bargaining unit because the employees at the ABC work out of state and are subject to the laws of Arizona and the SRPMIC. According to the employer, some of these laws conflict

with Washington law or general bargaining practices that preclude a community of interest. The employer's assertion does not preclude finding a community of interest.¹

The employer invites the adoption of the "single facility" presumption employed by the NLRB and find that the geographic isolation of the Arizona facility means that the RSEs there do not share of community of interest with the other RSEs in the bargaining unit. That presumption is unnecessary given that this agency starts with the petitioned-for bargaining unit configuration and begins its community of interest analysis. *See Sequim School District*, Decision 13337. Regardless, the NLRB would not apply that presumption to this case. The "single facility" presumption is a holding by the NLRB that a petition for a single facility is presumptively appropriate. *California Pacific Medical Center*, 357 NLRB 197 (2011); *Dixie Bell Mills, Inc.*, 139 NLRB 629 (1962). The presumption only applies when the petition is for a single facility and has no applicability when the petition is for a multilocation bargaining unit. Instead, the NLRB applies its traditional community of interest analysis. *Sleepy's, Inc.*, 355 NLRB 132 (2010); *National Labor Relations Board v. Carson Cable TV*, 795 F.2d 879, 887 (9th Cir. 1986).

While geographic proximity might be evidence of working conditions, it is not a stand-alone criterion for determining a community of interest under Washington law. If it were, many of the employer-wide units (including the current employer's units) certified by this agency might be inappropriate. Indeed, the employer has employees in other bargaining units who work out of state and are subject to another state's laws.

¹ The employer's reliance on *Edmonds Community College*, Decision 3698 (CCOL, 1991) and *Green River Community College*, Decision 4491 (CCOL, 1993), *aff'd*, *Green River Community College*, Decision 4491-A (CCOL, 1994) is not persuasive. The employer relies on these decisions in support of its assertion that the location and laws of the location of the ABC preclude finding a community of interest. There are significant distinctions with each decision. In *Edmonds Community College*, which involved an unfair labor practice complaint and not a representation petition, the college's collective bargaining agreement specifically excluded employees working outside of the state. *Edmonds Community College*, Decision 3698. In *Green River Community College*, the employer sought to exclude academic employees working at an off-campus location, but the Commission upheld the Executive Director's determination that the applicable bargaining statute for academic employees required a single bargaining unit for the community college district. *Green River Community College*, Decision 4491-A.

The SRPMIC Code of Ordinances does not disrupt or preclude a community of interest between the ABC RSEs and the bargaining unit. Article II, Section 23-25 of the SRPMIC Code of Ordinances is consistent with laws governing public employees in Washington. Since 2018, state and local laws compelling employees to pay union dues or an agency fee are unconstitutional. *See Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). Washington's laws are in compliance with the Court's decision in *Janus*. RCW 41.56.080 provides that a certified bargaining representative is required to represent all employees in the bargaining unit without regard to membership. There are some differences between Article II, Section 23-27(a) and RCW 41.56.110 in how employees submit a request for deduction of dues or fees. Section 23-27(a) requires the request be written while RCW 41.56.110 allows for voice authorization. These differences do not create an irreconcilable conflict or preclude finding a community of interest.

The employer also asserts that RCW 41.56.110, which requires the employer to honor dues deduction requests from bargaining unit employees, conflicts with Section 23-27(b), which gives the employer the discretion to "accept the administrative burden" of making the deduction. The employer contends that this conflict precludes a community of interest. That assertion is without merit. The employer is not asserting that these employees are precluded from bargaining. Rather, it is asserting there is no community of interest by virtue of the ordinance provision. If, these employees were found to not have a community of interest, they could form their own bargaining unit. This same "conflicting" provision would still exist but have no bearing on community of interest. Also, the fact that the ordinance may create questions about the rights and obligations of the employer does not squelch the community of interest shared by the RSEs with the bargaining unit. Any administrative burden to the employer for deducting dues for the four RSEs at the ABC, if they so choose, when it is already required to deduct dues upon request by every other employee in a bargaining unit is questionable.

Finally, the hiring preference provisions of Article 36 of the lease between the employer and the SRPMIC do not preclude a community of interest. Article 36 of the lease provides that SRPMIC members and qualified members of other federally recognized Indian Tribes be given a preference

for hiring and promotion. The employer is obligated to notify the SRPMIC of all job openings and the job requirements for those openings for any position permanently located within the leased premises. The employer is not to employ a person who is not a member of the SRPMIC or other federally recognized Indian Tribe without giving the RSPMIC three days' notice. That provision does not create a conflict. Rather, it is a matter for the parties to consider in negotiating a collective bargaining agreement. Additionally, the evidence calls into question to what degree the employer applies this provision. Eugene Sanchez, the Human Resources Administrator for the WaNPRC, was not aware of any hiring preference. There is no indication in the employer's central hiring system that would note any preference for a candidate for the ABC.

CONCLUSION

The petitioned-for RSEs at the ABC and APL have a sufficient similarity in skills, duties, and working conditions with the rest of the RSE bargaining unit. They all perform the same spectrum of work set for the job class. The employer administers all the regulatory aspects of grants and contracts. The RSEs' working conditions are generally within the boundaries set by the Professional Staff Program. There is a community of interest between the APL and ABC RSEs and the current bargaining unit RSEs. Absent being excluded on the additional challenges pending, the petitioned-RSEs working at the APL and ABC shall be included in the bargaining unit.

FINDINGS OF FACT

1. The University of Washington is a public employer with the meaning of RCW 41.56.030(13).
2. The UW Researchers United/UAW 4121 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union filed a petition to represent a bargaining unit of approximately 1,900 Research Scientist/Engineers (RSEs) who work for the University of Washington (employer). The petitioned-for unit includes all employees of the employer in RSE Assistant (RSE-A), RSE-1, RSE-2, RSE-3, and RSE-4 job classifications.

4. The employer objected to the inclusion of approximately 214 employees on three grounds: a lack of community interest for two groups of employees, statutory exclusions pursuant to RCW 41.56.021(1)(b)(i–iv), and supervisory objections. The employer asserts that the approximately 40 RSEs working at the Applied Physics Laboratory (APL) and the four RSEs working at the Arizona Breeding Colony (ABC) do not share a community of interest with the rest of the bargaining unit.
5. An election was conducted, and an interim certification was issued pending the status of the objected-to employees. *University of Washington*, Decision 13519 (PECB, 2022).
6. The employer operates a number of scientific research and engineering facilities. The employer's Office of Research oversees pre-award aspects of research and administers all the regulatory aspects of grants and contracts. RSEs perform a wide variety of scientific and engineering work across the employer's departments and facilities. This work is done in numerous settings including clinics or laboratories, in the field, and aboard research vessels.
7. All RSEs have historically been covered by the employer's Professional Staff Program (PSP). The PSP covers certain employees exempt from the state civil service system who are not represented by a union. The PSP dictates among other things, how employees covered by the program are hired, how wages are set, how performance is evaluated, and how employee complaints are handled. The PSP also sets forth the policies for leave, benefits, and accommodation for disability and pregnancy. The PSP is part of the employer's human resources structure, which requires centralized approval for compensation and disciplinary decisions.
8. RSE-As perform the following type of work: solving well-defined problems using accepted methods and techniques; conducting experiments or tests in the laboratory or in the field making measurements and recording data; contributing data for use in reports or publications; working with others to accomplish team objectives.

9. RSE-1s perform similar work to RSE-As except that they may exercise more judgment in selecting the methods and techniques to apply to a given project.
10. RSE-2s perform more complex tasks than the RSE-As and RSE-1s. They may lead specific tasks on projects; assist in the preparation of reports, papers, or presentations; and participate in the planning of projects and procurement of funding.
11. RSE-3s operate more independently. They evaluate, select, and apply standardized scientific or engineering procedures to assignments of moderate complexity. They manage projects and author or coauthor papers and identify and develop new funding sources.
12. RSE-4s are fully independent researchers. They plan and execute laboratory research. They may devise new approaches to problems, and they use a wide application of complex principles, theories, and concepts in their specific field. They may chair technical meetings and manage multiple or significant projects. They initiate new projects and seek funding for them.
13. The APL is a non-academic research facility operated by the employer in affiliation with the United States Department of Defense, which provides about 50 percent of the APL's funding. The APL is located on the employer's Seattle campus. It is one of 14 University Affiliated Research Centers (UARC) across the United States receiving funding from the military. The Executive Director of the APL reports to the employer's Vice Provost for Research and to the United States Navy UARC Program Director. The employer makes all personnel decisions for the APL.
14. RSEs at the APL work on a number of different research and engineering projects for the Navy and other sponsoring organizations. This includes work in the following departments: Air-Sea Interaction and Remote Sensing, Polar Science, Ocean Physics, Acoustics, Ocean Engineering, Industrial and Medical Ultrasound, Environmental and Information Systems (EIS), and Electronic and Photonic Systems (EPS).
15. Some work performed by the employer requires a security clearance from the federal National Industrial Security Program. The employer is the secured entity, and employees

who work on a classified project or will need access to classified material are required to have a security clearance in order to work on that project. Ninety percent of the employer's classified work is performed by employees of the APL. Approximately 170 of the APL employees have a security clearance, and 14 of the 40 RSEs at the APL have a security clearance.

16. The APL facility has more robust security than many other areas of the employer's Seattle campus. Employees who do not have security clearances but who have access to controlled unclassified information are required to sign a non-disclosure agreement.
17. In addition to RSEs, the APL employs post-doctoral researchers and office workers. These employees are part of campus wide bargaining units.
18. John Hamann is an RSE-4 at APL. Hamann began working at the APL as an RSE-3. Hamann's work involves converting signal processing algorithms between computer languages to improve efficiency and to enable the algorithms to work on a wider variety of hardware. Hamann works from home and in Henderson Hall on the employer's Seattle campus. Hamann has a security clearance. This means Hamann is not able to talk about specific details about some of his work outside the APL. Some of Hamann's work is unclassified. Hamann uses a security classification guide to tell him which parts of his work are classified.
19. The employer operates a primate breeding colony located near Mesa, Arizona, on the land of the Salt River Pima-Maricopa Indian Community (SRPMIC). The breeding colony is part of the employer-run Washington National Primate Research Center (WaNPRC) which is based on the employer's Seattle campus. The WaNPRC conducts research on nonhuman primates.
20. There are four RSEs employed at the ABC and approximately 20 RSEs located at the WaNPRC headquarters. These two groups of RSEs have limited contact with each other. They are supervised by different people, and they perform different work. At the ABC, the

- RSEs' primary duties include a behavioral management program for the psychological well-being of the primates bred at the facility.
21. Other research related to primates takes place at the WaNPRC Seattle headquarters. The RSEs in the two locations occasionally work together to deal with sick primates, and they also occasionally review each other's draft publications.
 22. Jessica Toscano is an RSE-3 working at the ABC. Toscano began as an RSE-1 and was reclassified at an RSE-3 in 2021. Toscano's primary duties include overseeing the behavioral management program for the primates at the Arizona facility. In Toscano's three years of employment at the ABC, there has been one work-related visit by Seattle area RSEs to the Arizona facility.
 23. Toscano has looked at draft publications of work by Seattle staff and has periodically (two to three times a year) asked Seattle staff to review her draft research publications. Toscano's supervisor, Jim Murphy, is based in Arizona. Toscano does not report to anyone in Seattle. Murphy interviewed and recommended Toscano for hire.
 24. The employer's lease for the ABC contains provisions obligating the employer to follow hiring preferences for SRPMIC or other tribal members and requiring the employer to follow SRPMIC ordinances.
 25. Article 36 of the lease between the employer and SRPMIC provides that SRPMIC members and qualified members of other federally recognized Indian Tribes be given a preference for hiring and promotion. The employer is obligated to notify the SRPMIC of all job openings and the job requirements for those openings for any position permanently located within the leased premises. The employer is not to employ a person who is not a member of the SRPMIC or another federally recognized Indian Tribe without giving the SRPMIC three days' notice.
 26. Article II, Section 23 of the SRPMIC Code of Ordinances establishes that the SRPMIC is a "right to work" community. Article II, Section 23-25 provides that no person working for the SRPMIC or working on SRPMIC lands shall be required to join, affiliate, refrain from

- joining or affiliating with a labor organization, or pay dues or fees to a labor organization. Article II, Section 23-27(a) provides that employees may deduct union dues or fees from employee wages upon submission of written authorization, and that the written authorization may be revoked at any time by the employee.
27. Section 23-27(b) provides that the employer is not required to comply with an employee's request to deduct union dues or fees. Instead, the "(e)mployer[] shall determine, at [its] discretion, whether to accept the administrative burden of making such voluntary deductions."
 28. Nicholas Breen is an RSE-4 working as the Director of Technical Services in the Department of Chemistry on the Seattle campus. Technical Services includes all the shared research support services for the department. This includes nuclear magnetic resonance (NMR) instruments, an electronics shop, mass spectrometry instruments, computer services, and an X-ray crystallography laboratory.
 29. Rajan Paranjji is an RSE-4 working as the facilities manager of the NMR instruments. These instruments are used to study molecules and are used by a range of users including students, faculty, researchers, and private sector users. NMR is used in a wide variety of scientific endeavors including chemistry, physics, biochemistry, and biology. Paranjji trains users on the safe and efficient use of the instruments and manages a calendar system to allocate usage of the instruments.
 30. Rachael Huffman is an RSE-3 and is an electrical engineer in charge of the electronics shop. Huffman assists users in getting older equipment to work and designing and building new equipment for researchers. The shop also allows users to use the shop's equipment to make their own repairs.
 31. Martin Sadilek is an RSE-4 and is the manager of the Mass Spectrometry facility. Mass spectrometers measure the molecular weight and charge of materials. There are 12 spectrometers in the facility Sadilek manages. The facility is mainly used by chemistry graduate students, but some undergraduates and people from the private sector also use it.

32. Werner Kaminsky is an RSE-3 and is an X-ray crystallographer. Kaminsky manages the use of two X ray reflectometers that are used to create pictures of the crystal structure of various molecules. Kaminsky primarily works one-on-one with a graduate student assistant to process materials that various other researchers from around the world want to have analyzed.
33. Nathaniel Peters is an RSE-4 and is the manager of W.M. Keck Microscopy Center located on the employer's Seattle Campus. The Keck Center is operated by the Departments of Physiology and Biophysics and Pharmacology in the School of Medicine. It houses confocal microscopes that take diagnostic images used in basic science research. The Keck Center is primarily used by principal investigators, faculty members, and other laboratory members in the School of Medicine.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 6 through 18 and findings of fact 28 through 33, the petitioned-for employees at the Applied Physics Laboratory share a community of interest with the certified bargaining unit described in finding of fact 5.
3. Based upon findings of fact 6 through 12 and findings of fact 19 through 33, the petitioned-for employees at the Arizona Breeding Colony share a community of interest with the certified bargaining unit described in finding of fact 5.

ORDER

1. Absent being excluded on the additional challenges pending, the employees in RSE Assistant (RSE-A), RSE-1, RSE-2, RSE-3, and RSE-4 job classifications working at the Applied Physics Laboratory and Arizona Breeding Colony shall be included in the bargaining unit described in *University of Washington*, Decision 13519 (PECB, 2022).

2. Nothing in this order infringes upon the employer's right to continue to challenge the inclusion of individual employees working at the Applied Physics Laboratory and Arizona Breeding Colony in the bargaining unit described in finding of fact 5 based upon other grounds, such as statutory or supervisory exclusions.

ISSUED at Olympia, Washington, this 30th day of August, 2022.

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

ISSUED ON 08/30/2022

DECISION 13519-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 134711-E-21

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