

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

AMERICAN FEDERATION OF TEACHERS
WASHINGTON

Involving certain employees of:

WALLA WALLA COMMUNITY COLLEGE

CASE 136130-E-23

DECISION 13801 - PECB

ORDER ON ELIGIBILITY

Karen Strickland, President, and *Jacqui Cain*, Project Organizer, for the American Federation of Teachers Washington.

Bryan Ovens, Assistant Attorney General, Attorney General Robert K. Ferguson, for Walla Walla Community College

On January 5, 2023, the American Federation of Teachers Washington (union) filed a petition to represent “[a]ll professional staff employees of Walla Walla Community College [employer] as referenced by RCW 41.56.021.” The employer objected to the inclusion of a number of employees. The number of objections in this case did not impact the outcome of an election. So, an election was conducted, and an interim certification was issued pending the status of the objected-to employees. *Walla Walla Community College*, Decision 13666 (PECB, 2023).¹ Prior to hearing, the employer’s objections were reduced to a single objection: whether Assistant Dean of Enrollment Services Tessa Kimball was statutorily excluded pursuant to RCW 41.56.021(1)(b). Hearing Officer Loyd Willaford conducted a hearing by video conference on September 15 and October 20, 2023. The parties filed post-hearing briefs on December 11 and 12, 2023, to complete the record.

¹ The interim order described the bargaining unit as “[a]ll professional staff employees referenced by RCW 41.56.021 working at Walla Walla Community College, excluding supervisors, confidential employees, employees referenced in RCW 41.56.021(1), and all other employees.”

Based on the evidence produced at hearing, Assistant Dean of Enrollment Services Tessa Kimball is a manager who directs the work of an administrative unit—Enrollment Services. Accordingly, Kimball is exempt from collective bargaining under RCW 41.56.021(1)(b)(i).

BACKGROUND

Walla Walla Community College is a higher education institution that serves approximately 3,000 students and has approximately 600 employees. It is organized into different programs and departments. The second most significant department leadership position is Vice President of Student Services. Vice President Graydon Stanley currently directs the Student Services program and is responsible for overseeing policies, programs, and the delivery of services while delegating authority to the Deans or Assistant Deans who report to him. Stanley reports directly to the President of the college. Stanley oversees approximately 11 units. One of those units is the administrative unit, Enrollment Services.

In 2019, due in part to budget reductions and consolidations, the employer engaged in a comprehensive reorganization. As part of the reorganization, two types of reporting structures were created: 1) Assistant Deans report to Deans, who report to a Vice President and 2) Assistant Deans report directly to a Vice President. The employer also created Enrollment Services as a unit within Student Services. Enrollment Services consists of the Office of Student Financial Support, the Office of Outreach, and the Office of Admissions/ Registrar. Tessa Kimball was appointed Assistant Dean of Enrollment Services and is the only individual to serve in this position. Each of the offices in Enrollment Services has a Director who supervises the employees in those offices. The Directors also perform the day-to-day work of these offices. All the Directors report to Kimball, who currently reports to Stanley.

As Assistant Dean of Enrollment Services, Kimball is charged with providing leadership and vision for student services, programs, and functions that constitute student enrollment, including outreach, admissions and registration, student records, financial aid, and testing. Kimball implements the vision for Enrollment Services and is responsible for staffing, the division of labor among the staff, training, and accountability of the staff. She has budget authority and approves expenditure requests. Budget expenditures include travel, office furniture, training and

professional development, and subscriptions to financial aid registration. Kimball has the authority to propose the creation of new positions. She developed the job responsibilities for the Assistant Director of Financial Aid and had them approved by Human Resources in December 2022. Kimball also approves the hiring of Directors who report to her. Kimball is in the process of creating a policy manual for enrollment services and has authority to delegate who works on drafting the policies. Kimball will then review the policies and determine if they are complete. In addition to these duties, she attends regular management meetings in Enrollment Services and in the broader Student Services division. Kimball serves on committees that recommend policies for the employer.

Kimball directly supervises five employees—three Directors and two Specialists. She makes suggestions to Directors regarding the assignment of work. Kimball also possesses the authority to delegate work to people reporting to her and has done so. Kimball has completed performance reviews of her subordinates, which includes setting goals and providing an evaluation summary. The evaluation is signed off on by Stanley. Kimball develops training plans and is responsible for determining whether employees have finished the plan and can move up in classification. She also participates in the disciplinary process for employees in Enrollment Services. In one instance, Kimball brought a discipline issue to the Vice President of Student Services at the time, who then decided to terminate the employee and had the termination letter drafted. Kimball expressed concern about the impact the termination would have on the functionality of the office and instead recommended a 12-month probationary plan. The employer agreed to follow Kimball's recommendation instead of terminating the employee. Kimball oversaw the probationary period.

Due to staffing shortages during the COVID-19 pandemic, loss in staff, and medical leaves, Kimball has also performed some of the day-to-day work of the offices within Enrollment Services, including Financial Support and the Registrar's Office. Kimball and her supervisors have different estimates as to the amount of time that Kimball has spent and currently spends on these fill-in duties. Both Kimball and her supervisors agree that the amount of time was reduced in 2023 as compared to 2022 and will continue to reduce. They also agree that the intent moving forward is for Kimball to not perform this fill-in work. Kimball testified that this fill-in work was in addition to her normal duties, which equated to a 60-hour work week.

ANALYSISApplicable Legal Standard(s)

RCW 41.56.021 provides collective bargaining rights for higher education staff who are exempt from chapter 41.06 RCW. *Tacoma Community College*, Decision 12872 (PSRA, 2018); *University of Washington*, Decision 13519-B (PECB, 2022). RCW 41.56.021 also exempts a number of staff from collective bargaining. 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 are exempt from collective bargaining. 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). *University of Washington*, Decision 13519-B.

The individual provisions of RCW 41.56.021 must be read disjunctively. *Everett Community College*, Decision 10392 (PECB, 2009), *aff'd*, Decision 10392-B (PECB, 2010). The title of a position is not dispositive of the unit placement of a position because the actual duties are examined when determining whether a position is included or excluded from a bargaining unit. *University of Washington*, Decision 13519-B (citing *Everett Community College*, 10392).

Statutory provisions that preclude employees from collective bargaining rights must be construed narrowly. *International Association of Firefighters, AFL-CIO, Local 469 v. City of 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. *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, 546 (1996).

Application of Standard

Assistant Dean of Enrollment Services Tessa Kimball is a manager who directs the work of an administrative unit— Enrollment Services— and is exempt from collective bargaining under RCW 41.56.021(1)(b). An administrative unit is a unit that is administered or managed as a distinct entity within a larger entity or program. *University of Washington*, Decision 13519-B (citing *Everett Community College*, 10392-B). “An administrative unit may also be a ‘vertical’ unit of an employer’s workforce, regardless of how other employees are organized for purposes of collective bargaining.” *Id.* “‘Direct,’ as used in RCW 41.56.021(1)(b)(i), has been interpreted to ‘regulate the activity or course of’ or ‘to guide or supervise.’” *Id.*

Enrollment Services is an administrative unit. It is a distinct subdivision or office of the program— Student Services— and ultimately of the college itself. Enrollment Services oversees all aspects of college recruitment and enrollment, from outreach, admissions, and registration, to student records, financial aid, and testing. Kimball directs the work of this unit.

Kimball provides leadership over the unit. She implements the priorities and vision for Enrollment Services and is responsible for staffing, the division of labor among the staff, training, and accountability of the staff. Kimball has budget authority and approves expenditure requests. Budget expenditures include travel, office furniture, training and professional development, and subscriptions to financial aid registration. Kimball has the authority to propose the creation of new positions. She developed the job responsibilities for the Assistant Director of Financial Aid and had them approved by Human Resources in December 2022. Kimball also approves the hiring of Directors who report to her. She is creating a policy manual for enrollment services and has authority to delegate who works on drafting the policies. She reviews the policies and determines if they are complete. In addition to these duties, Kimball attends regular management meetings in Enrollment Services and in the broader Student Services division. Kimball serves on committees that recommend policies for the employer.

The union contends that, because of the amount of fill-in work that Kimball has performed during her tenure as Assistant Dean of Enrollment Services, she is effectively doing the same work as the members of the bargaining unit and thus shares a community of interest with that group. The issue

is not one of community of interest. Rather, the issue is whether Kimball is exempt from collective bargaining pursuant to RCW 41.56.021(1)(b). The fill-in work would only be an issue, in this instance, if Kimball was performing the same work as members of the bargaining unit and not performing the exempt duties in RCW 41.56.021(1)(b)(i).

Kimball has continuously directed the work of Enrollment Services. Kimball did perform some fill-in work or work performed by bargaining unit members, primarily during the pandemic and the staffing shortages since then, but the amount of time that Kimball has performed fill-in work has decreased over the past year, and the fill-in work is not expected to continue. Because Kimball directs the work of an administrative unit, Enrollment Services, she is exempt from collective bargaining under RCW 41.56.021(1)(b)(i). Kimball is excluded from the bargaining unit.²

FINDINGS OF FACT

1. The Walla Walla Community College (employer) is a public employer within the meaning of RCW 41.56.030(13).
2. The American Federation of Teachers Washington is a bargaining representative within the meaning of RCW 41.56.030(2).
3. On January 5, 2023, the union filed a petition to represent “[a]ll professional staff employees of Walla Walla Community College [employer] as referenced by RCW 41.56.021.”
4. The interim order certified the bargaining unit and described it as “all professional staff employees referenced by RCW 41.56.021 working at Walla Walla Community College, excluding supervisors, confidential employees, employees referenced in RCW 41.56.021(1), and all other employees.”

² The employer also asserted that Kimball was exempt under RCW 41.56.021(1)(b)(ii)-(iv). Since Kimball is exempt under RCW 41.56.021(1)(b)(i), it is not necessary to reach the question whether Kimball is also exempt under RCW 41.56.021(1)(b)(ii)-(iv).

5. Prior to hearing, the employer's objections were reduced to a single objection: whether Assistant Dean of Enrollment Services Tessa Kimball was statutorily excluded pursuant to RCW 41.56.021(1)(b).
6. Walla Walla Community College is a higher education institution that serves approximately 3,000 students and has approximately 600 employees. It is organized into different programs and departments. The second most significant department leadership position is Vice President of Student Services. Vice President Graydon Stanley currently directs the Student Services program and is responsible for overseeing policies, programs, and the delivery of services while delegating authority to the Deans or Assistant Deans who report to him. Stanley reports directly to the President of the college. Stanley oversees approximately 11 units. One of those units is the administrative unit, Enrollment Services.
7. In 2019, due in part to budget reductions and consolidations, the employer engaged in a comprehensive reorganization. As part of the reorganization, two types of reporting structures were created: 1) Assistant Deans report to Deans, who report to a Vice President and 2) Assistant Deans report directly to a Vice President. The employer also created Enrollment Services as a unit within Student Services. Enrollment Services consists of the Office of Student Financial Support, the Office of Outreach, and the Office of Admissions/Registrar. Tessa Kimball was appointed Assistant Dean of Enrollment Services and is the only individual to serve in this position. Each of the offices in Enrollment Services has a Director who supervises the employees in those offices. The Directors also perform the day-to-day work of these offices. All the Directors report to Kimball, who currently reports to Stanley.
8. As Assistant Dean of Enrollment Services, Kimball is charged with providing leadership and vision for student services, programs, and functions that constitute student enrollment, including outreach, admissions and registration, student records, financial aid, and testing. Kimball implements the vision for Enrollment Services and is responsible for staffing, the division of labor among the staff, training, and accountability of the staff. She has budget authority and approves expenditure requests. Budget expenditures include travel, office furniture, training and professional development, and subscriptions to financial aid

registration. Kimball has the authority to propose the creation of new positions. She developed the job responsibilities for the Assistant Director of Financial Aid and had them approved by Human Resources in December 2022. Kimball also approves the hiring of Directors who report to her. Kimball is in the process of creating a policy manual for enrollment services and has authority to delegate who works on drafting the policies. Kimball will then review the policies and determine if they are complete. In addition to these duties, she attends regular management meetings in Enrollment Services and in the broader Student Services division. Kimball serves on committees that recommend policies for the employer.

9. Kimball directly supervises five employees—three Directors and two Specialists. She makes suggestions to Directors regarding the assignment of work. Kimball also possesses the authority to delegate work to people reporting to her and has done so. Kimball has completed performance reviews of her subordinates, which includes setting goals and providing an evaluation summary. The evaluation is signed off on by Stanley. Kimball develops training plans and is responsible for determining whether employees have finished the plan and can move up in classification.
10. Kimball also participates in the disciplinary process for employees in Enrollment Services. In one instance, Kimball brought a discipline issue to the Vice President of Student Services at the time, who then decided to terminate the employee and had the termination letter drafted. Kimball expressed concern about the impact the termination would have on the functionality of the office and instead recommended a 12-month probationary plan. The employer agreed to follow Kimball's recommendation instead of terminating the employee. Kimball oversaw the probationary period.
11. Due to staffing shortages during the COVID-19 pandemic, loss in staff, and medical leaves, Kimball has also performed some of the day-to-day work of the offices within Enrollment Services, including Financial Support and the Registrar's Office. Kimball and her supervisors have different estimates as to the amount of time that Kimball has spent and currently spends on these fill-in duties. Both Kimball and her supervisors agree that the amount of time was reduced in 2023 as compared to 2022 and will continue to reduce.

They also agree that the intent moving forward is for Kimball to not perform this fill-in work. Kimball testified that this fill-in work was in addition to her normal duties, which equated to a 60-hour work week.

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 4 and 6 through 11, the Assistant Dean of Enrollment Services directs the work of an administrative unit and is exempt from collective bargaining under RCW 41.56.021(1)(b)(i).

ORDER

The Assistant Dean of Enrollment Services shall be excluded from the professional staff bargaining unit. Absent the filing of an appeal under WAC 391-25-660, a final certification will be issued consistent with this order of eligibility.

ISSUED at Olympia, Washington, this 11th day of March, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", written over the printed name.

MICHAEL P. SELLARS, Executive Director