

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

THE EVERGREEN STATE COLLEGE

and

WASHINGTON FEDERATION OF STATE
EMPLOYEES

For clarification of an existing bargaining unit.

CASE 136212-C-23

DECISION 13816 - PSRA

ORDER CLARIFYING BARGAINING
UNIT

Herb Harris, Manager of PERC Activities, for the Washington Federation of State Employees.

Laurel Uznanski, Vice President of Human Resources, for the Evergreen State College.

The Evergreen State College (employer) and Washington Federation of State Employees (union) jointly filed this unit clarification petition seeking to amend the definition of the union's supervisory campus-wide bargaining unit. The parties seek this change following statutory and rule changes that eliminated the exemption for certain part-time employees. The petition is granted, and the bargaining unit description shall be amended.

ANALYSIS

Chapter 41.80 RCW grants collective bargaining rights to certain state employees, including employees at the state's higher education institutions. Employee covered by chapter 41.80 RCW are defined as "any employee, including employees whose work has ceased in connection with the pursuit of lawful activities protected by this chapter, *covered by chapter 41.06 RCW.*" (emphasis added). RCW 41.80.005(6). Thus, eligibility for bargaining under chapter 41.80 RCW is predicated on the employee being covered by the state civil service law, chapter 41.06 RCW.

Chapter 41.06 RCW applies to each state agency and higher education institution and each employee of those entities unless otherwise specifically excluded or exempted. The statute exempts several different types of employees. RCW 41.06.040. Prior to 2018, certain types of part-time employees were exempt from coverage under chapter 41.06 RCW and chapter 41.80 RCW. Laws of 2018, ch. 246. Specifically, RCW 41.06.070(1)(I) then exempted the following types of employees:

Inmates, students, part time, or temporary employees, and part time professional consultants as defined by the Washington personnel resources board.

Id.

Pursuant to the authority granted in then RCW 41.06.070(1)(I), the Washington Personnel Resources Board adopted WAC 357-04-045 to further define part-time and temporary employees and define the eligibility of those employees to engage in collective bargaining. *In Re WAC 391-35-356*, Decision 10510 (2009). Under this rule, all part-time and temporary employees working less than 1050 hours in an any twelve-month consecutive period are exempt from the remainder of chapter 357 WAC. WSR 04-15-016. The rule further provides that those employees working between 350 and 1050 hours in any twelve-month consecutive period may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the Public Employment Relations Commission. *Id.* Only those part-time and temporary employees working less than 350 hours in any twelve-month consecutive period were completely exempted from chapter 41.06 RCW and chapter 41.80 RCW.

At the time chapter 41.80 RCW was enacted and WAC 357-04-045 was adopted, the Commission had a rule regarding part-time employees. WAC 391-35-350 provides that it is presumptively appropriate to include with full-time employees those part-time employees who perform the same work as their full-time counterparts, provided the part-time employees work at least one-sixth of the number of hours normally worked by a full-time employee.

Following the adoption of WAC 357-04-045, the Commission adopted WAC 391-35-356 to apply specifically to employees covered by chapter 41.06 RCW working less than full-time. That rule states:

Special provision—State civil service employees.

(1) For employees covered by chapter 41.06 RCW who work less than full-time, it shall be presumptively appropriate to include those employees in the same bargaining unit with full-time employees performing similar work.

(2) The presumption set forth in this section is intended to avoid excessive fragmentation and a potential for conflicting work jurisdiction claims which would otherwise exist in separate units of full-time and less than full-time employees.

(3) The presumption set forth in this section shall be subject to modification by adjudication.

Repeal of Exemption for Part-Time Employees

In 2018, the legislature repealed the exemption for part-time employees. Laws of 2018, ch. 246. In 2021 the Office of Financial Management amended WAC 357-04-045 to repeal any reference to part-time employees. WSR 21-14-042.¹ The amendment became effective July 1, 2022. WSR 21-01-153. Temporary employees remain exempt under RCW 41.06.070(1). For temporary employees the rule operates in the same fashion as before the 2022 amendments. Only those temporary employees working less than 350 hours in a twelve-month consecutive period are completely exempt from chapter 41.06 RCW. Those temporary employees working between 350 and 1050 hours remain exempt from the civil service rules, chapter 357 WAC, but still may be included in an appropriate bargaining unit. WAC 357-04-045.

¹ In 2011, the director of the Office of Financial Management became the rulemaking authority under chapter 41.06 RCW. Laws of 2011, ch. 43, § 401.

The amendments to RCW 41.06.070(1) and WAC 3570-04-045 do not impact WAC 391-35-356. It is still presumptively appropriate to include employees working less than full-time in the same bargaining unit as their full-time counterparts.

The Request for Amendment of Bargaining Unit Description

The union's supervisory campus-wide bargaining unit is currently described as follows:

All full-time and regular part-time classified supervisory employees of The Evergreen State College covered under RCW 41.80, excluding confidential employees.

The Evergreen State College, Decision 10252 (PSRA, 2008). Revising the bargaining unit in a manner that is more consistent with chapter 41.06 RCW and chapter 357 WAC is appropriate and should eliminate confusion as to which employees are included in the bargaining unit. Accordingly, the bargaining unit shall be described as follows:

All supervisory classified employees covered by chapter 41.06 RCW and chapter 41.80 RCW employed by The Evergreen State College, including qualifying temporary employees, excluding employees covered by other collective bargaining agreements, confidential employees, nonsupervisory employees, and all other employees.

Qualifying temporary employees are those employees with a temporary appointment and who have worked at least 350 hours as provided for in WAC 357-04-045.

FINDINGS OF FACT

1. The Evergreen State College is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees is an employee organization within the meaning of RCW 41.80.005(7).
3. The union represents a supervisory campus-wide bargaining unit bargaining unit that is currently defined as follows:

All full-time and regular part-time classified supervisory employees of The Evergreen State College covered under RCW 41.80, excluding confidential employees.

4. After the enactment of chapter 41.80 RCW in 2002, the Washington State Personnel Resources Board, pursuant to its authority in RCW 41.06.150, adopted WAC 356-04-045 regarding part-time and temporary employees. The rule provided that individuals working less than 1050 hours in any twelve-month consecutive period from the date of hire are exempt from the civil service rules, chapter 357 WAC. The rule further provided that individuals exempted from the civil service rules by WAC 357-04-045 who work between 350 and 1050 hours in any twelve-month consecutive period may be included in an appropriate bargaining unit for purposes of collective bargaining as determined by this agency.
5. In 2018, the legislature amended RCW 41.06.070(1) to repeal the exemption for part-time employees from the state civil service law. Temporary employees remain excluded under RCW 41.06.070(1).
6. In 2022 the Office of Financial Management amended WAC 357-04-045 to repeal any reference to part-time employees. For temporary employees the rule operates in the same fashion as before the 2022 amendments. Only those temporary employees working less than 350 hours in a twelve-month consecutive period are completely exempt from chapter 41.06 RCW. Those temporary employees working between 350 and 1050 hours remain exempt from the civil service rules, chapter 357 WAC, but still may be included in an appropriate bargaining unit.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has authority in this matter under chapter 41.80 RCW and chapter 391-35 WAC.

2. Based upon findings of fact 3 through 6, part-time civil service employees who previously were required to work at least 350 hours to be included in the bargaining unit described in finding of fact 3 are now presumptively included in the bargaining unit described in finding of fact 3 regardless of the number of hours worked.

ORDER

The bargaining unit represented by the Washington Federation of State Employees described in finding of fact 3 shall be redefined as follows:

All supervisory classified employees covered by chapter 41.06 RCW and chapter 41.80 RCW employed by The Evergreen State College, including qualifying temporary employees, excluding employees covered by other collective bargaining agreements, confidential employees, nonsupervisory employees, and all other employees.

ISSUED at Olympia, Washington, this 12th day of April, 2024.

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 391-35-210.



RECORD OF SERVICE

ISSUED ON 04/12/2024

DECISION 13816 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 136212-C-23

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