FILE

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: GRADUATE STUDENT EMPLOYEE ACTION COALITION, UAW Involving certain employees of: UNIVERSITY OF WASHINGTON	CASE 16288-E-02-2699 DECISION 8315 - PECB DIRECTION OF ELECTION

Theiler Douglas Drachler and McKee, by *Paul Drachler*, Attorney at Law, for the petitioner.

Christine Gregoire, Attorney General, by *Judy Mims*, Assistant Attorney General, and Summit Law Group by *Otto G. Klein III*, Attorney at Law, joined by *Kristen D. Anger*, Attorney at Law, on the brief, for the employer.

On March 14, 2002, the Graduate Student Employee Action Coalition, UAW (union) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain student/employees of the University of Washington (employer). An investigation conference was conducted on May 1 and 9, 2002, at the employer's campus in Seattle, Washington. An investigation statement issued on May 13, 2002, set forth issues for hearing, as follows:

a. The parties could not stipulate that a question concerning representation exists because the employer reserved its stipulation concerning the showing of interest. The employer questions the sufficiency of the showing of interest because the cards were, for the most part, gathered prior to the effective date of the enabling legislation.

b. The parties did not stipulate to the definition of an appropriate bargaining unit. While both parties stated an acceptance of a "one sixth of employment" standard to determine regular part-time status, the employer wishes to apply that test in a 40 hour per week model, and the [union] wishes to use a 20 hour per week standard.

c. The parties could not agree on a way to define a "continuing expectation of employment". The employer wants to analyze the working relationship using all four academic quarters, while the [union] wants to use three quarters ([Autumn], Winter and Spring) as a way to analyze a regular work year.

d. The parties did not agree on a final disposition for individuals serving as Research Associates. The [union] believes that most "RA's" should be eligible for unit inclusion, while the employer believes that most of the RA's must be excluded under terms of the enabling legislation.

e. The parties could not agree on how to deal with instances where individuals held multiple employment positions, particularly if some of those positions involved RA duties.

f. The parties could not stipulate to a final eligibility list for the proposed bargaining unit.

Hearing Officer Kenneth J. Latsch conducted a formal hearing on 17 days between June and December of 2002, and the transcript of those proceedings fills 2,645 pages.[1] The parties filed briefs on February 18, 2003. The union filed a reply brief on March 3, 2003.

The Executive Director rules that: (1) the full-time standard for the student/employees involved in this proceeding is 20 hours per week for the normal academic year (autumn, winter and spring

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1 The hearing dates were: June 19, July 12, July 18, July 19, July 25, August 1, September 5, September 6, September 18, September 19, September 20, October 17, October 21, October 29, October 31, November 1, and December 4, 2002, constituting the longest hearing process in the 28-year history of the Commission.

quarters); (2) student/employees are eligible for inclusion in the petitioned-for bargaining unit if they work in any combination of covered positions for more than one-sixth of that full-time standard; (3) research assistants and student/employees performing similar duties and responsibilities under other titles are included in the bargaining unit if their service obligations toward this employer qualify them as regular part-time employees; (4) the sufficiency of the showing of interest is not a proper subject for a ruling; and (5) doubts as to the validity of the authorization cards as actual evidence of representation warrant directing an election in this case.

BACKGROUND

The employer is the largest of the institutions of higher education operated by the state of Washington, with a main campus in Seattle and branch campuses in Tacoma and Bothell, and a total enrollment of about 40,000 students. It operates under the general policy direction of a board of regents appointed by the Governor. That board appoints a president who has overall responsibility for day-to-day management of the institution, including financial affairs, program administration, and personnel matters.[2] Acting directly or through designees, the president has authority to formulate and issue rules, regulations, and executive orders. A provost reporting to the president serves as the employer's chief academic officer. An executive vice-president reporting to the president serves on an executive team with the president and provost. Additional vice-presidents and assistant vice-presidents have responsibility for specific portions of the operation.

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[2] Analysis in this decision is limited to the employer's personnel policies concerning the student/employees at issue in this proceeding.

At the time of hearing, a dean headed each of 17 colleges and schools (hereafter: "sub-institutions") on the Seattle campus.[3] The deans are responsible for academic affairs, as well as budgetary leadership. There were about 150 departments, divisions, and degree-granting programs within the subinstitutions,[4] and most of the teaching/learning actually takes place in these departments, divisions, and programs.

Each of the employer's departments, divisions, and programs has a faculty attached to it. At the time of the hearing, the employer had about 10,000 faculty members. The faculty has autonomy in some academic matters, and makes decisions (or at least effective recommendations) on some issues pertinent to this proceeding, including graduate school admissions and personnel practices.

<u>Graduate Student/Employees</u>

The employer offers degrees the "master of . . ." and "doctor of . . ." level in about 90 programs and the employer normally has more than 7,000 graduate students enrolled. The employer's Graduate School administrative unit coordinates activities among many of the departments offering graduate degrees, and the dean of the Graduate School has a vice-provost title in recognition of the

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[3] Most undergraduate degrees (at the "Bachelor of . . ." level) are conferred through the College of Arts and Sciences, which is the largest of the 17 subinstitutions. Other large subinstitutions are the: College of Education, College of Engineering, College of Forest Resources, School of Law, School of Medicine, School of Nursing, College of Ocean and Fishery Sciences, School of Pharmacy, and Daniel J. Evans School of Public Affairs.

[4] There is no uniformity as to the number of departments or programs per subinstitution: Several have multiple units; others have few.

level of academic responsibility associated with that position. The employer has established some policies applicable to all graduate students, and the graduate admissions office is responsible for assuring that prospective graduate students meet the employer's criteria for entrance. The departments, divisions, and programs can set their own standards for admission to their particular fields of study, and often supplement employer-wide policies with policies of their own.[5]

Competitiveness -

Some of the employer's graduate programs are nationally ranked and the employer receives many more applications for graduate study than are accepted, so that admission to its graduate programs is very competitive. At the same time, competition between institutions of higher education for the best students prompts this employer to provide substantial financial assistance to attract desired students for graduate study.

Prospective graduate students are often familiar with a specific program or project on the employer's campus, and contact faculty member(s) about the possibility of pursuing a course of study at the institution. Some departments conduct weekend visits for prospective students to come to the campus to meet with faculty members. It is commonplace for faculty members to discuss financial terms with prospective students (subject to the student being accepted through the graduate admissions office), and faculty members may actively recruit applicants by indicating their ability to provide financial support for research or study.

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[5] While they cannot conflict with institution-wide policies, departmental policies can be much more detailed and can cover issues not addressed in the institution-wide policies.

The financial packages offered to graduate students come in a variety of forms: In some cases, the student is given funding (hereafter: an "award") with little or no service expectancy attached to it;[6] a financial package may be offered for the prospective student's entire course of graduate study, or financial terms may be set for a specific period of time.[7]

Service Appointments -
In the many situations that are of interest in this proceeding, the financial package offered to a graduate student includes a service expectancy imposed by this employer for work as student/employee in one or more of the following roles:

- Teaching assistant (TA) roles (including predoctoral instructor, predoctoral lecturer, predoctoral teaching assistant, predoctoral teaching associate I, predoctoral teaching

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[6] Some students are excluded from consideration in this case on the basis that they are not employees of this employer in any sense. Those include:
(1) Students who fund their own tuition and expenses while pursuing a degree, and so have neither income from nor service obligations toward this employer;
(2) Students whose tuition and expenses are funded by a fellowship for a course of study and/or a specific area of research (most often a merit-based award from an outside source such as the National Science Foundation, the National Institute of Health, or a private foundation) secured through an application made to the funding source prior to the student coming to the employer's institution, so that enforcement of any terms or conditions is between the student and the funding source; and
(3) Students who receive funding from the employer to pursue a course of study with no service expectancy imposed by the employer (hereafter an "award").

[7] In such cases, the particular graduate program often finds ways to provide the affected graduate student some renewal of, extension of, or substitution for, the initial financial package.

associate II, and student/employees with substantially equivalent duties) generally support the teaching/learning functions of faculty members. A TA might assist a faculty member in the classroom, might lead a discussion section, or might conduct a laboratory section.[8] In some courses, a TA (usually a predoctoral instructor) may actually assume responsibility for an entire course, or can take over for a faculty member who is on a sabbatical or is otherwise away from the university during the quarter when the course is to be offered. The employer had 1,424 student/employees working in TA roles in the autumn of 2001.

- Staff assistant (SA) roles (including predoctoral staff assistant, predoctoral staff associate I, predoctoral staff associate II, and student/employees with substantially equivalent duties) generally complement teaching/learning and research activities. An SA might serve as a student advisor, might perform institutional research, or might perform related work such as admissions. The employer had 190 student/employees working in SA roles in the autumn of 2001.

- Research assistant (RA) roles (including predoctoral researcher, predoctoral research assistant, predoctoral research associate I, predoctoral research associate II, and student/employees with substantially equivalent duties) generally support the research mission of the university. An RA might assist a faculty member, might assist a member of the em-

[8] For example: As to undergraduate courses which may have 500 or more students, the faculty member usually lectures to the entire class, while a TA leads a quiz section of 20-30 students where details from the lectures are discussed and students are provided with help in preparing for examinations; a TA working in such a situation is not independently responsible for the course being offered, and works closely with the faculty member to ensure that certain subjects are covered in detail.

ployer's permanent research staff,[9] might perform specific research assignments, or might perform independent research under the general supervision of a faculty member. The employer had 2,113 student/employees working in RA roles in the autumn of 2001.

There is no single method or standard for these types of service appointments. It is, however, the general practice that the tuition obligations of graduate students with TA, SA, and RA appointments will be funded in some part or in their entirety. Most of the graduate students with TA, SA, and RA appointments also receive monetary compensation for the work they perform.

Other Student/Employee Work Opportunities - Some graduate students are offered work opportunities that appear to be less formal than the TA, SA, and RA roles:

- Tutors either work for a particular department or for a study center such as Student Athlete Academic Services,[10] to help undergraduate students individually or in groups. Tutors assist students in improving their performance in a particular class. Tutors work varying hours, mostly less than 20 hours a week.[11] Some tutors work more hours in the middle portions of the quarters during the normal academic year, while others

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[9] Notice is taken of *University of Washington*, Decision 7811 (PSRA, 2002), wherein another union was certified an exclusive bargaining representative of a bargaining unit of about 444 full-time and regular part-time research technologists who are classified employees under the State Civil Service Law, Chapter 41.06 RCW.

[10] The study centers can employ as many as 100 tutors in a quarter, and may also hire either undergraduate students or non-students as tutors.

[11] In many situations, tutors work on a very limited basis.

are available throughout those quarters, depending on the program and its expectations.

- Readers and Graders assist faculty members by reviewing and grading the papers submitted by (mostly undergraduate) students.[12] Readers and graders are typically paid on an hourly basis. In some cases, graders keep office hours and help students having problems in a particular course. Graders are typically hired for an academic quarter at a time, but the record reflects that their work time will be concentrated in just a portion of the quarter. For the most part, graders work approximately 10 hours a week, but may work as much as 15 hours weekly.

Both the service expectancies and compensation associated with these roles are understood to be quite variable.

Undergraduate Student/Employees

Some student/employees are working toward a degree at the "bachelor of . . ." level. A majority of the tutoring work is performed by such undergraduates, and undergraduates may work in other student/ employee categories.

New Legislation

In its 2002 session, the Washington State Legislature passed Engrossed Substitute House Bill 2540,[13] amending the Public

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[12] The record indicates that undergraduate students may be hired as readers and graders.

[13] The term "substitute" connotes that amendments made in committee were rolled into a substitute bill; the term "engrossed" connotes that additional amendments were made on Second Reading.

Employees' Collective Bargaining Act, Chapter 41.56 RCW, to extend statutory collective bargaining rights (for the first time) to student/employees working in specific classifications at the University of Washington. That legislation became Chapter 34, Laws of 2002, and its operative language is now codified as follows:

> RCW 41.56.203 UNIVERSITY OF WASHINGTON-CERTAIN EMPLOYEES ENROLLED IN ACADEMIC PROGRAMS-SCOPE OF COLLECTIVE BARGAINING. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the University of Washington with respect to employees who are enrolled in an academic program and are in a classification in (a) through (i) of this subsection on any University of Washington campus. The employees in (a) through (i) of this subsection constitute an appropriate bargaining unit:
>
> (a) Predoctoral instructor;
>
> (b) Predoctoral lecturer;
>
> (c) Predoctoral teaching assistant;
>
> (d) Predoctoral teaching associates I and II;
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> (e) Tutors, readers, and graders in all academic units and tutoring centers;
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> (f) Predoctoral staff assistant;
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> (g) Predoctoral staff associates I and II;
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> (h) Except as provided in this subsection (1)(h), predoctoral researcher, predoctoral research assistant, and predoctoral research associates I and II. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include predoctoral researchers, predoctoral research assistants, and predoctoral research associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and
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> (i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h) of this subsection.
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> (2)(a) The scope of bargaining for employees at the University of Washington under this section excludes:
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> (i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by the University of Washington;

> (ii) The amount of tuition or fees at the University of Washington. However, tuition and fee remission and waiver is within the scope of bargaining;
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> (iii) The academic calendar of the University of Washington; and
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> (iv) The number of students to be admitted to a particular class or class section at the University of Washington.
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> (b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement of the affected provision.
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> (ii) The University of Washington may provide additional compensation to student employees covered by this section that exceed that provided by the legislature.

That legislation contained an emergency clause, and so became effective when the bill was signed by the Governor on March 14, 2002. The petition filed to initiate this proceeding described the proposed bargaining unit in the following terms:

> Employees who are enrolled in an academic program and are currently in a classification (a) through (i) or who were employed in the unit in the previous 12 months and who remain available for work in the unit and have an expectation of employment in the unit.
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> (a) Predoctoral Instructor;
> (b) Predoctoral Lecturer;
> (c) Predoctoral Teaching Assistant;
> (d) Predoctoral Teaching Associates I and II;
> (e) Tutors, Readers, and Graders in all academic units and tutoring centers, including, but not limited to such employees within the Student Assistant titles;
> (f) Predoctoral Staff Assistant;
> (g) Predoctoral Staff Associates I and II;
> (h) Predoctoral Researcher, Predoctoral Reearch Assistant, and Predoctoral Research Associates I and II;

> (i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h), who are classified in these or other titles.
>
> [excluding] Predoctoral Researchers, Predoctoral Research Assistants, and Predoctoral Research Associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the University, and all other employees.

The union filed that petition with the Commission shortly (perhaps minutes) after the Governor signed the new legislation into law.

DISCUSSION

The Complex Nature of the Institution

Part of the immense record made in this case consists of evidence amply demonstrating the existence of numerous variances of policy and practice within the employer institution, and among its subinstitutions, departments, divisions, and programs. That evidence is largely irrelevant in this case, however.

Commission precedents under Chapter 41.56 RCW have often repeated the principle that the determination of appropriate bargaining units is a function delegated by the Legislature to the Commission under specific criteria set forth in RCW 41.56.060, as follows:

> The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. *In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their*

> *bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. . . .*

(emphasis added). If those "community of interest" criteria were applicable in this case, the voluminous record could provide room for debate about whether multiple communities of interest should be identified within the overall cadre of student/employees at the institution. But that is *NOT* the situation at hand.

The Legislature has occupied the unit determination field in several of the other statutes administered by the Commission:

- As to the faculty employees of this employer (and of the five other state institutions of higher education conferring degrees at and above the "bachelor of . . ." level), who have collective bargaining rights under Chapter 41.76 RCW, that statute does not contain community of interest criteria of the type found in RCW 41.56.060, and the definition of bargaining unit in RCW 41.76.005(11) effectively precludes any community of interest debate.[14]

- As to classified employees of this employer (and of the other state institutions of higher education and state general government agencies), whose collective bargaining rights are in transition from the State Civil Service Law, Chapter 41.06 RCW, to a broader scope under the Personnel System Reform Act of 2002 (PSRA) and Chapter 41.80 RCW, the community of interest criteria set forth in RCW 41.80.070(1) are limited by

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[14] RCW 41.76.005(11) includes: "all faculty members of all campuses of each of the colleges and universities. Only one bargaining unit is allowable for faculty of each employer, and that unit must contain all faculty members from all schools, colleges, and campuses of the employer."

both: Requiring separation of supervisors from non-supervisory employees (RCW 41.80.070(1)(a)); and requiring institution-by-institution bargaining units in higher education (RCW 41.80.070(1)(b)).

- As to the academic faculties of community and technical colleges (who bargain collectively under Chapter 28B.52 RCW), language in RCW 28B.52.030 referring to "an election to represent the academic employees within the . . . district" precludes the possibility of having more than one bargaining unit within a district, even though some of the districts have two or more separate operations.[15]

- As to teachers in the common schools (who bargain collectively under Chapter 41.59 RCW), community of interest criteria similar to those found in RCW 41.56.060 are set forth in the first paragraph of RCW 41.59.080, but language in RCW 41.59.080(1) requiring that all non-supervisory educational employees of employers be included in district-wide units effectively precludes any community of interest debate.[16]

Thus, it is not surprising that the Legislature has also occupied the field with respect to unit determination for certain classes of employees within Chapter 41.56 RCW:

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15 *Green River Community College*, Decision 4491-A (CCOL, 1994). Chapter 28B.52 RCW lacked community of interest criteria of the type set forth in RCW 41.56.060 when it was first enacted as a professional negotiations act in 1971, and the quoted language survived through substantial amendment of that chapter in 1987.

16 Chapter 28.72 RCW (later Chapter 28A.72 RCW) lacked community of interest criteria of the type found in RCW 41.56.060 when it was enacted as a professional negotiations act in 1965, instead referring to an organization winning "an election to represent the . . . employees within the . . . district".

- RCW 41.56.025 both makes Chapter 41.56 RCW applicable to employers operating as education providers under Chapter 28A.193 RCW, and limits bargaining units to the employees working as education providers to juveniles in adult correctional facilities.

- RCW 41.56.026 makes Chapter 41.56 RCW applicable to individual providers of home care services under Chapter 74.39A RCW, and provisions in Chapter 74.39A RCW then negate the community of interest criteria set forth in RCW 41.56.060 by requiring a state-wide bargaining unit of individual providers.

- RCW 41.56.201 as enacted in 1993 created an option for state institutions of higher education and unions representing their classified employees to have their collective bargaining relationship and obligations governed by Chapter 41.56 RCW, but RCW 41.56.201(2)(a) required the Commission to recognize the bargaining units in their current form, as certified by the Washington Personnel Resources Board or its successor.[17]

This employer and union were both active participants in the lobbying that preceded the adoption of the statutory language under which this case must be decided. Now that the bill they lobbied is law, the intent of the proponents is irrelevant, and Chapter 34, Laws of 2002, must be applied as written. *An institution-wide bargaining unit is REQUIRED* by the language in RCW 41.56.203(1) which states: "The employees in (a) through (i) of this subsection *constitute an appropriate bargaining unit. . . .*" (emphasis

[17] The option established in RCW 41.56.201 ceased to be available as of July 1, 2003. An ironic tidbit of history is that the Commission became the successor to the WPRB under that section from the effective date of certain PSRA provisions on June 13, 2002 through June 30, 2003, but it then had to apply the community of interest criteria set forth in RCW 41.06.340 and 41.80.070, rather than the community of interest criteria in RCW 41.56.060.

added). To the extent these parties (or either of them) have belabored the record with evidence of variance among the types of student/employees, their wasted effort will not be rewarded with detailed discussion of such facts and arguments in this decision.

The positions of the parties, additional facts, and legal analysis are set forth below separately for issues or groups of issues that are properly before the Commission in this case.

The "Regular Part-Time" Issues

Three of the issues framed in the investigation statement are closely related, and are discussed together here: The second issue framed (concerning the full-time base from which the test for inclusion in the bargaining unit is to be applied), the third issue framed (concerning the work year to which the test is to be applied), and the fifth issue framed (concerning student/employees who move between categories).

The Commission has codified a standard for determining whether an individual is a "regular part-time" employee included in a bargaining unit or a "casual" employee to be excluded from all bargaining units. WAC 391-35-350 states:

> (1) It shall be presumptively appropriate to include regular part-time employees in the same bargaining unit with full-time employees performing similar work, in order to avoid a potential for conflicting work jurisdiction claims which would otherwise exist in separate units. Employees who, *during the previous twelve months, have worked more than one-sixth of the time normally worked* by full-time employees, and who remain available for work on the same basis, shall be presumed to be regular part-time employees. *For employees of* school districts and *educational institutions, the term "time normally worked by full-time employees" shall be based on* the number of days in *the normal academic year.*

> (2) It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.
>
> (a) Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.
>
> (b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.
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> (3) The presumptions set forth in this section shall be subject to modification by adjudication.

(emphasis added). The parties do not contest the applicability of the "one-sixth" threshold for regular part-time status set forth in WAC 391-35-350. They do, however, disagree about how that test should be applied in this case.

Positions of the Parties on Regular Part-Time -

The union maintains that student/employees in all categories listed in the new legislation should be included in the bargaining unit if they meet the one-sixth test. The union maintains that the base for computing the full-time standard should be 20 hours per week for three academic quarters (because the service expectancies of the student/employees are 20 hours per week or less in that period) and that work in any of the covered categories should be accumulated for purposes of applying the one-sixth test.

The employer contends the computation should be based on a 40-hour work week throughout the year, and that such a standard is a fair way to determine whether a student/employee has a sufficient relationship with the employer to be a member of the bargaining unit to be created in this proceeding. The employer would also have a "two consecutive quarters" requirement imposed and, at least

through presenting evidence at the hearing in this matter, it asked for separate computation in each type of student/employee work.

Applicable Legal Principles -

The student/employees at issue in this proceeding are specifically excluded from the coverage of Chapter 41.06 RCW.[18] The 40-hour work week and 2080-hour work year (40/2080) standard applicable to classified employees of this employer working under the State Civil Service Law, Chapter 41.06 RCW, is thus not controlling here.

WAC 391-35-350 was adopted in 2001, as the culmination of a number of precedents developed in various employment settings:

King County, Decision 1675 (PECB, 1983), addressed the need to evaluate employment settings individually. That decision included:

> The fashioning of a test requires that the employment relationship, and the expectancy of continued employment, be looked at with a view sufficiently global to include the perspective of the employer seeking to establish and maintain a workforce as well as the perspective of an individual seeking to make a living or supplement other income.

Clearly, there can be no "one size fits all" for employment settings. The *King County* case presented a (relatively unusual)

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18 RCW 41.06.070(1)(l). The collective bargaining rights of the student/employees at issue here are regulated exclusively by the recent amendment to Chapter 41.56 RCW. It follows that a recently-adopted rule, by which the Washington State Personnel Resources Board (WPRB) established that a part-time employee of an institution of higher education must work 350 hours in a one-year period to have sufficient civil service status under Chapter 41.06 RCW to be eligible for collective bargaining rights under Chapter 41.80 RCW, is also inapplicable here.

situation in which the workforce being organized consisted entirely of employees who worked less than a 40/2080 schedule.

In *Columbia School District*, Decision 1189-A (EDUC, 1982), the Commission dealt with another workforce composed entirely of employees working less than a 40/2080 schedule.[19] The Commission determined regular part-time status on the basis of the work year that applied to the affected employees. In *Columbia*, the "30 days in one year" formulation of the one-sixth test conformed to the educational program offered by those employers, as defined by the autumn through spring academic year in use there.

A similar result was reached in *Community College District 12*, Decision 2374 (CCOL, 1986), although different terminology was used. When the community college employment setting was examined, the work year used to compute regular part-time status for an entire bargaining unit working less than the 40/2080 schedule again corresponded to the autumn through spring academic year. Because the "days" methodology for computing work time in common schools was unfamiliar in that employment setting, "full time equivalency" (FTE) terminology familiar in community colleges was utilized.

Many bargaining units of school district classified employees encompass multiple occupations. Under precedents such as *Sedro Woolley School District*, Decision 1351-C (PECB, 1982) and *Tumwater School District*, Decision 2043 (PECB, 1985), a multi-functional employee (for example: an individual who substitutes as both a bus driver and custodian, or as both an instructional assistant and office-clerical employee) would be eligible for inclusion in the bargaining unit upon completion of 30 days of work in any combination of roles within the bargaining unit. Importantly, no case is cited or found where the one-sixth test was applied

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[19] The base year for the full-time teachers in the bargaining units involved was 7 or 7-1/2 hours per day for the 180 days of the normal academic year, thus amounting to between 1260 and 1350 hours per year.

separately to occupations within the same bargaining unit, and nothing in WAC 391-35-350 requires (or even provides basis for a party to demand) an occupation-by-occupation computation.[20]

Application of Precedent on "Regular Part-Time" - This record clearly reflects that the service appointments made to student/employees are for 20-hour week or less. There is no evidence that the employer ever offers student/employees positions listed for more than 20 hours per week:

- The hours for TA appointments vary within a limited context. The employer has very detailed rules regulating TA usage, and departments must ensure that a TA receives appropriate training and faculty supervision in the particular class assignment. Faculty members must observe a TA at work, and some departments use a two-week program designed to train each TA in the particular subject matter. A TA generally has a defined work week, and most often works 20 hours per week in the TA assignment. The TA work hours may be closely monitored, and the affected department will take steps to reduce the workload of a TA who is working more than the prescribed 20-hour limit.

- The work hours of SA appointments are understood to be generally similar to those of student/employees with TA appointments.

- The RA appointments are generally stated in terms of 20 hours per week. While the employer produced evidence showing that RA appointments are more flexible than TA appointments, and

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20 When faced with evidence of multi-functional employees in *Ephrata School District*, Decision 4675-A (PECB, 1995), the Commission rejected an occupation-by-occupation approach that would have fragmented the workforce.

even sought to contradict the existence of a service expectancy in regard to many RA appointments, the evidence certainly does not support finding any general practice of paying an RA extra compensation for work in excess of 20 hours, let alone paying an RA at an overtime rate.[21]

- The work hours of readers, graders and tutors vary widely, with the service expectancy most often less than 20 hours per week.

In light of the cited precedents tailoring the computation to the particular employment setting being considered, application of a "20 hours per week" standard is indicated in this case.

The employer divides the calendar year into quarters, and autumn (September or October to December), winter (January to March), and spring (March to June) quarters (each of approximately 11 weeks in length) constitute its normal academic year. The majority of the work opportunities for student/employees are during that normal academic year. The employer operates a summer program, but the course offerings are much smaller in scope than those made available in the normal academic year,[22] and there are limited work opportunities for student/employees during the summer quarter.[23]

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[21] To the extent that student/employees on RA appointments work more than 20 hours per week, that amounts to "volunteer" work. An employer cannot establish one standard for compensation and then ask the Commission to apply a higher standard for regular part-time status based on time worked in pursuit of a different motivation. The performance of research in connection with the preparation of a dissertation is discussed separately below.

[22] Only about 35 percent of the student body (14,000 out of a total of 40,000) were enrolled in the summer quarter.

[23] Only about 35 percent of the TA workforce (500 out of a total of 1,424) worked in the summer quarter).

In light of the cited precedents tailoring the computation to the particular employment setting being considered, and particularly in light of the reference to educational institutions in WAC 391-35-350, the use of a calendar year test is inapt for this workforce.

This record clearly indicates that there is mobility for student/employees among the types of work listed in RCW 41.56.203:

- The application process for TA appointments starts with advertisements inviting interested graduate students to apply. Practices concerning TA appointments vary from department to department, and may be applied in a rather flexible manner. Some TA appointments are made for a quarter at a time, but departments that use a large number of TA appointments frequently make them for the entire academic year. In some departments, a student/employee may only hold a TA appointment once or twice during his/her career as a graduate student.
- In some departments, a TA appointment may serve as a temporary funding mechanism until an RA appointment begins. Thus, a first year graduate student who hasn't settled on an area of study may be given a TA appointment, but will be switched to an RA appointment once a field of inquiry is established.
- Some student/employees may seek and accept a TA appointment to supplement the income they are receiving from some other type of student/employee role within the categories listed in RCW 41.56.203.[24]

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[24] The service expectancies associated with dual appointments may take the student/employee away from research work, and so may even extend the overall time required for completion of his/her own degree requirements, but that inherently tips the balance toward the employment side of the student/employee relationship.

The statute itself requires that student/employees in all of the listed categories be included in a single bargaining unit, so it makes no sense to create artificial barriers within the class of student/employees established by RCW 41.56.203.

In 2001, the employer paid more than $21 million for graduate student tuition and stipends under appointments that arguably imposed service obligations on student/employees. In the context of that very substantial sum, compound application of the "regular part-time" issues framed in this case would produce widely divergent results:

- Applying the "20 hours per week" standard for service appointments to the employer's normal academic year (20 hours per week x 11 weeks per quarter x 3 academic quarters = 660 hours per annum) would result in inclusion of individual student/employees in the bargaining unit upon their working more than 110 hours in any combination of covered jobs in a one-year period.

- Applying the "40 hours per week throughout the year" standard such as that applicable to the employer's classified employees (40 hours per week x 52 weeks in the calendar year = 2080 hours per annum) would result in inclusion of individual student/employees in the bargaining unit only if they work more than 347 hours in a one-year period.

Compounding a 215 percent greater number of work hours required for inclusion in the bargaining unit, the latter formula would make bargaining unit membership far less attainable for student/ employees who shift between categories. In light of the language of the applicable rule and the cited precedents tailoring the computation to the particular employment setting being considered, the threshold for this bargaining unit is set at 110 hours.