

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

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.

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.

Graduate Student/Employees

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

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.

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

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

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

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;
- (e) Tutors, readers, and graders in all academic units and tutoring centers;
- (f) Predoctoral staff assistant;
- (g) Predoctoral staff associates I and II;
- (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

(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.

(2)(a) The scope of bargaining for employees at the University of Washington under this section excludes:

- (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;

(iii) The academic calendar of the University of Washington; and

(iv) The number of students to be admitted to a particular class or class section at the University of Washington.

(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.

(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.

- (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 Research Assistant, and Predoctoral Research Associates I and II;

