



**Bob Ferguson**

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November 9, 2017

**SENT VIA EMAIL ([filing@perc.wa.gov](mailto:filing@perc.wa.gov))**

Dario de la Rosa  
Representation Case Administrator  
Washington State  
Public Employment Relations Commission  
P.O. Box 40919  
Olympia, WA 98504-0919

**RE: PERC Case No. 129731-E-17 – Post Docs Representation Petition**

Dear Mr. de la Rosa:

**1. Employee list**

Attached please find the list of employees in the petitioned-for titles and classifications. All employees in the petitioned-for titles and classifications are provided. It is not possible to further parse the employees covered by the petition for purposes of producing a responsive list. Although the Union seeks to qualify its petitioned-for classifications and titles by application of one-sentence description from the NIH of a “post-doc”, the National Institutes of Health (NIH) “definition” is unsuited to this purpose because it is a subjective, generalized, one-sentence descriptor and is not a term of art and is not recognized under UW policy or used by UW Academic Personnel to systematically identify or differentiate employees.

**2. The University’s position on the appropriate bargaining unit**

The Union has petitioned to represent employees under RCW 49.56.513, which “applies to all postdoctoral and clinical employees *as excluded in chapter 41.76 RCW ...*” (Emphasis added). The analysis of appropriate bargaining unit therefore begins with RCW 41.76.

RCW 41.76 provides for representation of faculty. RCW 41.76.005 defines “faculty” as those who “are designated with faculty status or who perform faculty duties as defined through policies established by the faculty governance system.” At the University of Washington, membership in the faculty is defined in the Faculty Code Section 21-31, which was adopted through the faculty legislative/governance process. The Union has petitioned for several titles or classifications that are designated with faculty status and covered in the Faculty Code, specifically, the Research

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Associate, Research Associate Trainee, Acting Instructor and Acting Assistant Professor. Because RCW 41.76 requires a single, institution-wide faculty unit and does not allow for application of a community of interest analysis, it doesn't allow certification of a separate unit that includes these faculty titles with non-faculty titles. Faculty should not be included in the unit.

The University understands that the Union believes that the list of "exclusions" in RCW 41.76.005(5) somehow creates a definition of "faculty" that excludes many faculty members from coverage so that they may be combined with non-faculty in other bargaining units. This reading is not supported by the rules of statutory construction or the intent of the statute. The definition of "faculty" and the list of exclusions must be read in the context of the entire statute, so as to avoid inconsistency and give meaning to all its provisions. The language of RCW 41.76.005(11) is clear, that an appropriate bargaining unit under 41.76 must include "all faculty members" and that "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."

The exclusions in RCW 41.76.005(5) share little in common, except that *none* have the result of removing faculty members from the universe of faculty who would fall into an institution-wide faculty unit. Any faculty who are "casual or temporary," "administrative," or "confidential employees" would not be part of *any* bargaining unit; "graduate student employees" are not faculty. Similarly, "postdoctoral and clinical employees" should *not* be defined for purposes of representation to include both non-faculty and faculty and thus pull faculty members out of the statutorily mandated institution-wide unit.

On the other hand, Senior Fellow, Senior Fellow Trainee, and Visiting Scientists are *not* faculty and therefore are *not* covered by RCW 41.76. Thus, they are not excluded from RCW 41.56.513. Accordingly, the University concludes Senior Fellow and Senior Fellow Trainees are an appropriate unit under RCW 41.56. However, given the community of interests analysis required under RCW 41.56, it is not clear that Visiting Scientists belong in the unit. Visiting scientists are appointed for a limited period of time (up to three years) and are not required to have a doctoral degree.

Sincerely,



Jennifer K. Schubert  
Assistant Attorney General  
University of Washington Division

Enclosure

cc: Mr. Michael Miller, W Postdocs/UAW 4121 (via email, mikemilleruaw@gmail.com)