

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No UC-17-09

(UNIT CLARIFICATION PETITION)

WESTERN OREGON UNIVERSITY)	
FEDERATION OF TEACHERS,)	
LOCAL 2278, AFT, AFL-CIO,)	
)	
Petitioner,)	RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND ORDER
OREGON UNIVERSITY SYSTEM,)	
WESTERN OREGON UNIVERSITY,)	
)	
Respondent.)	
_____)	

Neither party objected to a Recommended Order issued on August 25, 2009, by Administrative Law Judge (ALJ) Wendy L. Greenwald following a hearing on July 7, 2009, in Salem, Oregon. The record closed on July 29, 2009, with the receipt of the parties' post-hearing briefs.

Richard H. Schwarz, Executive Director, and Karen A. Bartholomew, Field Representative, AFT-Oregon, Tigard, Oregon, represented Petitioner.

Judy Vanderburg, Director of Human Resources, Western Oregon University, Monmouth, Oregon, represented Respondent.

On May 1, 2009, the Western Oregon University Federation of Teachers, Local 2278, AFT, AFL-CIO (WOUFT) filed this unit clarification petition which seeks to add

the positions of instructors and coordinators in the Intensive English Program (IEP) to its existing bargaining unit under OAR 115-025-0005(4). The petition was accompanied by an adequate showing of interest. The Oregon University System, Western Oregon University (WOU) filed timely objections to the petition, asserting that the petitioned-for employees, who teach remedial courses in a non-academic program, neither hold academic rank nor are considered to be faculty, and therefore are not eligible to be members of the current bargaining unit. At the hearing, WOU clarified that its objections are based both on the current bargaining unit description and a lack of community of interest between the petitioned-for employees and the current bargaining unit members.

The issue in this case is:

Are the IEP instructors and IEP coordinators appropriately included in the bargaining unit represented by WOUFT within the meaning of OAR 115-025-0005(4)?

RULINGS

The rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT

1. WOUFT is a labor organization and the exclusive representative of a bargaining unit of employees at WOU, a public employer. WOUFT's bargaining unit consists of:

“employees of WOU who hold academic rank (Professor, Associate Professor, Assistant Professor, Non tenure track Assistant Professor, Instructor, and Lecturer) and who are regularly employed at .50 FTE or more * * *. Excluded are those employees whose positions are contracted solely through the WOU Division of Extended Programs, and all positions properly excluded by law as supervisory or confidential.”

WOUFT's bargaining unit currently consists of approximately 246 employees, including tenure-track and tenured faculty (tenure faculty), non-tenure-track faculty (non-tenure faculty), and librarians. There are approximately 100 non-tenure faculty employees in the bargaining unit.

2. WOU and the WOUFT are parties to a collective bargaining agreement effective July 1, 2007 through June 30, 2009. At the time of the hearing, the parties were in bargaining for a successor agreement and were still operating under the 2007-09 agreement.

3. WOU offers both credit and non-credit programs. Credit programs are designed to provide students with a baccalaureate or master's degree. Non-credit programs are either short-term or long-term programs designed for a specific purpose to meet particular market needs. Non-credit programs do not count toward a student's degree, certificate, license, or grade-point average.

4. WOU's academic credit programs, which are overseen by the Provost/Vice President of Academic Affairs, are organized under the College of Education and the College of Liberal Arts and Sciences (LAS). Each college is divided into a number of academic units called divisions. The College of LAS is made up of seven divisions, which are further divided into departments. All divisions and departments have designated chairs. The College of Education has three divisions, each consisting of a number of programs.

5. The English as a Second Language/Bilingual (ESOL/Bilingual) Program is part of the College of Education. ESOL/Bilingual faculty train students to teach other students with different cultural and language backgrounds in a school setting. The program is an add-on endorsement for an Oregon teaching license. The endorsement may be obtained alone or in conjunction with another degree.

6. The Office of the Associate Provost oversees a separate non-academic organizational structure at WOU. The programs included in this structure are the Offices of International Students and Scholars (OISS), Academic Advising, Admissions, Center for Teaching and Learning, Financial Aid, Registrars, Study Abroad, Writing Center, and Honors Program.

7. OISS is responsible for the "Recruitment, Admissions, Registration, Immigration Advising, Student Services, and Retention Activities for all international students at WOU." The current director of OISS is Neng Yang.

8. The IEP was established within OISS in the winter term of 2006 as part of an effort to recruit international students who are interested in pursuing a degree from WOU or another American university. The purpose of the IEP is to provide intensive English language training to international students so they will "have near-native conversational ability," be "fully literate in reading and writing," be "familiar with

American culture and history,” and pass an English proficiency test called the TOEFL (Test of English as a Foreign Language) with a score of 500 or above. Once students successfully complete the IEP program, they can enroll in an academic program at WOU or another university. The IEP is a revenue-producing program in which enrollment has increased from 18 students in 2005-06 to 180 students in 2007-08.

9. IEP classes are non-credit and do not lead to a degree, license, or academic certificate. IEP classes generally cover instruction in basic English language skills, such as listening, speaking, reading, and writing. They also include some electives, such as studies in culture and computer software programs. These classes are currently taught by the coordinator, a lead instructor, and four instructors.

Hiring, Qualifications, and Advancement Opportunities

10. Tenure faculty are typically hired through a national search process. Tenure faculty are employed with the expectation that they will proceed through a probationary period and obtain indefinite tenure, which is typically accompanied by a promotion in rank. Tenure faculty applicants are expected to have a terminal degree, such as a PhD, and to demonstrate an ability to teach, conduct research, and participate in service projects. Service projects usually involve working with professional organizations or providing community services within WOU. Specific qualifications for tenure faculty vary by discipline. Generally, tenure faculty start their employment as an assistant professor, and normally progress in rank to associate professor and then full professor.

11. Peter Callero is a tenured faculty member who has worked as a professor of sociology at WOU since December 1985. Callero is also the past president of the WOUFT. Callero was originally hired as an assistant professor, promoted to associate professor, and then full professor. Callero has a bachelor’s degree, master’s degree, and doctoral degree in sociology.

12. Non-tenure faculty are classified as (1) lecturers – employees who hold a bachelor’s degree in disciplines where the EdD, the PhD or the MFA is the highest earned degree; (2) instructors – employees (including fixed term faculty employed on a multi-term contract) who hold a master’s degrees in disciplines where the EdD, the PhD or the MFA is the highest earned degree; and (3) assistant professors – employees who hold an EdD, PhD, MFA, or the highest recognized earned degree in the discipline.

13. Non-tenure faculty are not typically hired through a national search process. Non-tenure faculty may be hired with a bachelor’s, master’s, or advanced degree. These employees have no expectation of continuing employment and must apply

for tenure faculty positions in the same manner as an outside applicant. Non-tenure faculty are rarely hired for tenure positions because they rarely meet the requirement of a terminal degree for those positions.

14. Faculty in the ESOL/Bilingual Program are required to have an advanced degree in ESOL or linguistics, and they typically have some experience in public education and research related to ESOL. The threshold qualification for an adjunct instructor in ESOL/Bilingual Education is a master's degree in education or a related field. A doctorate is required for an ESOL/Bilingual Education assistant professor position.

15. Vacancies in the IEP coordinator and instructor positions are advertised through the media, newspapers, e-mail list services, and internet web postings. Applicant interviews are conducted through OISS, and hiring recommendations are made by the OISS director.

16. Minimum requirements for the IEP coordinator position include a master's degree in TESOL (Teaching English as a Second Language) or a related field, bilingual skills, and experience in ESL program administration and teaching. Minimum requirements for the IEP lead instructor position include a master's degree in TESOL, applied linguistics, or a related field, or a master's degree in another field with a TESOL certification, and five years of experience teaching ESL to adults at a university. Minimum requirements for the IEP instructor positions include a master's degree in TESOL, applied linguistics, or related field, or a master's degree in another field with a TESOL certification, or one year of ESL teaching experience. Employees are hired specifically into these positions with no opportunity for advancement.

17. Lise Hull was initially employed by WOU as an adjunct instructor during the summer term of 2007, at which time she performed some of the IEP coordinator's duties. She has worked in the IEP coordinator position since September 2007. Hull was hired by Director Yang after Yang and two instructors interviewed her. She has a bachelor's degree in English, a master of arts degree in teaching, and a TESOL certification. When Hull was originally hired, she served a six-month probationary period. Hull's current employment is renewed on an annual basis. Hull has not applied for a tenure faculty position.

18. Jonan Donaldson has worked as the lead instructor in the IEP program since September 2007. OISS Director Yang interviewed and hired him. Donaldson has a bachelor's degree in applied linguistics, a master's degree in theater arts, and a TESOL certification. Donaldson has not applied for a tenure faculty position.

Duties and Responsibilities

19. Professional duties for full-time tenure faculty include teaching, service, and scholarship (research). Non-tenure faculty responsibilities generally include only teaching. Tenure and non-tenure faculty teaching duties include being available for student appointments; preparing a class syllabus, which provides information about class assignments, grading, scheduling, and the attendance policy; preparing for daily classes; reviewing/grading homework assignments; administering/grading tests; and issuing course grades. Librarians do not typically teach regular classes.

20. Callero has been a department chair in the College of LAS several times during his employment. His responsibilities as a department chair included assisting the division chair with certain management duties, serving as a department representative in committee meetings, signing off on curriculum documents, coordinating the schedule of classes, and assisting with hiring non-tenure faculty.

21. The IEP coordinator/instructors' teaching duties include preparing a syllabus for their classes, assigning and grading homework, administering and grading tests, and issuing grades to students. The IEP coordinator/instructors use the same grading system as tenure and non-tenure faculty and enter their students' grades in WOU's computer grading system.

22. In addition to teaching, the IEP coordinator's duties include developing the IEP class curriculum and syllabus, establishing class schedules, assigning classes to instructors, coordinating classes, administering student placement tests, reviewing textbooks, observing and providing feedback to instructors, and providing on-going administrative support and services to students.

23. In addition to his teaching duties, the IEP lead instructor is responsible for mentoring instructors, advising and counseling students, developing course materials and curriculum, participating in extra-curricular functions, and assisting the coordinator in developing and improving program curriculum and procedures.

Interchange of Duties

24. Tenure and non-tenure faculty who work within the same discipline may teach the same courses. There is minimal interchange of duties between represented faculty in different disciplines. Librarians occasionally teach courses in the College of Education. There is no interchange of duties between the represented faculty and the IEP coordinator/instructors.

Hours and Term of Employment

25. Tenure faculty are employed for a nine-month academic year. They do not have defined hours of work, and their workload is determined on the basis of their teaching load. A full-time tenure faculty teaching load is normally 12 course credit hours per academic term. Full-time tenure faculty are also required to have a minimum of five scheduled office hours per week.

26. Callero's typical day as a tenured faculty member includes arriving at campus in the morning, preparing for class, teaching class, meeting with students, and attending community meetings or union-related meetings.

27. Non-tenure faculty may be employed for multiple terms or on a term-by-term basis. Their hours of work are generally built around their class schedules. Non-tenure faculty are employed "on the basis that 1.00 FTE [full-time equivalency] equals fifteen (15) course credit hours (or equivalents)."

28. Librarians work different schedules than teaching faculty, including weekends and evenings.

29. The IEP coordinator is employed on a fixed-term twelve-month contract. The coordinator works 40 hours per week from 8:00 a.m. to 5:00 p.m. The lead instructor is employed on a fixed-term nine-month academic year contract at 1.0 FTE. The lead instructor is scheduled for 16 hours of teaching, two office hours, and two hours of program/curriculum development per week. Lead instructor Donaldson generally arrives at work around 8:00 a.m. and leaves around 5:00 p.m. IEP instructors are scheduled for 16 hours per week, including 14 hours of teaching and two office hours. IEP instructor positions are renewable each term.

30. IEP classes are held from 10:00 a.m. to noon and 1:00 p.m. to 3:00 p.m. During the school year, IEP classes operate on the same academic term calendar as credit classes, except that IEP classes are not held during finals week. In the summer, IEP classes operate on a ten-week term, while academic classes operate on a different schedule.

Salary

31. Salaries for tenure faculty are based on a 34-step annual salary schedule established in the parties' collective bargaining agreement. The salary schedule rates as of September 2008 range from \$42,000 at step 1 to \$80,734 at step 34.

32. The parties' agreement provides a minimum annual salary for lecturers, instructors, and non-tenure assistant professors based on degree level. Effective September 2008, the rate provided for a bachelor's degree is \$23,378; for a master's degree, \$31,163; and for a doctoral/terminal degree, \$35,056.

33. IEP coordinator Hull's annual salary is \$38,000. IEP lead instructor Donaldson's nine-month academic year salary is \$30,000.

Supervision

34. OISS Director Yang supervises the IEP coordinator. Yang reports to the Associate Provost, who reports to the Provost.

35. Evaluation of represented employees is under the direction of their Division Chair, who reports to the Dean of the College, who reports to the Provost. Represented employee evaluation procedures are established in the parties' agreement.

Healthcare and Other Benefits

36. WOUFT bargaining unit members and IEP coordinator/instructors receive the same level of health care benefits, including fully-paid health, dental, and basic life insurance benefits through the Public Employees Benefit Board (PEBB) and retirement benefits through the Public Employees Retirement System (PERS). Bargaining unit members and IEP coordinators/instructors are also eligible for free admission to WOU classes, and have access to WOU e-mail service, mail boxes, library, and the student center meeting rooms and dining facility. Other WOU employees are also eligible for many of these same benefits.

37. WOUFT bargaining unit employees and the IEP coordinator/instructors are entitled to paid holidays based on the WOU calendar, and they accrue eight hours of sick leave per month. The IEP coordinator, who works a twelve-month contract, is also eligible for vacation leave, while the WOUFT-represented employees and IEP instructors, who work a nine-month academic year, are not.

Physical Location

38. The WOU campus is located in Monmouth, Oregon. The campus has approximately 40 buildings or structures, including administrative offices, classrooms, student activities centers, and residence halls.

39. OISS and IEP were originally located in the Academic Programs and Support Center, which currently houses such programs as the writing center, admissions, and student support center. Due to an increase in the size of the international program, the OISS and IEP offices and classrooms were moved to Maaske Hall. Maaske Hall is centrally located on campus, adjacent to the Werner University Center and Math and Nursing Building and across the street from the Hamersly Library and the Education Building. Currently, OISS is the only program in this building. Donaldson occasionally teaches an IEP computer class in the Instructional Technology Center lab, which is also used by represented faculty.

40. Callero works in the Humanities and Social Sciences building, which is approximately two buildings away from Masske Hall. Last year, Callero and other social science faculty worked temporarily in Maaske Hall.

Bargaining History

41. WOUFT was originally certified as the exclusive representative of the academic employees at WOU in 1977.¹ The parties agreed to amend the original certification in 1986 to include academic employees who teach at least one summer term three-credit course.

42. IEP was established in the winter term of 2006. The petitioned-for group of employees has not previously been represented by a labor organization.

Desires of Employees

43. The petition was supported by an adequate showing of interest.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.

2. The coordinator/instructors in the IEP are appropriately included in the current WOUFT bargaining unit.

¹At the time of the original certification, WOUFT was known as the Oregon College of Education Federation of Teachers, OFT/AFT, and WOU was known as the Oregon College of Education.

DISCUSSION

WOUFT petitions to add the IEP coordinator/instructors to its current bargaining unit. WOU raises two objections to this petition. First, WOU objects that the IEP positions should not be included because the parties have historically limited bargaining unit membership to employees who hold academic rank and teach credit classes. Second, WOU objects that there are fundamental differences in recruitment, wages, hours, and other community of interest factors between the IEP positions and the current bargaining unit employees.

WOU's first objection is based on the parties' contractual bargaining unit description. We dismiss this objection. A contract provision that excludes specified positions from the bargaining unit is not a valid defense to a timely petition which seeks to add those positions to the unit under OAR 115-025-0005(4).² *SEIU Local 503, OPEU v. Oregon University System, Portland State University*, Case No. UC-7-09, 23 PECBR 137, n 3 (2009). A petition filed under OAR 115-025-0005(4) seeks to add previously unrepresented employees to an existing bargaining unit. In such cases, we primarily consider whether the petitioned-for bargaining unit is appropriate within the meaning of ORS 243.682(1)(a) and OAR 115-025-0050. Therefore, we focus on WOU's second objection which concerns the appropriateness of including the IEP employees in the current unit.

ORS 243.682(1)(a) provides that to determine whether a proposed bargaining unit is appropriate, this Board:

“shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.”

OAR 115-25-0050(2) further clarifies that

²The issue of whether certain positions are already included or excluded under the express terms of the parties' contractual bargaining unit description is appropriately raised in petitions filed under OAR 115-025-0005(3). Although the parties' failure to include the IEP employees in their bargaining unit description is not by itself a defense to a petition under subsection (4), we consider bargaining history as one of the statutory factors in determining the appropriateness of the proposed unit. ORS 243.682(1)(a).

“[i]n considering whether a bargaining unit is appropriate, the Board shall consider such factors as community of interest (e.g., similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, common supervisor, etc.), wages, hours and other working conditions of the employees involved, the history of collective bargaining and the desires of the employees. The Board may determine a unit to be an appropriate unit although some other unit might also be appropriate.”

This Board has discretion to decide how much weight to give to each factor listed in ORS 243.682(1). *OPEU v. Dept. of Admin. Services*, 173 Or App 432, 436, 22 P3d 251 (2001). Further, the list of statutory considerations is not exclusive. *Id.*

In *United Employees of Columbia Gorge Community College, Local 4754, AFT, AFL-CIO v. Columbia Gorge Community College*, Case No. UC-19-01, 19 PECBR 452, 458 (2001), we explained the importance of using these factors:

“Commonality of interest is extremely important in determining an appropriate bargaining unit. This is so, because the resulting unit must work for the mutual benefit of all included employees. Unit determinations that ensure a sufficient community of interest help effectuate policies of the Public Employee Collective Bargaining Act (PECBA) by decreasing potential sources of labor unrest and increasing equality of bargaining power. *AFSCME Council 75 v. State of Oregon and AOCE*, Case No. UC-37-97, 17 PECBR 767, 774-775 (1998).”

We turn to our analysis of these factors based on the evidence in the record.

Similarity of duties, skills, and qualifications. The IEP coordinator/instructors and the bargaining unit faculty have significantly similar duties, skills, and qualifications. The similarities are particularly strong between the IEP staff and the non-tenure bargaining unit faculty. The primary duty of both the current bargaining unit faculty and the IEP coordinator/instructors is to teach students. Both the IEP coordinator/instructors and the bargaining unit faculty perform essentially the same teaching duties, which include preparing course syllabi, preparing and teaching classes, assigning and grading homework, issuing course grades, and holding office hours. Although the courses taught by IEP instructors are limited to English-language skills, the courses taught by bargaining unit faculty are also limited by the specific discipline in which they work.

Tenure faculty have additional duties in research and service, and are generally required to have higher academic qualifications than the IEP coordinator/instructors.

However, the duties of non-tenure faculty in the bargaining unit are generally limited to teaching, and their degree-level requirements are similar to those of the IEP coordinator/instructors. Again, for all faculty and the IEP coordinator/instructors, the specific degree required depends on the discipline in which the employee works.

Interchange/transfer of duties. The IEP program is established in a different organizational structure from the academic faculty structure and there is no interchange/transfer of duties between the two. However, there is also little interchange or transfer of duties between bargaining unit employees in different academic disciplines. Within a discipline, non-tenure faculty teach some of the same courses as tenure faculty.

Promotion of employees. Only the tenure faculty have promotional opportunities within the bargaining unit. There are no promotional opportunities for the IEP employees into bargaining unit positions. Both non-tenure faculty and IEP coordinator/instructors must apply for tenure-track faculty positions; neither group receives any preference for these jobs.

Work location. The bargaining unit faculty and IEP coordinator/instructors all work on the WOU campus in Monmouth. The IEP coordinator/instructors work in a separate building reserved for the international student program, but on occasion an instructor may teach a class in the campus instructional technology center. Similarly, bargaining unit faculty are assigned to a specific building based on the discipline in which they work. Bargaining unit faculty and IEP coordinator/instructors all have access to the same student center dining facilities, library, meeting rooms, and e-mail system.

Supervisory structure. Bargaining unit faculty and IEP coordinator/instructors do not have common supervision or a similar evaluation process.

Wages. Wage structures for tenure and non-tenure faculty are established in the parties' collective bargaining agreement. The wages of the IEP coordinator and instructors are not determined by the agreement, but are somewhat comparable to the wages of non-tenure faculty with similar degrees.

Hours and workload. The IEP coordinator/instructors have a more structured schedule than bargaining unit employees. However, the hours worked by bargaining unit faculty and IEP coordinator/instructors are similar in that they are generally determined by their set class schedule and office hours. Schedules for both bargaining unit employees and IEP instructors are based on the academic year.

Benefits and leaves. Bargaining unit faculty and IEP coordinator/instructors have the same benefits and paid leaves, except the IEP coordinator is additionally entitled to vacation leave as a result of her 12-month position.

History of collective bargaining. The WOUFT bargaining unit has a long history of collective bargaining. The IEP positions have not previously been represented and have existed only since the IEP program began in 2006.

Desires of the employees. The Union produced a sufficient showing of interest along with its petition.

After reviewing and weighing the statutory factors, we conclude that the IEP coordinator/instructors are appropriately included in the WOUFT bargaining unit, subject to a secret ballot election. Teaching is the primary job responsibility of both current bargaining unit employees and the petitioned-for employees. As such, they have similar duties in regard to their teaching activities. Current bargaining unit employees and the IEP coordinator/instructors also work on the same campus, work similar hours, operate on the same academic calendar, and receive the same benefits and leaves. In addition, non-tenure bargaining unit faculty and IEP coordinator/instructors have similar job skills, qualifications, and promotion opportunities. Other community of interest factors, such as lack of interchange among employees and different supervision, do not outweigh the significant factors supporting inclusion. The history of collective bargaining is not relevant here since the employees at issue hold relatively new positions.

WOU asserts that IEP employees lack a sufficient community of interest with current bargaining unit faculty because IEP employees teach non-credit, non-academic courses. However, the existence of some distinctions and differences in the work of bargaining unit members is inherent in our preference for the largest possible bargaining unit. Distinctions and differences at least as great as these already exist in this bargaining unit. For example, librarians, who are part of the current bargaining unit, generally do not teach. Therefore, we conclude that teaching credit versus non-credit or academic versus non-academic courses does not outweigh the similarities in the duties, skills, qualifications, and other working conditions shared by these employees.

These employees also share a community of interest based on the professional nature of their work in a higher education institution. We have historically divided employees in higher education institutions into two separate units, one for professional employees and one for classified employees. *University of Oregon Chapter, American Federation of Teachers v. University of Oregon and Oregon State System of Higher Education*, Case No. RC-46-87, 10 PECBR 265, 276 (1987), *aff'd*, 92 Or App 614, 759 P2d 1112

(1988). We have stated that “professional employees at education institutions, as a group, have an overall community of interest and may constitute an appropriate bargaining unit.” *Portland Community College Faculty Federation v. Portland Community College*, Case No. UC-34-87, 10 PECBR 700, 732-733 (1988). Adding the IEP employees to the current faculty unit is consistent with this precedent.

Under ORS 243.662, all public employees are entitled to be represented by a labor organization for the purpose of collective bargaining. WOU has failed to identify another bargaining unit that would be appropriate for these employees. WOU acknowledges that the IEP employees are professionals. Therefore, these employees would not appropriately be included in a unit of classified employees. A separate unit of these six employees is also not appropriate based on our preference for the largest possible appropriate unit. *University of Oregon Chapter, American Federation of Teachers v. University of Oregon and Oregon State System of Higher Education*, 10 PECBR at 274-75. Therefore, unless we include these employees in the current faculty bargaining unit, they might be denied their right to union representation under ORS 243.662.

WOU also argues that our decision in *Associated Academic Professionals (AAP), AFT, AFL-CIO v. Eastern Oregon University*, Case No. RC-23-02, 20 PECBR 108 (2002) supports excluding these positions from the WOUFT bargaining unit. In *AAP*, this Board certified a bargaining unit of instructional faculty and librarians that specifically excluded employees “who teach exclusively noncredit courses.” *Id.* at 123. However, we did not consider whether it would be appropriate to include the employees who teach non-credit classes because the petitioner in that case did not seek to include such employees in the bargaining unit. Therefore, *AAP* is not determinative here.

For these reasons, it is appropriate to include the IEP coordinator/instructors in WOUFT’s faculty bargaining unit, subject to a secret ballot self-determination election.

ORDER

1. The Elections Coordinator shall conduct a secret ballot election by mail to allow employees in the positions of IEP coordinator, IEP lead instructor, and IEP instructor to express their desires for representation by WOUFT for the purposes of collective bargaining. Eligible voters shall be those employees employed on the date of this Order and still employed at the close of the election.

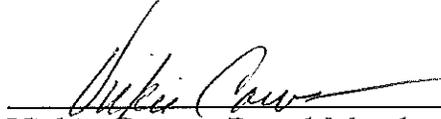
2. The choices on the ballot shall be Western Oregon University Federation of Teachers and No Representation.

3. The University shall provide this Board and WOUFT with an alphabetical listing of names, home addresses, and position titles of all eligible employees, along with a mailing label for each employee, within 10 days of the date of this Board's final Order.

DATED this 4th day of December 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.