

Granite Falls School District, Decision 7719 (PECB, 2002)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
PUBLIC SCHOOL EMPLOYEES OF	)	CASE 15725-C-01-1014
GRANITE FALLS	)	
	)	
For clarification of an existing	)	DECISION 7719 - PECB
bargaining unit of employees of:	)	
	)	ORDER CLARIFYING
GRANITE FALLS SCHOOL DISTRICT	)	BARGAINING UNIT
	)	
	)	

David G. Fleming, Attorney at Law, represented the union.

Jerry Gates, Labor Relations Consultant, Victor-Four
Labor Relations, represented the employer.

On March 22, 2001, Public School Employees of Granite Falls (union) filed a petition with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking to have an information systems supervisor position included in a bargaining unit of classified employees of the Granite Falls School District (employer). A hearing was held on September 25, 2001, before Hearing Officer Paul T. Schwendiman. Both parties filed briefs.

The Executive Director concludes that the position in question is properly excluded from the existing bargaining unit, as a supervisor.

BACKGROUND

The employer operates two elementary schools, a middle school, and a high school, serving approximately 2,200 students.

Public School Employees of Granite Falls has represented the employer's classified employees since at least 1969.

The employer and union were parties to a collective bargaining agreement effective May 1, 1969, containing the following recognition clause:

The School Board and the Superintendent of School District Number 332 recognizes the Local Organization of Public School Employees of District 332 an affiliate of the Public School Employees of Washington, as exclusive bargaining representative of all of the employees in the following units; Secretarial - Clerical, Food Service, Custodial, and Transportation for the purpose of consulting and negotiating on appropriate matters applicable to any and all employees in the units. EXCEPT: An Administrative Assistant, and/or Board Clerk, whose duties imply a confidential relationship to the School Board and/or Superintendent.

Exhibit 3.

With the exception of transportation employees,¹ the recognition clause in the parties' current collective bargaining agreement continues to encompass the same general classifications listed in the 1969 contract. The exclusions are more specific in the current contract than they were in 1969, stating: ". . . Food Service Supervisor (1), Business Manager (1), Superintendent's Secretary (2), Receptionist (1), Payroll Clerk (1), and Information Systems Supervisor (1) for a total of seven (7) exemptions." Exhibit 2. The exclusion of the "information systems supervisor" was the only

¹ During or about 1985, this employer and the Lake Stevens School District formed a joint transportation operation that has a separate bargaining relationship. See *Lake Stevens-Granite Falls Transportation Cooperative*, Decision 2462 (PECB, 1986).

modification of the recognition clause that resulted from the parties' negotiations for their current collective bargaining agreement.

Business and Operations Manager Mike Sullivan is responsible for the employer's fiscal, maintenance, custodial, food service, and technical operations. He initiated the employer's computer operations shortly after he was hired by the employer in 1994. At that time, the employer had only one computer in a computer lab, some Macintosh computers in scattered locations, and no technical staff. Sullivan hired and supervised an information systems specialist in 1995. He worked with that employee in designing the network and setting up the system. While 20 to 30 computers were added to the system at that time, most of the additional technology involved setting up the network infrastructure.

In 1997, the employer purchased about 60 computers. Dan Scollard replaced the first information technology employee in 1997, after responding to a job posting that listed job duties as follows:

1. Oversees installation, configuration and maintenance of all WAN and LAN networking equipment: Troubleshoots data communications issues; Manages efficient network utilization; Responsible for security of network data and equipment.
2. Provides critical input for assessing, designing and planning ongoing implementation of WAN and LAN network expansion, including network service, infrastructure, and equipment integrity.
3. Revises specifications and drawings for facilities projects involving data installation: Trains others in maintenance and front-line maintenance of network services and functions, working as a network support team member: Physical

- installation of cabling / telecommunications systems.
4. Provides technical support for network-related services and functions; Keeps accurate records and reports, as required.
 5. Provides telephone support to users of district's computer systems and software.
 6. Manage the loading and unloading of paper and forms from line printers, routine printer maintenance, and any required bursting or decollating.
 7. Load and unload backup media; Maintain media retention schedule, recirculating as appropriate.
 8. Conduct or organize training sessions for staff in use of the district computer systems and software.
 9. Order, receive, store, distribute, and maintain computer related supplies and inventory.
 10. Coordinate regular and periodic processes in support of district student, fiscal, and library systems.
 11. Provide support on problem identification and resolution.
 12. Assist with various clerical tasks, including but not limited to, filing, making copies, taking messages, and drafting documents and purchase orders.
 13. Perform related duties as assigned.

Exhibit 4.

That job posting listed the mental demands of the technician position, as follows:

Experience constant interruptions: required to deal with distraught or angry employees required to adapt to shifting priorities and frequently rechannel work efforts: perform detailed work in reference to preparation,

computation of data and analyzing information both verbally and in written form (manuals, blueprints, etc.): High level of proficiency in reading, writing, and mathematics, solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists; significant stress due to multiple deadlines on continuing basis in conjunction with daily work load.

That job posting also specified required knowledge, skills and abilities, as follows:

Possess high level of proficiency in reading, writing, math and problem solving.

Ability to communicate effectively with staff and public.

Effective customer service and public relations skills.

Ability to operate a computer and learn the operation of specific software programs.

Ability to set up and maintain accurate files and records.

Ability to organize and set priorities for work.

Ability to maintain strict confidentiality.

Ability to establish and maintain effective working relationships with students, parents staff and public.

While that job posting had described a \$32,000 to \$38,000 annual salary that would have been competitive with the market for information system technicians in the local area, the employer and union negotiated a lower wage rate before the position was filled. Scollard was thus paid \$9.39 per hour for the first 90 days of his employment, and \$10.95 per hour thereafter.²

² A \$9.39 hourly rate would yield \$19,531 per annum for a 2080 hour work year; a \$10.95 hourly rate would yield per annum \$22,776 for a 2080 hour work year.

Scollard resigned, effective in May of 1999, to accept a higher salary offered by another employer. The employer then hired Jayson Bowen to replace Scollard.

The information system continued to expand after Bowen was hired, and Sullivan found himself spending 15-20 hours a week performing technical work on the system, managing the employer's information system operation, and supervising Bowen. As a result, Sullivan saw a need to relieve himself of some of his computer-related duties. The employer then created a new "information systems supervisor" position reporting to Sullivan. The essential job functions of the new position included all 13 functions found in the technician job posting, plus the following:

1. Remain accessible during school hours to take action on any situation that may arise.
2. Provide leadership in the information systems department; implement district procedures; and coordinate decision making process with site-based management committee and district staff when applicable.
3. Provide guidance, discuss achievement and behaviors; encourage, motivate, coach, correct, discipline, and direct information systems staff.
4. Supervise and evaluate personnel assigned to information systems department; observe and provide feedback regarding performance; requires effective decision making and problem solving; requires effective and appropriate delegation; requires substantial self-discipline in behavior and attitude; requires dealing with distraught, angry or hostile individuals; represent the district on potentially sensitive or controversial matters where applicable.

5. Administer records and provide periodic reports to administrators.

Exhibit 14.

Where the job description for the new position requires the supervisor to operate a computer and learn the operation of specific software programs, the job description for the technician position contained no such specific requirement. The employer also adopted job descriptions for a "webmaster" (whose job is to maintain the employer's internet web site) and an "information systems student assistant" (whose job description is identical to the revised job description for the technician position).

On February 2, 2000, Superintendent Gary Wall notified the union that the employer wanted the new "information systems supervisor" and another position excluded from the bargaining unit. He wrote that they:

. . . are not custodial-maintenance, food service, instructional assistant or secretarial type jobs. They are more program manager or technician jobs. They have budget responsibility, exercise a degree of independent judgment more akin to the supervisor or professional/technical type jobs and they serve as the leader for the respective program, with personnel recruitment, setting program goals and objectives and other related program responsibilities. It is for those reasons that the PSE bargaining unit would not be an appropriate fit as the community of interests are not the same.

Of course, if after review of the descriptions, you need more information or you feel that the district's determination regarding the unit question needs clarification, please let me know at your earliest convenience.

Exhibit 7.

The union objected to the employer's characterization of the new information systems position as being supervisory.

Scollard was hired into the new "information systems supervisor" job, and thus returned to work for the employer in February, 2000. The majority of his work since that time has been similar to that of the information systems technician. His work time is mostly devoted to installing, configuring and maintaining the employer's information system along with the other functions described in the technician job description. He generally manages the existing information system and plans future expansion of the system.

Scollard supervises Bowen and one or more paid student assistants. On May 7, 2001, Scollard evaluated Bowen. Scollard has also performed a variety of other supervisory functions since he was hired into the "information systems supervisor" position.

During negotiations for their current collective bargaining agreement (which is effective for the period from September 1, 2000 through August 31, 2002, but was not signed until June 7, 2001), the parties failed to reach agreement on the status of the "information systems supervisor" position. The union filed the petition to initiate this proceeding on March 22, 2001, long before the parties signed their current contract, and the exclusionary language was added to the recognition clause in that context.

POSITIONS OF THE PARTIES

The union asserts that Scollard is not a supervisor, and that he should be included in the bargaining unit it represents.

The employer contends that Scollard is now a supervisor, and that the position he now occupies should be excluded from the bargaining unit.³

DISCUSSION

The Applicable Legal Standard

A potential for conflict of interest is inherent in having both supervisors and their subordinates in the same bargaining unit. Accordingly, supervisors have routinely been excluded from bargaining units containing their subordinates under precedents dating back to at least *City of Richland*, Decision 279-A (PECB, 1978), aff'd 29 Wn. App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

While this case has been pending before the agency, the Commission promulgated a rule codifying the precedents concerning the supervisory exclusion, as follows:

WAC 391-35-340 UNIT PLACEMENT OF SUPERVISORS--BARGAINING RIGHTS OF SUPERVISORS. (1) It shall be presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

³ In its opening statement at the hearing, the employer claimed that Scollard was also a "confidential" employee. During an off-the-record discussion during the hearing, the employer withdrew that claim. Transcript 119.

While the rule itself is new, having been effective on August 1, 2001, it merely codified years of precedent under which the exercise of authority on behalf of the employer over subordinate employees has been presumed to provide a basis for excluding the supervisor from a bargaining unit. The Concise Explanatory Statement provided by the agency under the state Administrative Procedure Act stated:

REASONS FOR CHANGE: The Focus Group meetings disclosed substantial clientele support for adoption of a rule codifying *City of Richland*, [supra] The Court of Appeals wrote:

PERC has been established to decide *the appropriate bargaining unit* when there is a disagreement between the public employer and employees regarding the selection of a bargaining representative. RCW 41.56.050. This process may be used in determining, modifying, or combining bargaining units; ... In determining, modifying, or combining the bargaining unit, the commission "shall consider the duties, skills, and working conditions of the public employees", as well as the history and extent of collective bargaining and the desire of the public employees to be organized. RCW 41.56.060.

... PERC's authority to decide a unit appropriate for the purposes of collective bargaining is similar to that of the NLRB. See 29 U.S.C. SS 159. A unit determination by the NLRB involves of necessity a large measure of informed discretion, *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, ... (1947), and must be upheld absent a clear abuse of this discretion. *Dynamic Mach. Co. v. NLRB*, 552 F.2d 1195 ... (7th Cir. 1977); *Stop & Shop Cos. v. NLRB*, 548 F.2d 17 (1st Cir. 1977); *Sheraton-Kauai Corp. v. NLRB*, 429 F.2d 1352 (9th Cir. 1970). Likewise, our Supreme Court has previously ruled that

an administrative agency's appropriate unit finding must be upheld absent a clear abuse of discretion. *Association of Capitol Powerhouse Eng'rs v. State*, 89 Wn.2d 177, 183 ... (1977).

...
After 1972, and after PERC's consideration of this petition, a substantial change was made in Washington public sector labor law. The precise relationship of battalion chiefs to the employer as viewed in this state has not been consistent and appears to be inconsistent with federal law. See *Minneapolis-Moline Co. v. UAW*, 85 NLRB Dec. 597 (1949). Supervisors are traditionally excluded under federal law from collective bargaining because of the confidential relationship which must necessarily exist between the employer and employee. The Washington statute specifically excludes from collective bargaining governmental employees whose duties as deputy, administrative assistant, or secretary necessarily imply a confidential relationship with the executive head, RCW 41.56.030-(2). Thus, the legislature chose to exclude confidential employees from the act's coverage. It did not, however, specifically exclude supervisors. The Department of Labor and Industries (DLI), the predecessor to PERC, however, had excluded supervisors predicated on the maxim, "No man can serve two masters." [*City of Tacoma*, Decision 95A (PECB, 1977)].

In *Municipality of Metro Seattle v. Department of Labor & Indus.*, 88 Wn.2d 925 ... (1977), the Department of Labor and Industries had certified the appellant union as a bargaining representative for certain municipal employees. None of the positions involved carried the title of deputy, administrative assistant, or secretary. The court found unless the positions involved fell within one of those categories, the persons holding them were not excluded from the defini-

tion of public employee and hence would be able to collectively bargain. In addition, if the questioned employees did fit into one of the categories named, they still might be "public employees" if their duties did not necessarily imply a confidential relationship. In its definition of supervisor, the National Labor Relations Act manifests a concern with the authority which a supervisor exercises over other employees and a possible conflict of interest with management.

The Public Employees' Collective Bargaining Act differs in that the concern which it displays is not with the relationship between the employee and other employees, but with the relationship between the employee and the head of the bargaining unit or other official described in the act. [METRO at 929.] *Thus, there can be a difference in the treatment of confidential employees and supervisors under the state act.* In the above case the employees involved were at the lowest level of supervision. They had daily contact with the bus drivers, but no personal contact with the director. None of their duties implied or even suggested a confidential relationship existed between them and the head of the unit.

A case cited by both counsel and bearing some similarity is *International Ass'n of Firefighters Local 469 v. Yakima*, 91 Wn.2d 101 ...

In [Yakima] it was a very close question whether the battalion chiefs should even have been permitted to become members of the Union. The question in the case at bench is not whether they should become members of the labor union, but whether they should be separated from the rank-and-file members of the Union because of the nature of their duties.

The PERC found the record of the hearing demonstrated the battalion chiefs in Richland have distinct duties, skills and working conditions which warrant their

removal from the rank-and-file fire fighter unit.

Paraphrasing the hearing [officer's] findings, the four battalion chiefs report directly to the fire chief, who reports directly to the city manager. ...

Battalion chiefs propose and discuss policy changes with the fire chief and occasionally draft new policy language. One is a budget officer. He must make day-today purchases. The battalion chiefs meet with the fire chief and determine the budget which is submitted to the city council. One of the battalion chiefs has authority to commit the credit of the City. The battalion chiefs can effectively recommend a fire fighter be disciplined or even discharged. They also can effectively recommend a person be hired, even though ultimate authority to hire or fire rests with the city manager. The battalion chiefs prepare employee evaluations and effectively recommend merit pay increases. They determine staffing and may transfer employees and determine and assign overtime. The battalion chief aids the fire chief in the preparation of promotional exams. Each of the battalion chiefs may resolve grievances pursuant to the first step of the grievance procedure described in the collective bargaining agreement. As a step in the grievance procedure, the battalion chief may be consulted by the fire chief or higher authorities.

The hearing [officer] found the problems inherent in grouping supervisors and nonsupervisors in the same bargaining unit are evident in the instant case. The president of the Union Local is a battalion chief. As a supervisor, he owes a certain fiduciary duty to the City and, as president of the Local, a duty to the Union membership. The dilemma is apparent when an employee under his supervision files a grievance with him. In whose interest should he act? What pres-

sure will he receive from either the City or the Union? Further, is it not more likely that grievances with regard to battalion chiefs' actions, including imposed discipline, would not be filed? How could the aggrieved employee then depend on the support of his union? Would not members of the battalion chief's platoon be hesitant to challenge his union leadership in view of the extent of his authority over them? Would there not be a stifling of discussion at union meetings when problems with supervision arose?

It is the traditional view of the rank and file that supervisors tend to a higher degree of allegiance to management than do the rank and file. This is recognized in the National Labor Relations Act, which excludes supervisors from collective bargaining. The hearing officer found the differences in function and working conditions indicate the battalion chiefs have a separate community of interest from the rank-and-file fire fighters.

While there was a strong consensus by the Focus Group that PERC should not attempt to define "supervisor", there was substantial support for the dual propositions that:

1. The Commission could aptly codify its precedents which generally state that persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") are generally to be excluded from the bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit; and

2. Supervisors have bargaining rights and are properly allocated to separate bargaining units of supervisors.

The adopted rule addresses the latter two concerns.

CLIENTELE COMMENTS: None received.

To date, more than 175 decisions issued under the authority of the Public Employment Relations Commission have cited *City of Richland, supra*. Among those, not less than 120 also cited RCW 41.59.020(4)-(d) as the defining the types of authority that are of concern in the cases concerning supervisors:

. . . any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

Thus, while neither Chapter 41.56 RCW nor Chapter 391-35 WAC contains a definition of "supervisor", practical application of the *Richland* precedent has been consistent with the definition contained in the Educational Employment Relations Act, Chapter 41.59 RCW.

Should an employer and union disagree about whether the presumption described in WAC 391-35-340 should be applied in a particular situation, either may timely petition the Commission to clarify the bargaining unit.

Application of Standards

Timeliness of the Petition -

Although the parties' contract appears to exclude the "information systems supervisor" position from the bargaining unit, and although Commission rules limit the filing of a unit clarification petition

concerning a supervisory issue while a collective bargaining agreement is in effect,⁴ no claim of untimeliness exists in this case. It is clear that the petition was filed before the parties' current contract with signed.

Delegation of Authority -

The job description for the disputed position includes some delegation of supervisory authority:

Provide guidance, discuss achievement and behaviors; encourage, motivate, coach, correct, discipline, and direct information systems staff.

⁴ WAC 391-35-020(2) includes:

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

(b) Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.

Supervise and evaluate personnel assigned to information systems department; observe and provide feedback regarding performance; requires effective decision making and problem solving; requires effective and appropriate delegation; requires substantial self-discipline in behavior and attitude; requires dealing with distraught, angry or hostile individuals; represent the district on potentially sensitive or controversial matters where applicable.

Exhibit 14 (emphasis added).

Testimony going beyond that job description confirms there has been an actual delegation of supervisory authority. Business Manager Sullivan trained Scollard to do evaluations. Transcript 102. Sullivan expects Scollard to schedule his subordinates, to discipline his subordinates for problems such as tardiness (Transcript 72), to recommend further discipline up to and including discharge (Transcript 107-108), and to process his subordinates' grievances under step one of the grievance procedure contained in the collective bargaining agreement.⁵ Transcript 73. Sullivan will evaluate Scollard as to how he carries out his supervisory functions. Transcript 67.

Exercise of Authority -

In actual practice, Scollard assigns work to Bowen, including adding users and fixing file sharing problems (Transcript 95), and assignments that allow Bowen to "get into the nitty-gritty, figuring out how to make things work." Transcript 99. Scollard also approves Bowen's time slips (Transcript 105), and approves Bowen's vacation schedule (Transcript 106). Scollard formally evaluated Bowen on May 7, 2001. Exhibit 19. Until September,

⁵ Section 15.2.1 provides the employee shall first discuss the grievance with his immediate supervisor. All grievances not brought to the immediate supervisor within 30 calendar days of the event are invalid. Exhibit 2.

2001, Scollard also supervised two paid Information System Student Assistants. Transcript 93-94. One of those was an individual named Aden, who continued as a part-time employee of the employer now working two-and-one-half hours per day.⁶ Scollard assigns work to Aden. Scollard had not yet evaluated Aden, although he expected to do so within six-months following the date Aden began work. Transcript 108.

Citing *Soap Lake School District*, Decision 6948 (PECB, 2000), the union urges that the exercise of supervisory authority needs to be a "frequent and essential" part of the duties of the supervisor. The argument is not persuasive. Close reading of the *Soap Lake* decision discloses that the cited factors were discussed in connection with a proposed "confidential" exclusion where "exclusion as a 'confidential employee' altogether deprives the individual of [all] collective bargaining rights under the Public Employees' Collective Bargaining Act" Under *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978), the exclusion of "confidential employees" is entirely separate from the "supervisor" debate applicable to this case. Moreover, the Commission has adopted a separate rule on "confidential" status, WAC 391-35-320, which embraces the "labor nexus" test used by the Supreme Court of the State of Washington in its *Yakima* decision. Unlike an individual excluded as "confidential", an individual who is excluded from a particular bargaining unit as a supervisor is not deprived of all collective bargaining rights.

⁶ Applying the "one-sixth of full-time" threshold for status as a regular part-time employee under WAC 391-35-350, it appears that Aden qualifies for inclusion in the bargaining unit represented by the union. Thus, even though the "information system student assistant" classification is not mentioned in the parties' collective bargaining agreement, the record made in this case supports a conclusion that a potential for conflicts exists between the position held by Scollard and the position now held by Aden.

The union argues that Scollard is a lead worker rather than a supervisor. The union is correct that lead workers have been left in bargaining units with the employees they lead, if they have limited authority on personnel matters, or where their role is the ministerial regulation of programs or functions, because there is then little potential for conflicts of interest within a bargaining unit. See *Federal Way Water and Sewer District*, Decision 3794 (PECB, 1991). The Commission drew a distinction in *Morton General Hospital*, Decision 3521-B (PECB, 1991):

. . . between individuals with sufficient authority to qualify as "supervisors" and those with authority akin to working foremen. The latter have authority to direct subordinates in their job assignments, without possessing authority to make meaningful changes in the employment relationship. *City of Toppenish*, Decision 1973-A (PECB, 1985).

This Commission has previously observed that in nearly every organization there exists a work level which may not be clearly characterized as supervisory or non-supervisory:

In a hierarchical organization, certain employees may be given some supervisory responsibilities, but not a full complement, or they may be allowed to share supervisory responsibilities with their own superiors. *City of Toppenish*, Decision 1973-A (PECB, 1985).

The Commission went on to note in *Toppenish*, at page 3, that such employees are not always allowed to exercise a degree of independent judgment in important areas that compels their exclusion from a bargaining unit. The question in each case is whether a position enjoys substantial independent responsibility of a kind that requires exclusion from the rank-and-file unit.

Where there is substantial similarity in duties and working conditions shared by the disputed "supervisor" and the bargaining unit employees, there is reduced potential for the types of conflicts of interest which the Commission and courts have sought to avoid

through unit determination decisions. If a purported supervisor performs only routine or clerical duties in the administration of a public employer's personnel policies, that employee is not excluded from a rank-and-file bargaining unit. Lead workers and working foremen have thus been left in units where the evidence demonstrates that the "supervisor" does not possess independent authority to direct work activities and does not exercise independent judgment in fundamental personnel matters. *Whitman County, Decision 1967 (PECB, 1983).*

In this case, however, the evidence supports a conclusion that Scollard has a preponderance of the supervisory functions.

Hiring occurs at an "appointing authority" level above Scollard, but that is typical for public employers. The authority to recommend is thus of great significance. Bowen was hired during the gap in Scollard's employment with this employer, and the hiring of one of the employer's certificated employees as part-time Webmaster presents a clouded situation because of uncertainty as to whether that is a "certificated" role or merely a certificated employee moonlighting in a "classified" position.⁷ It is clear, however, that Scollard helped to select Aden for employment.⁸

Assignment of work by Scollard to both Bowen and Aden is clearly established by this record. Even when Aden performs some assignments for Sullivan, Scollard had an involvement and awareness in those assignments.

⁷ See *Castle Rock School District*, Decision 4722-B (EDUC, 1995).

⁸ The "information systems student assistant" classification is a likely source for promotions to regular employment. Both Scollard and Bowen were recruited by this employer when they were students.

Promotion, transfer, layoff and recall have not occurred within the small information systems workforce, so there has been no occasion for any exercise of authority in those areas.

Suspend, discipline or discharge have not occurred within the small information systems workforce since Scollard was rehired into the "information systems supervisor" position, but it is clear that Scollard is responsible for imposing any minor discipline and recommending any major discipline that might become necessary. It is also clear that Scollard evaluates the performance of employees.

Adjustment of grievances is a function delegated to Scollard by Sullivan and by the grievance procedure contained in the collective bargaining agreement.

Scollard thus has performed (or has authority to perform) a preponderance of the types of authority specified in RCW 41.59.00(4)(d). The *potential* for conflicts of interest exists whenever supervisory authority exists, regardless of whether the particular type of authority has actually been exercised.

Independence -

The union argues Scollard lacks the independent authority required to warrant his exclusion as a supervisor. While RCW 41.59.020(4)-(d) contains the "not merely routine or clerical in nature but calls for the consistent exercise of independent judgment" component, the record in this case supports a conclusion that Scollard is sufficiently independent to warrant his exclusion from the bargaining unit as a supervisor. Scollard's assignment of work to Bowen illustrates his independence. When scheduling vacations and other time off, Scollard usually assures that either he or Bowen is available to immediately correct system problems. He also independently weighs the "severity and urgency" of the technician's

need for time off against the employer's need for two or more employees to complete a project in a timely fashion. Transcript 107. The record shows that Scollard has actually been trained to evaluate subordinate employees, which is indicative of the employer's expectation that Scollard is to act independently in such matters.

Performance of Bargaining Unit Work -

In support of its contention that Scollard is merely a lead worker, the union compares Scollard's routine to those of a building secretary and a head custodian who are included in the bargaining unit. However, neither the evidence in this record nor the union's argument support a ruling that Scollard is not a supervisor. The building secretary and the head custodian each sometimes direct the work of other employees, which is arguably a supervisory function. When he worked at the high school, the head custodian (a former union president) also "monitored" the work of two custodians. A key distinction exists, however, in regard to the making of recommendations. The head custodian provided input to the high school principal on evaluations, but the head custodian's testimony that the principal "kind of listened to what I had to say because he really never paid any attention" (Transcript 123) defeats any suggestion that the head custodian made effective recommendations. It is clear that the principal signed the evaluations (Transcript 133), that the principal approved leaves (Transcript 125), and that the principal was responsible for any discipline. Moreover, any grievance filed by one of the "monitored" custodians would have been acted upon at step one by the principal, not by the head custodian. Similarly, the building secretary (another union official) merely assigns work to a health care attendant and office assistants who work at the school. As explained by the building secretary:

. . . in general the principal will put things in my box that she wants done and then it's my duty to assign them to either myself if I have time to do it or if I don't then to the office assistant.

Transcript 144-145.

The involvement of the building secretary in the evaluation process also falls short of constituting an effective recommendation. She explained:

. . . the new principal, she just gives one of these evaluation forms, a blank, puts it in your box with a note please fill this out for and then she writes the person's name at top and then you just fill it out and put it back in the box. We don't even meet to talk about it.

Transcript 146.

The principal then edits the evaluation form and signs it as the sole evaluator of record. Transcript 158. Similarly, although the building secretary served on a three-person committee that interviewed applicants for employment, the presence of the principal on that committee and the "try and make the best judgment" task of the team precludes a finding that the building secretary was making an effective recommendation on hiring.

The supervisory status of the building secretary and of the head custodian is not at issue in this proceeding, and could not be at issue absent a change of circumstances. See WAC 391-35-020. The evidence concerning their assignment of work is of minimal probative value. The record clearly indicates that any lead or supervisory duties they have are less than the supervisory authority delegated to and exercised by Scollard.

The Union's "Avoid Stranding" Argument -

The union argues that a different standard should be applied to small employers, because of the possibility of stranding an excluded supervisor without access to union representation. It argues for "strict scrutiny" in cases where the possibility of stranding exists. However, the union fails to persuade that there should be a complete disregard (or wholesale modification) of the long-standing precedents concerning unit placement of supervisors.

City of Vancouver, Decision 3160 (PECB, 1989), dealt with the evils of "stranding" in the context of a large employer, where the creation of multiple bargaining units would have left some non-supervisory employees without meaningful access to collective bargaining rights. Concerns about fragmentation generally relate to the number and complexity of contracts to be negotiated and administered within an employer's workforce, and very small units are discouraged where the positions can properly be fit into one or more broader bargaining units. *City of Auburn*, Decision 4880-A (PECB, 1995). However, the valid concerns about fragmentation must be harmonized with two other valid concerns:

First, the Commission adopted a rule effective August 1, 2001, as follows:

WAC 391-35-330 One-person bargaining unit inappropriate. A bargaining unit cannot be considered appropriate if it includes only one employee.

That rule codified long-standing precedent dating back to *Town of Fircrest*, Decision 248-A (PECB, 1977), where the Commission announced acceptance of "the well established principle that a collective bargaining unit cannot be considered appropriate if it has only one person included."

Second, the Commission adopted the rule effective August 1, 2001, to codify precedents concerning supervisors that date back to *City of Richland, supra*.

The union's argument has some basis in theory, as an inherent tension between unit determination policies has been acknowledged:

Chapter 41.56 RCW, has been described by the Supreme Court as "remedial" legislation, and the Supreme Court of the State of Washington has sought to preserve the maximum range of employee access to collective bargaining rights. *METRO*, [88 Wn.2d 925 (1977)]; *International Association of Fire Fighters v. City of Yakima*, 91 Wn.2d 101 (1978); and *Zylstra v. Piva*, 85 Wn.2d 743 (1975). The "supervisor exclusion" and "one-person units inappropriate" precedents both flow from the unit determination provisions of the statute, under which the task is limited to the allocation of persons who meet the definition of "public employee" into appropriate groupings for bargaining. Where two different lines of policy and precedent emanating from the Commission's unit determination authority come into conflict, the cited Supreme Court precedents suggest that the dispute should be resolved in a manner which preserves the collective bargaining rights of the employees.

City of Fircrest, Decision 4249 (PECB, 1992).

In *City of Blaine*, Decision 6619 (PECB, 1999), the employer argued that a proposed unit was inappropriate because it commingled non-uniformed employees with an employee who could have been eligible for interest arbitration under RCW 41.56.030(7) and RCW 41.56.430 through .490. The solution was to include the "uniformed" employee with non-uniformed employees until such time (if ever) as the employer created another uniformed position that could be grouped together with the existing position to form an appropriate bargaining unit. While a superficial reading of the *Blaine*

decision might suggest temporarily leaving an otherwise stranded supervisor in the same bargaining unit with his or her subordinates to avoid stranding, such a reading is contradicted by realization that the "availability of interest arbitration" basis for the separation of non-uniformed personnel from uniformed personnel was inapposite in *Blaine* absent the existence of an appropriate unit of uniformed personnel. In contrast, the potential for conflicts cited by the Court of Appeals as the basis for separation of non-supervisors and supervisors in *Richland* would continue to conflict with concerns about avoidance of stranding.

Theoretical concerns aside, the record made in this case obviates the need for harmonizing any latent conflicts among the rules and precedents: Scollard would not be stranded by his exclusion from the bargaining unit represented by this union. The employer already has at least a "food service supervisor" who is excluded from the bargaining unit, so there are at least two supervisors who could be grouped together to form a separate bargaining unit of supervisors that would be presumptively appropriate under WAC 391-35-340(2).

Pay Pressure and Direct-Dealing -

The union accuses the employer of merely wanting to negotiate directly with Scollard, rather than negotiating with the union:

Mr. Sullivan did what school districts do when they do not want to negotiate a pay rate with their classified employees for specialized tasks. He called him a supervisor and unilaterally implemented the \$10,000 pay increase.

Apart from stating unproven generalities, the union's argument suffers from an exceedingly narrow view of the facts. The collective bargaining process failed to achieve a market rate for the technician classification, Scollard quit to take a higher-

paying job, and Scollard only returned to work for the employer when he was offered a higher rate of pay. The evidence does not support a conclusion that Scollard's departure was a sham,⁹ or that the new classification is a subterfuge. The wage or salary level of a position is not determinative in unit determination proceedings under RCW 41.56.060, and the delegation and exercise of supervisory authority in the new position cannot be ignored. Regardless of his employment history, Scollard is now properly excluded from the bargaining unit as a supervisor.¹⁰

FINDINGS OF FACT

1. The Granite Falls School District is a public employer within the meaning of RCW 41.56.020(5). The employer operates two elementary schools, a middle school and a high school in or around the community of Granite Falls, Washington.
2. Public School Employees of Granite Falls, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory classified employees of the employer.
3. The collective bargaining relationship between the employer and union was established prior to May 1, 1969.

⁹ It is clear that Scollard left for a higher-paying job at the Everett Herald. There is no basis to conclude his departure was anything less than unconditional.

¹⁰ The place for the union to allege unlawful "skimming" of bargaining unit work by the creation of the new supervisory position would have been in an unfair labor practice proceeding filed within six months after Scollard was rehired by the employer.

4. The employer and union are parties to a collective bargaining agreement in effect from September 1, 2000, through August 31, 2002. Prior to the signing of that agreement, the union filed the petition to initiate this proceeding.
5. The employer commenced staffing information systems functions during or about 1994, and has had full-time staffing of a growing information systems function since at least 1997.
6. The employer created a new "information systems supervisor" position in February of 2000. Under the job description and in actual practice, the incumbent in that position has authority to act independently on (or to make effective recommendations regarding) at least the hiring, assignment, promotion, suspension, discipline or discharge of subordinate employees, and acts on behalf of the employer in processing of grievances at the first step of the contractual procedure.
7. Positions subordinate to the "information systems supervisor" are or could be included in the bargaining unit represented by the union, including classifications of "information systems technician" and "information systems student assistant".
8. Dan Scollard has been the "information systems supervisor" since February of 2000. He previously worked for the employer within the bargaining unit represented by the union, but resigned to accept a higher-paying job in the private sector. Scollard reports to and is evaluated by the employer's Business Manager. Scollard has been trained to evaluate his subordinates, and has been the evaluator of record on at least one evaluation. Scollard assigns work to his subordinates, and approves their time slips and vacation schedules.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. As presently constituted, the "information systems supervisor" independently exercises or makes effective recommendations on sufficient supervisory authority to warrant exclusion, under RCW 41.56.060 and WAC 391-35-340, from the bargaining unit which includes subordinate employees, in order to eliminate a potential for conflicts of interest which would otherwise exist within the bargaining unit represented by the union.

ORDER

The bargaining unit involved in this matter is hereby clarified to exclude the "information systems supervisor" position.

Issued at Olympia, Washington, on the 17th day of May, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.