

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

KENNEWICK SCHOOL DISTRICT

CASE 130667-C-18

For clarification of an existing bargaining
unit represented by:

DECISION 12977 - PECB

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON

ORDER OF DISMISSAL

Jason K. MacKay, Assistant General Counsel, for the Public School Employees of
Washington.

Bronson J. Brown, Attorney at Law, Bell Brown & Rio PLLC, for the Kennewick
School District.

The Kennewick School District (employer) filed a unit clarification petition asking this agency to review the supervisory status of the Certificated Substitute Dispatch Secretary and Substitute Dispatch/Personnel Secretary positions. Both positions are classified positions and are currently represented by the Public School Employees of Washington (union) in a bargaining unit of secretarial employees. The employer asserts that these positions are supervisors within the meaning of WAC 391-35-340 and should be excluded from the secretarial bargaining unit. Hearing Officer Daniel Comeau conducted a hearing on October 29, 2018, and the parties filed post-hearing briefs on December 18, 2018, to complete the record.

The issue to be decided is whether the certificated substitute dispatch secretary and substitute dispatch/personnel secretary are supervisors under WAC 391-35-340 in the union's secretarial bargaining unit. Neither position performs supervisory duties over other rank-and-file employees included in the secretarial unit. No conflict of interest exists between the at-issue positions and other members of the secretarial bargaining unit. The employer's request to exclude the positions is denied.

BACKGROUND

The union represents a bargaining unit of classified secretaries in the Kennewick School District. The certificated substitute dispatch secretary (certificated dispatcher) and substitute dispatch/personnel secretary (classified dispatcher) positions have been included in that bargaining unit for at least 16 years.

The certificated dispatcher and classified dispatcher each oversee the recruitment and hiring for a pool of substitutes who work at the district. The certificated dispatcher is in charge of the pool of substitute teachers. The substitute certificated teachers are employees covered by the Educational Employment Relations Act, Chapter 41.59 RCW and represented by the Kennewick Education Association.¹ When a substitute teacher is initially hired, that person is not automatically included in the certificated bargaining unit because they have not worked the required number of days. The substitutes also cannot be included in the secretarial bargaining unit due to the different collective bargaining law for certificated employees.

The classified dispatcher is in charge of the pool of non-certificated paraeducator and secretary substitutes. There are approximately 10 secretarial substitutes and 120 paraeducator substitutes in the classified pool. Qualifying substitute secretaries are included in the same bargaining unit as the classified dispatcher.² When a substitute secretary is initially hired, that person is not automatically included in the secretarial bargaining unit because they have not worked the required number of days. Substitute secretaries are supervised by building administrators and the dispatchers have no further role in their employment.

¹ Qualifying substitute teachers are those substitutes who work at least one-sixth the days in the academic year (usually 30 days per school year). WAC 391-35-350.

² Qualifying substitute paraeducators and secretaries are those substitutes who work one-sixth the hours of a regular full-time paraeducator or secretary. WAC 391-35-350.

The paraeducators are included in a separate bargaining unit represented by the union. When a substitute paraeducator is initially hired, that person is not automatically included in the paraeducators bargaining unit because the person has not worked the required number of days.

As part of hiring process, the certificated and classified dispatchers interview applicants, ensure that applicants have the necessary credentials, and perform background and reference checks. Once a dispatchers is satisfied that an applicant is qualified, the dispatcher recommends that the applicant be hired into the pool. The Human Resources director then makes the final decision to hire a specific candidate into the pool. In most instances the Human Resources director agrees with the dispatchers' recommendations.

Substitutes hired by the district are given access to an online system that allows them to sign up for jobs. The dispatchers train the substitutes on how to use the system and then the substitutes use the system to sign themselves up for substitute jobs. Occasionally, the dispatcher will assign a specific substitute to a job because the substitute has a specific skillset or the substitute is requested by a building administrator. When substitutes apply for permanent positions with the district, the dispatchers provide their reference checks to the hiring authority regarding the candidates.

ANALYSIS

Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *rev. denied*, 96 Wn.2d 1004 (1981). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997). The goal in making bargaining unit determinations is to group together employees who have sufficient similarities (community of interest) that indicate they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

In making bargaining unit determinations, this agency considers “the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.” RCW 41.56.060(1). These criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors will arise in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978).

Included in this agency’s authority to determine an appropriate bargaining unit is the power to modify that unit through unit clarification proceedings, upon request. *University of Washington*, Decision 11590 (PSRA, 2012), *aff’d*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of Chapter 391-35 WAC. The general purpose of the unit clarification process is to provide a mechanism to make changes to an appropriate bargaining unit based upon a change of circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

Generally, supervisors are not included in the same bargaining unit as the people they supervise. WAC 391-35-340. The exclusion of supervisors from the bargaining units of their subordinates is presumed appropriate when they exercise authority on behalf of the employer over rank-and-file subordinates, and such exclusion avoids a potential for conflicts of interest. *Id.* The Commission places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. *State – Office of Administrative Hearings*, Decision 11503 (PSRA, 2012), *citing State – Corrections*, Decision 9024-A (PSRA, 2006). If an employee merely executes the instructions of a higher ranking employee when making meaningful changes to the workplace, that employee has not exercised independent judgment. *State – Office of Administrative Hearings*, Decision 11503, *citing City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff’d*, Decision 8080-B (PECB, 2006).

A determination under the Commission’s definition of supervisors does not negate or strip away any titular or other supervisory authority of that employee. Indeed, an employee may possess a

lower level of supervisory authority than the statutory definition contemplates and still be deemed a “supervisor” by subordinates. The distinguishing characteristic is that the authority does not rise to the level of conflict expressed in the statute, which would require separating the employee out of the bargaining unit. *Rosalia School District*, Decision 11523 (PECB, 2012).

In determining whether an employee meets this agency’s supervisory standard, the actual duties of the employee are examined. A supervisory employee is any employee whose *preponderance* of duties includes the independent authority “to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action” *Granite Falls School District*, Decision 7719-A (PECB, 2003); *see also*, RCW 41.59.020(4)(d). “Preponderance” can be met in two different ways. An employee may be a supervisor if a preponderance of the employee’s time is spent performing one or more of the statutory supervisory activities. *City of East Wenatchee*, Decision 11371 (PECB, 2012); *Inchelium School District*, Decision 11178 (PECB, 2011).

An employee may also be a supervisor if less than a preponderance of the employee’s time is spent performing supervisory activities, but the employee does perform a preponderance of the type of supervisory activities enumerated in RCW 41.59.020(4)(d). *City of East Wenatchee*, Decision 11371; *King County*, Decision 10075 (PECB, 2008). The determination of whether an employee possesses sufficient authority to be excluded from a rank-and-file bargaining unit as a supervisor is made by examining the actual duties and authority exercised by that individual, not on the basis of the individual’s title or job description. *Rosalia School District*, Decision 11523; *Morton General Hospital*, Decision 3521-B (PECB, 1991). However, the exercise of authority to assign and direct work, grant time off, authorize overtime, issue oral or written reprimands, conduct performance evaluations, and train employees may be insufficient when the individual performing these duties does not have the authority to hire, terminate, suspend without pay, or effectively recommend such actions. *Okanogan County*, Decision 6142-A (PECB, 1998).

Application of Standards

The certificated dispatcher and classified dispatcher are not supervisory employees under WAC 391-35-340 because they do not supervise bargaining unit employees within the bargaining unit. The stated purpose of the supervisory standard is exclude supervisors from bargaining units of rank-and-file employees in order “to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.” WAC 391-35-340. The conflict arises when supervisors and rank-and-file employees are included in the same bargaining unit and the supervisors oversee the rank-and-file employees. There is no conflict if supervisors in a bargaining unit supervise rank-and-file employees outside their bargaining unit.

The only supervisory duty performed by the certificated dispatcher and classified dispatcher positions is to hire substitutes into the pools. The hiring process does not create a conflict of interest between the dispatchers and the substitute employees. The certificated dispatcher and classified dispatcher serve as the gatekeepers for substitute employees working at the district. When a new substitute is hired, that person is not automatically included in any bargaining unit or covered by a collective bargaining law. Rather, a new substitute employee must work a required number of days or hours and have a reasonable expectation of employment to be considered an employee who can be included in a bargaining unit. WAC 391-35-350; *Thurston County Fire District 8*, Decision 11524-A (PECB, 2013).

Even if the certificated dispatcher could meaningfully impact the working conditions of a substitute teacher through an employment action, a conflict of interest will never exist because the employees cannot be in the same bargaining unit. Nothing in this record suggests that the certificated dispatcher exercises or spends time performing a preponderance of the supervisory duties over employees included in the secretarial bargaining unit. The certificated dispatcher appropriately remains in the secretarial bargaining unit.

Similarly, the classified dispatcher currently is in a separate bargaining unit from the paraeducators and therefore does not impact the working conditions of the substitute paraeducators in a manner that creates an impermissible conflict of interest. Even if the classified dispatcher could

meaningfully impact the working conditions of a paraeducator through an employment action, that conflict does not preclude the classified dispatcher from being in the secretarial bargaining unit.

While the classified dispatcher is in the same bargaining unit as substitute secretaries who work the requisite number of hours to qualify for collective bargaining, the record does not show that any conflict that exists between the classified dispatcher and a substitute secretary rises to a level warranting exclusion of the classified dispatcher from the secretarial bargaining unit.

The classified dispatcher neither performs a preponderance of the supervisory duties nor spends a preponderance of time performing supervisory duties over the substitute secretaries. The district utilizes approximately 120 substitute paraeducators and 10 substitute secretaries. Less than 10 percent of the classified substitute workforce consists of substitute secretaries.

As noted above, substitute secretaries are not bargaining unit employees at the time they are hired, so the fact that the classified dispatcher spends a considerable portion of time interviewing employees as part of the hiring process is neither an indicator of supervisory activity nor a conflict of interest with the secretarial bargaining unit. The fact that the classified dispatcher may assign a specific substitute to a job because the substitute has a specific skillset or the substitute is requested by a building administrator is also, by itself, not an indicator that the dispatcher position is supervisory in nature. Once a substitute secretary is hired, that individual is supervised by building administrators and the dispatcher has no meaningful role in the substitute's employment with the district.

CONCLUSION

There is no conflict of interest between the dispatchers and any other rank-and-file member of the secretarial bargaining unit represented by the union. The dispatchers shall remain included in the bargaining unit.

FINDINGS OF FACT

1. The Kennewick School District (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. The Public School Employees of Washington (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit of classified secretaries in the Kennewick School District. The certificated substitute dispatch secretary (certificated dispatcher) and substitute dispatch/personnel secretary (classified dispatcher) positions have been included in that bargaining unit for at least 16 years.
4. The certificated dispatcher and classified dispatcher each oversee the recruitment, hiring, and dispatching for a pool of substitutes who work at the district.
5. The certificated dispatcher is in charge of the pool of substitute teachers. The substitutes also cannot be included in the secretarial bargaining unit due to the different collective bargaining law for certificated employees.
6. The classified dispatcher is in charge of the pool of non-certificated paraeducator and secretary substitutes. There are approximately 10 secretarial substitutes and 120 paraeducator substitutes in the classified pool. Qualifying substitute secretaries are included in the same bargaining unit as the classified dispatcher. The paraeducators are included in a separate bargaining unit represented by the union.
7. As part of hiring process, the certificated and classified dispatchers interview applicants, ensure that applicants have the necessary credentials, and perform background and reference checks.

8. Substitutes hired by the district are given access to an online system that allows them to sign up for jobs. The dispatchers train the substitutes on how to use the system and then the substitutes use the system to sign themselves up for substitute jobs.
9. When substitutes apply for permanent positions with the district, the dispatchers provide their reference checks to the hiring authority regarding the candidates.

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. Based upon findings of fact 3 through 5 and 7 through 9, the certificated dispatcher is not a supervisory employee within the meaning of WAC 391-35-340.
3. Based upon findings of fact 3 and 6 through 9, the classified dispatcher is not a supervisory employee within the meaning of WAC 391-35-340.

ORDER

The unit clarification petition filed by the Kennewick School District in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 18th day of March, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.



RECORD OF SERVICE

ISSUED ON 03/18/2019

DECISION 12977 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 130667-C-18

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