

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PUBLIC SCHOOL EMPLOYEES
OF WASHINGTON

FOR CLARIFICATION OF AN
EXISTING bargaining unit of employees
of:

PUYALLUP SCHOOL DISTRICT

CASE 128480-C-16

DECISION 12730 - PECB

ORDER CLARIFYING
BARGAINING UNIT

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

Chuck W. Lind, Attorney at Law, Patterson Buchanan Fobes & Leitch, Inc., P.S., for the Puyallup School District.

On October 10, 2016, the Public School Employees of Washington (union) filed a unit clarification petition concerning the supervisory status of the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions at the Puyallup School District (employer). These positions are currently excluded from the union's non-supervisory secretarial-clerical bargaining unit. The union asserts that none of these positions are supervisors within the meaning of WAC 391-35-340. The employer argues that the positions are supervisors and should remain excluded from the union's bargaining unit. Hearing Officer Elizabeth Snyder conducted a hearing on February 1 and 2, 2017, and parties filed post-hearing briefs on March 20, 2017, to complete the record.

The issues to be decided is whether the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions are supervisors.¹ Based upon the evidence and testimony, none of the four disputed positions perform a majority of the supervisory duties nor do they spend a preponderance of time performing supervisory duties. The positions do not exercise independent judgment to act in the interest of the employer and make meaningful changes in the employment

¹ The parties agree that the union's petition is timely under WAC 391-35-020(2).

relationship. The supervisory authority that the positions exercise is similar to a lead worker as opposed to a supervisor. The union's secretarial-clerical bargaining unit is clarified to include the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions.

BACKGROUND

The union represents a bargaining unit comprised of non-supervisory employees in the secretarial-clerical general job classification. *Puyallup School District*, Decision 12067-A (PECB, 2014). Since early 2015, the employer created the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions to alleviate administrative work for the central office department administrators. These positions report to a district executive director or director and oversee staff within each department and handle other upper level tasks as necessary. The subordinate staff reporting to the four positions are included in the union's bargaining unit. The employer assessed the duties to be performed by each position and determined that all four positions were supervisory in nature and excluded them from the union's bargaining unit.

Uniform Duties Across all Four Positions

The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions each perform certain uniform duties regarding the employees they oversee. Each position can direct and assign work to their subordinates, and would be held responsible for the mistakes these employees might make. The positions directly and indirectly evaluate employees and have the independent authority to impose discipline up to letters of reprimand. Each position possesses the authority to grant subordinate employees' time-off and overtime, but these decisions can ultimately be overridden by each department's respective director. All four employees sit on a hiring panel and the employer expects all four positions to be the "hiring authority" when it comes to subordinate employees.

There are several supervisory duties that each position does not have the authority to perform, either by design or because the subject matter is controlled by the parties collective bargaining agreement. For example, the positions do not have the authority to suspend or fire a subordinate employee. None of the positions have the authority to increase or decrease employee wages,

transfer, layoff, recall or promote employees and none of the positions have the independent authority to create new positions.

None of the four positions have adjusted bargaining unit member grievance. However, there is a belief that should a grievance be filed by a subordinate bargaining unit employee, the grievance would be filed directly to one of the four disputed employees.

In addition to these common duties, the four at-issue positions have distinct functions and purposes within the employer's operation.

Specific Duties – Payroll Generalist (Margaret Nelson)

The employer created the Payroll Generalist position in March 2015 to help run the payroll processes and procedures in an efficient manner. The Payroll Generalist performs a large checklist of monthly duties, including overseeing the maintenance of the Employee Payroll Management System.

The Payroll Generalist position assigns and evaluates the work of the Payroll Analyst and Payroll Technician. Although the Payroll Generalist interacts with these two positions throughout the day, Nelson explains that both positions are filled by excellent staff who only need a minimum level of supervision.² The position oversees employee garnishments and inquiries from creditors. If there is an error in the calculations made by the Payroll Analyst, the Payroll Generalist would be responsible for correcting any discrepancies. Nelson testified that as part of her job she is responsible for making sure that several processes and procedures are correctly accomplished every month for the payroll system, regardless if she or the Payroll Analyst does the work.

Benefits Analyst (Pamela Lambert)

The employer created the Benefits Analyst position in November 2015 and hired Pamela Lambert to fill the position. The Benefits Analyst is responsible for ensuring compliance with Federal,

² Although Nelson also testified that she believed that she spends 95 percent of her time supervising the two employees, the evidence in the record does not support that assertion as her two subordinate employees testified that they typically work independently.

State, District, and bargained-for benefit provisions. Lambert oversees one other position, the Benefits Coordinator position, which is filled by Cathy Repp. The employer promoted Repp to this position in November 2015 through an established seniority process found in the CBA, which did not include an interview.

Lambert testified that she spends 50-60 percent of her working time overseeing Repp. However, Lambert also testified that Repp knows her assigned tasks, can begin her day with little direction, and believes that as time goes on Repp will need less guidance to perform her work. Repp testified that when she first started, she required more training regarding the benefits aspect of the position. Repp also testified that she interacts with Lambert for about 30 minutes to an hour each day, with an occasional question on similar work being performed by both Repp and Lambert. The Benefits Analyst position has not been involved in the hiring process since its creation and Lambert was not involved when Repp was selected for the position.

Accountant II (Barb Rehn)

The employer created the Accountant II position in the summer of 2015 and hired Barb Rehn to fill the position. The Accountant II position is responsible for preparation, maintenance, processing and auditing financial records for the school district. The Accountant II position also provides cash management and assistance to business service specialists, the District Accountant, staff, and the administration.³

The Accountant II oversees one other position, the Business Service Specialist Assistant. Amie Tomlinson is the current incumbent for the Business Service Specialist Assistant position. Rehn testified that she supervises Tomlinson for about two to four hours a day. Additionally, Rehn testified that every two weeks she and Tomlinson spend three days getting pay batches ready for review and auditing. With respect to evaluations, Rehn testified that she provides input for Tomlinson's evaluation but does not actually write up the evaluation herself. The Accountant II position has not been involved in the hiring process since its creation.

³ The employer seemed to put much consideration into the process of creating this position and its job description. The employer made notes and comments on other similar job descriptions in an effort to reduce redundancy and confirm specific job duties. However, there is no mention of any kind of supervision at all on the Accountant II job description.

Special Services Analyst (Alissa McCoy)

The employer created the Special Services Analyst position in 2015. The main duties of the position include overseeing the five secretarial staff in the Special Services department, budgetary authority to approve invoices and contracts, signing off on purchase orders, and general maintenance of the budget for Special Services. McCoy believes that she spends around 85-95 percent of her time supervising these five people.

McCoy was involved in the hiring process for Receptionist/Clerk Erricka Collier. The three person hiring team included McCoy and her direct supervisor. The hiring team interviewed and scored candidates. Although McCoy testified that she believed she had the final authority on who was selected, the final act of hiring came from the Human Resources office.

ANALYSISApplicable 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. PERC*, 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), *aff'd*, *Renton Education Association v. PERC*, 101 Wn.2d 435 (1984).

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 he or she spends a preponderance of his or her time 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 he or she spends less than a preponderance of his or her time performing supervisory activities but 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 his or her 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 employer asserts that the four positions are supervisors that must be excluded from the union’s bargaining unit. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions are not supervisors within the meaning of Chapter 41.56 RCW. While the positions participate in some supervisory duties, none of the positions possess the independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. None of the positions perform a preponderance of the supervisory duties and none of the positions actually spend a preponderance of their time performing supervisory duties.

The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions direct employees, evaluate employees, and have the authority to approve employee leave.

Additionally, all four positions have the authority to issue oral and written reprimands. While these activities can be indicia of a supervisor, they are insufficient to compel a conclusion that the positions are supervisory. *See, e.g., Okanogan County, Decision 6142-A.*

None of the four positions possess the independent authority to fire, suspend, transfer, layoff, recall, or promote bargaining unit employees. None of the positions have the independent authority to adjust employee wages through the evaluation or disciplinary process. While each position may approve overtime, those decisions can also be overridden by employees with more authority, such as director of the department.

It is true that all four positions are involved in the hiring process by participating on a hiring team and can make recommendations about which employee should be hired. The Payroll Generalist and Special Services Analyst each testified that they believed they ultimately had the authority to select the candidate they wanted to hire. The Chief Human Resources Officer Amie Brandmire testified that the Benefits Analyst and Accountant II possessed the same level of authority even though neither position had been involved in the hiring process. While Brandmire also testified that she believed that the Payroll Generalist was the “hiring manager” for positions in the payroll department, she also stated that Chief Financial Officer Corrine Pennington and Director of Payroll Rachel Matthiesen get to choose whether they are involved in the hiring process.⁴

Examining the at-issue employees’ duties as a whole, none of the positions have the authority to independently exercise a preponderance of the supervisory duties. Rather, all four employees only have limited independent authority to exercise duties that could potentially create a conflict of interest with subordinate employees. These conflicts as a whole do not rise to a level that would warrant the at-issue employees’ exclusion from the bargaining unit.

The employer argues that the four positions in this case should be treated similarly to the employees in *City of Lakewood*. In *City of Lakewood*, the disputed employees possessed the

⁴ Even if it were to be assumed that all four positions possessed the independent authority to select the candidate of their choosing, this still would not result in any of the four employees performing a preponderance of the supervisory duties.

authority to make hiring recommendations from a position on a hiring panel, informally approve overtime, discipline subordinates up to a written reprimand, address grievances to some degree, and write performance evaluations. With respect to these duties, the employees in the two cases are similar.

However, the employees in *City of Lakewood* also possessed the independent authority to withhold or accelerate their subordinates' scheduled salary step increases. That role truly impacted the terms and working conditions of their subordinate employees. *Cf. State – Office of Administrative Hearings*, Decision 11503 (PSRA, 2012) (having the authority to evaluate another co-worker's performance does not necessarily pose a sufficient conflict of interest to warrant a supervisory exclusion). Here, the at-issue employees do not possess a similar authority to make meaningful changes to the employment relationship that would create a conflict between them and their subordinates.

The positions in the present case are more similar to the positions in *State – Ecology*, Decision 12565 (PSRA, 2016) and *Rosalia School District*, Decision 11523 where supervisory status was not found. In *State – Ecology*, the at-issue employee had the authority to issue verbal warnings, direct the work of the employees, evaluate and approve leave and overtime. In *Rosalia School District*, the employees had the authority to issue oral warnings but never discharged an employee. Employees in both cases performed reviews and evaluations, and did so because the employees in question were in the best position to observe the performance of a subordinate employee and also sat on hiring panels that could recommend a candidate to be hired but did not possess the independent authority to hire.

Having determined that the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions do not perform a preponderance of the supervisory duties, the next question is whether the positions spend a preponderance of their time performing supervisory duties. They do not.

Testimony taken during hearing regarding the percentage of time the employees spend supervising their subordinates does not accurately reflect the true amount of time the employees spend

performing supervisory duties. For example, the Payroll Generalist testified that she spent approximately 95 percent of her time supervising two subordinate employees but also testified that those same employees worked fair independently and that “their supervision level is fairly minimal.” The Payroll Generalist also testified that she has her own duties to perform. Similarly, the Benefits Analyst testified that she spends approximately 50-60 percent of her time supervising one subordinate employee, the Benefits Coordinator, also testified that she expected the position to require less supervision as the incumbent learned the positon. The Benefits Coordinator testified that she interacts with the Benefits Analyst 30-60 minutes a day. The Accountant II and Special Services Analyst testified similarly, with the Accountant II testifying that she spends two to four hours a day supervising one subordinate employee and the Special Services Analyst stating that she spends 85-95 percent of her time supervising five subordinate employees but also testified that they have their own duties to perform.

The four at-issue positions all perform finance duties that require the employees to check the work of their subordinate employees.⁵ Instances where an at-issue employee is performing work side-by-side with a subordinate or even checking the work of a subordinate employee are not presumptively supervisory duties. An example of this is where the Payroll Generalist ensures that several payroll processes and procedures are correctly accomplished every month for the payroll system. When the Payroll Generalist checks the Payroll Specialist’s work for accuracy, this duty is not a supervisory function. Rather, the Payroll Generalist’s ability to issue the Payroll Specialist a letter of reprimand if the Payroll Specialist fails to accurately perform her work is a supervisory function that potentially leads to a conflict of interest.

With respect to those supervisory duties that the four positions do perform, none of those positions spend a preponderance of their time performing those duties. Each position testified that their subordinate employees operate independently and require little direction. Evaluations occur only once per year and the act of approving leave only takes a miniscule amount of time to perform. There are not instances in this record demonstrating that any of the four at-issue employees have

⁵ The job descriptions for the at-issue positions contain a list of 15-20 non-supervisory duties that each position is expected to perform on a regular basis, and each employee testified the these lists accurately reflected their non-supervisory duties.

spent time on disciplinary matters. Even if it were assumed that all four employees have the independent authority to hire, there have been only two instances where these positions engaged in that activity since the positions were created and the amount of time spent on that activity would only apply to the Payroll Generalist and Special Services Analyst.

CONCLUSION

The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions do not perform a preponderance of the supervisory duties and do not spend a preponderance of their time performing supervisory duties. All four positions are lead workers that share a community of interest with the union's secretarial-clerical bargaining unit. The bargaining unit is clarified to include the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions.

FINDINGS OF FACT

1. The Puyallup School District is a public employer within the meaning of RCW 41.56.030(12).
2. The Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit comprised of non-supervisory employees in the secretarial-clerical general job classification.
4. Since early 2015, the employer created the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions to alleviate administrative work for the central office department administrators.
5. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions direct and assign work to their subordinates.

6. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions directly and indirectly evaluate employees and have the independent authority to impose discipline up to letters of reprimand.
7. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst possesses the authority to grant subordinate employees' time-off and overtime, but these decisions can ultimately be overridden by each department's respective director.
8. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst sit on a hiring panel and the employer expects all four positions to be the "hiring authority" when it comes to subordinate employees.
9. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions do not have the authority to suspend or fire a subordinate employee. None of the positions have the authority to increase or decrease employee wages, transfer, layoff, recall or promote employees and none of the positions have the independent authority to create new positions.
10. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst have not adjusted bargaining unit member grievance.
11. The Payroll Generalist position assigns and evaluates the work of the Payroll Analyst and Payroll Technician. Although the Payroll Generalist interacts with these two positions throughout the day, both positions are filled by staff who only need a minimum level of supervision.
12. The Benefits Analyst oversees one other position, the Benefits Coordinator position. The Benefits Analyst spends 50-60 percent of her working time overseeing the Benefits Coordinator. The Benefits Coordinator interacts with the Benefits Analyst for about 30 minutes to an hour each day. The Benefits Analyst position has not been involved in the hiring process since its creation.

13. The Accountant II oversees one other position, the Business Service Specialist Assistant. The Accountant II supervises Tomlinson for about two to four hours a day. Every two weeks, the Accountant II and Business Service Specialist Assistant spends three days getting pay batches ready for review and auditing. The Accountant II position has not been involved in the hiring process since its creation.
14. The Special Services Analyst oversees the five secretarial staff in the Special Services department. The Special Services Analyst was involved in the hiring process for a Receptionist/Clerk. The three person hiring team included the Special Services Analyst and the position's direct supervisor. The hiring team interviewed and scored candidates.
15. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions do not perform a preponderance of the supervisory duties.
16. The Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions do not spend a preponderance of their time performing supervisory duties.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon Findings of Fact 5 through 16, the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions are not supervisors within the meaning of WAC 391-35-340.

ORDER

1. The bargaining unit described in Finding of Fact 3 is clarified to include the Payroll Generalist, Accountant II, Benefits Analyst, and Special Services Analyst positions at the Puyallup School District.

ISSUED at Olympia, Washington, this 16th day of June, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A large, stylized handwritten signature in black ink, appearing to read 'M. Sellars', is written over the printed name of the Executive Director.

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 06/16/2017

DECISION 12730 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


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