

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON FEDERATION OF	)	CASE 16483-E-02-2735
STATE EMPLOYEES	)	
	)	DECISION 7833-A - PSRA
Involving certain employees of:	)	
	)	ORDER DETERMINING
WASHINGTON STATE UNIVERSITY	)	ELIGIBILITY ISSUES
	)	
	)	

Parr and Younglove, by Edward Earl Younglove III,  
Attorney at Law, for the union.

Glenn W. Frye, Labor Relations Officer, for the employer.

On May 24, 2002, the Washington Federation of State Employees (WFSE) filed a petition with the Washington State Department of Personnel (DOP), seeking certification as exclusive bargaining representative of the classified staff at the Intercollegiate College of Nursing / Washington State University College of Nursing (ICN). The DOP assigned its case number RC-175. Prior to the issuance of a final order by the DOP, amendments to RCW 41.06.340 enacted as part of the Personnel System Reform Act of 2002 (PSRA) transferred jurisdiction concerning unit determination and representation proceedings to the Public Employment Relations Commission.<sup>1</sup> The case was thus transferred to the Commission and re-docketed as Case 16483-E-02-2735. Following an investigation conference, the Commission proceeded with determination of the question concerning representation with certain employees voting by

---

<sup>1</sup> Chapter 354, Laws of 2002.

challenged ballot. An interim certification was issued on September 3, 2002, naming the WFSE as exclusive bargaining representative and remanding the case for further proceedings to resolve eligibility issues concerning three challenged voters.<sup>2</sup> A hearing was conducted on December 5, 2002, before Hearing Officer J. Martin Smith. Briefs were filed to complete the record in this case.

The Executive Director concludes that the status of the three employees is properly before the Commission at this time, and that they are not supervisors within the meaning of RCW 41.80.005(13). They are therefore included in the bargaining unit.

#### BACKGROUND

Washington State University has an enrollment of about 22,000 undergraduate and graduate students. The main campus is located in Pullman, but the Intercollegiate College of Nursing / Washington State University College of Nursing (ICN) is located in Spokane. The ICN offers course work by means of a consortium of higher education institutions, including Eastern Washington University, Whitworth College, and Gonzaga University. It also provides distance learning for students located in Yakima, Walla Walla, the Tri-Cities, and Vancouver. The present dean of the ICN, Dorothy Detlor, is also a professor at the ICN in Spokane.

Since 1994, various non-faculty employees of the ICN have held meetings to discuss workplace issues. A "Staff Organization" was formed and developed bylaws, including the following stated purposes:

---

<sup>2</sup> *Washington State University, Decision 7833 (PECB, 2002).*

The purposes of the Staff Organization are to make recommendations to the Dean on matters affecting the general welfare of the ICNE/WSU College of Nursing, promote optimum working conditions, facilitate development and training of staff, and participate in the formulation of policies and procedures related to staff responsibilities and opportunities.

Membership in that organization originally encompassed both administrative professionals and classified staff at the ICN, but it was separate and apart at all times from any "faculty" organization at the ICN.

In 1999, the Staff Organization filed a petition under the State Civil Service Law, Chapter 41.06 RCW, seeking creation of a bargaining unit of classified employees at the ICN. On June 10, 1999, the Washington Personnel Resources Board (WPRB) created a bargaining unit described as:

All classified staff employed at the [ICN] and its satellite/branch locations, and excluding those employees clearly identified by statute and the confidential secretary to the Dean of the Center.

The record does not indicate the organization ever engaged in collective bargaining with the employer.

In 2002, the bylaws of the Staff Organization were changed to restrict its membership to classified employees, and a committee was formed to investigate representation by a larger union. The petition to initiate this proceeding followed.

During the preliminary processing of this case, the employer and the WFSE disagreed as to whether Office Support Supervisor Thistle, Fiscal Specialist Supervisor Calamia, and Maintenance Custodian Supervisor Schofield were supervisors, and therefore excluded from

the bargaining unit. All of those positions had been included in the classified staff bargaining unit as created by the WPRB.

## DISCUSSION

### Procedural Issues

#### The Interim Certification Procedure -

The WFSE urges that the decision about whether the disputed employees are supervisors should be determined by means of a separate unit clarification proceeding under Chapter 391-35 WAC, rather than as part of this representation proceeding under Chapter 391-25 WAC. That procedural argument is without merit.

In *City of Redmond*, Decision 1367-A (PECB, 1982), the Commission directed that (whenever practical) the determination of questions concerning representation should move forward in an expeditious manner, while reserving eligibility issues concerning relatively small numbers of employees for subsequent determination within the same representation proceeding. That avoids the prejudice and delays that occurred in that case, where a hearing and determination on eligibility issues concerning a few employees held up the rights of the many employees acknowledged to be eligible voters in the representation proceeding. The "interim certification" process called for in *Redmond* was later codified into the Commission's representation case rules at WAC 391-25-270, and that rule is fully applicable to state civil service employees.

#### Expansion of Scope of Controversy -

At the hearing, the employer attempted to exclude a fourth employee from this bargaining unit, claiming the name of the additional employee had "inadvertently been left off" when issues were framed

earlier in this proceeding. The Executive Director rejects the employer's request.

The purpose of investigation conferences conducted under WAC 391-25-220 is to frame the issues to be determined in a representation proceeding. Parties are held to the stipulations they make in representation proceedings. *Community College District 5*, Decision 448 (CCOL, 1978). In the absence of an issue being framed in the investigation conference, the employee the employer would now place at issue was permitted to vote without a challenge to his or her ballot. To now obtain a ruling on its claim of "supervisor" status as to that employee, the employer would need to file and process a unit clarification petition under Chapter 391-35 WAC.

Effect of WPRB Action -

The WFSE contends the bargaining unit should stand as created by the WPRB in 1999, and that the employees in question should remain in the bargaining unit until (at least) June 30, 2004, even if they are supervisors.<sup>3</sup> The WFSE points to the State Civil Service Law, Chapter 41.06 RCW, which governed the determination of appropriate units prior to the transfer of jurisdiction to the Commission, and to WPRB policies which sometimes allowed mixed units of supervisors and non-supervisory employees.<sup>4</sup> The Executive Director finds these WFSE arguments to be without merit.

The Commission must decide this case on the basis of the statutes now in effect. Those include:

---

<sup>3</sup> Many additional provisions of the PSRA will become effective on July 1, 2004.

<sup>4</sup> The tolerance of mixed units was clearer in general government than under rules carried over from the former Higher Education Personnel Board in Title 251 WAC.

RCW 41.80.005 DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

. . .  
(9) "Exclusive bargaining representative" means any employee organization that has been certified under this chapter as the representative of the employees *in an appropriate bargaining unit*.

. . .  
(13) "Supervisor" means an employee who has *authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust employee grievances, or effectively to recommend such action*, if the exercise of the authority is not of a merely routine nature but requires the consistent exercise of individual judgment. However, no employee who is a member of the Washington management service may be included in a collective bargaining unit established under this section. . . .

. . .  
RCW 41.80.070 BARGAINING UNITS -- CERTIFICATION.  
(1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, *unless the unit does not meet the requirements of (a) . . . of this subsection*. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modifications of existing units, the commission shall consider: The duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. However, *a unit is not appropriate if it includes:*

(a) *Both supervisors and nonsupervisory employees*

. . .  
(2) The exclusive bargaining representatives certified to represent the bargaining units existing on June 13, 2002, shall continue as the exclusive bargaining representative without the necessity of an election.

(emphasis added).

The PSRA will provide for a broader scope of bargaining than existed under the process administered by the WPRB,<sup>5</sup> but the duty to bargain will only exist under the PSRA between an employer and the exclusive bargaining representative of an "appropriate" bargaining unit. Thus, the PSRA effectively created a transition period of two+ years until the new scope of bargaining takes effect on July 1, 2004, but more than half of that transition period has already transpired.

The Commission adopted WAC 391-35-026 as a special rule to ease the transition for exclusive bargaining representatives benefitted by RCW 41.80.070(2), so long as the separation of supervisors required by RCW 41.80.070(1)(a) is accomplished prior to July 1, 2004. That rule is inapplicable in this case, however, where the WFSE was not certified as exclusive bargaining representative for this bargaining unit prior to June 13, 2002.

An inherent condition precedent to the certification of exclusive bargaining representative being sought by the WFSE in this proceeding is the making of a conclusion of law that the bargaining unit is appropriate when the certification is issued. That invokes the full set of unit determination criteria set forth in RCW 41.80.070(1), including the required separation of supervisors from non-supervisory employees.

#### Application of "Supervisor" Exclusion

As defined in the PSRA at RCW 41.80.005(13), supervisors are persons who meaningfully exercise authority over subordinate employees. In giving supervisors the same right to organize and

---

<sup>5</sup> RCW 41.80.020 and 41.80.110 will take effect on July 1, 2004.

bargain as nonsupervisory employees while requiring their separation from non-supervisory employees, the PSRA embraced principles that have been a consistent feature of Commission precedents dating back to *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The separation avoids a potential for conflicts of interest that would otherwise exist within a mixed bargaining unit of supervisors and their subordinates. The focus is on the existence and exercise of authority that could become a basis for such conflicts of interest.

In this case, the employer argues that Thistle, Calamia, and Schofield are supervisors, and therefore should be excluded from the classified bargaining unit. The union believes there is ample evidence to support their inclusion in the bargaining unit as determined by the WPRB.

Titles Not Controlling -

The employer points out that Thistle, Calamia, and Schofield all have the word "supervisor" in their position titles. The Commission has consistently held, however, that job titles are not evidence of supervisory status. *Morton General Hospital*, Decision 3521-B (PECB, 1991); *Meridian School District*, Decision 6782 (PECB, 1999). Absent evidence demonstrating actual potential for conflicts of interest, employees holding titles that imply supervisory status have been included in non-supervisory bargaining units. *City of Tacoma*, Decision 7967 (PECB, 2003); *City of Gig Harbor*, Decision 4020-A (PECB, 1992).

Record Insufficient to Warrant Exclusion -

The employer contends that the actual duties of each of the three employees demonstrate their supervisory status. While there is testimony indicating that each position carries with it some



supervisory authority, there is not enough to show that they should be excluded from the unit.

According to the record, Calamia and Thistle each oversee two classified employees, and Schofield oversees three classified employees. Dean Detlor testified that she relied on the recommendations of Calamia and Thistle when making important decisions because:

[T]hey are in the position to deal with the actual issues. They also are involved in, particularly timeslip hiring and some of the other appointments, and I don't get involved in that at all. In fact I don't see the individuals lots of times that they hired at all. I sign off on their recommendations.

Transcript 111. Detlor testified that she "would certainly see [Thistle and Calamia] in the supervisory capacity."<sup>6</sup>

Other evidence in the record undermines that claim of supervisory status. All of the classified staff report to one of the associate deans or to a director who reports to the dean, and the employees at issue are no different. Moreover, other bargaining unit employees report to the same level of authority as Thistle, Calamia, and Schofield.

The Commission has used the term "lead worker" to describe employees who have authority to direct subordinates in their daily job assignments without possessing authority to make meaningful changes in the employment relationship. Such lead workers are routinely included in bargaining units of non-supervisory employees. *City of Aberdeen*, Decision 4174 (PECB, 1992). In this case:

---

<sup>6</sup> Transcript 105.

- Thistle performs office-clerical functions, including word processing, scanning, making photocopies, keeping records, operating the postage meter, and answering the telephone. Thistle testified that she spends about 95 percent of her work time carrying out those tasks.
- Calamia maintains the fiscal recordkeeping system, along with performing fiscal support functions such as payroll, travel reimbursement, purchasing and fiscal planning.
- Schofield physically performs custodial and maintenance tasks.

On the record made in this case, the Executive Director concludes that the employees at issue are properly characterized as "lead workers" under Commission precedent, not as supervisors.

#### FINDINGS OF FACT

1. Washington State University is an institution of higher education of the state of Washington, and is an employer within the meaning of Chapters 41.06 and 41.80 RCW. Among other programs, the employer operates the Intercollegiate College of Nursing / Washington State University College of Nursing (ICN), headquartered in Spokane, Washington.
2. The Washington Federation of State Employees (WFSE), an "employee organization" within the meaning of RCW 41.80.005-(7), has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of classified employees at the ICN.
3. During preliminary processing of this case by the Commission, the employer and union framed issues as to whether employees

holding the titles of "Office Support Supervisor" (Thistle), "Fiscal Specialist Supervisor" (Calamia), and "Maintenance Custodian Supervisor" (Schofield) were properly excluded from the bargaining unit as supervisors, and those employees were permitted to vote by challenged ballot.

4. The WFSE prevailed in the determination of the question concerning representation election conducted by the Commission and the challenges were insufficient in number to affect the outcome of the proceedings, so an interim certification was previously issued in this matter.
5. On the record made here, Thistle, Calamia, and Schofield each assign work to and oversee the work of other employees, but spend a substantial portion of their work time working with the tools or performing the functions of their respective occupations, so as to warrant their categorization as lead workers.
6. On the record made here, Thistle, Calamia, and Schofield each lack independent authority to meaningfully affect the employment status of the employees they oversee with respect to hiring, transfer, suspension, layoff, recall, promotion, discharge, reward, discipline, or adjusting of grievances.

#### CONCLUSIONS OF LAW

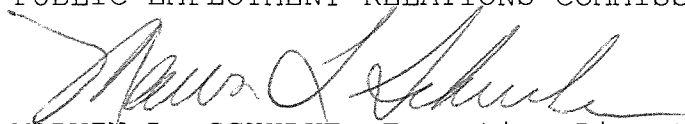
1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.80.070 and Chapter 391.25 WAC.
2. In their positions as presently constituted, Thistle, Calamia, and Schofield are not supervisors within the meaning of RCW 41.80.005(13).

ORDER

1. The positions currently held by Thistle, Calamia, and Schofield are properly included in the bargaining unit of non-supervisory classified employees of the ICN program of Washington State University.
2. The challenges to the eligibility of Thistle, Calamia, and Schofield are DENIED, but those ballots are impounded to protect their secrecy, in the absence of any effect on the determination of the question concerning representation.
3. The interim certification issued as Decision 7833 (PECB, 2002) shall stand as the final certification of representative in this case.

Issued at Olympia, Washington, this 15<sup>th</sup> day of July, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.