

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE NURSES
ASSOCIATION

Involving certain employees of:

KITTITAS VALLEY HEALTHCARE
(KITTITAS COUNTY PUBLIC
HOSPITAL DISTRICT 1)

CASE 27002-E-15

DECISION 12494 - PECB

DIRECTION OF ELECTION

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for the Washington State Nurses Association.

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Healthcare.

On February 5, 2015, the Washington State Nurses Association (union) filed a representation petition to include the Clinical Instructor and Clinical Educator positions in its existing registered nurses bargaining unit at Kittitas Valley Healthcare (employer or hospital). The employer objected to the petition, arguing that neither position shared a community of interest with the registered nurses bargaining unit because the duties, skills, and working conditions of the Clinical Instructor and Clinical Educator are substantially different from those of the registered nurses. Hearing Officer Dario de la Rosa conducted a hearing on July 2, 2015, and the parties filed post-hearing briefs.

The issue to be decided is whether the Clinical Instructor and Clinical Educator share a community of interest with the union's registered nurses bargaining unit such that inclusion of those positions would result in an appropriate bargaining unit under RCW 41.56.060. The Clinical Instructor and Clinical Educator interact with the registered nurses on a regular basis during training and other information-gathering situations. While the Clinical Instructor and Clinical Educator also interact with Information Technology Analysts (IT Analysts) who work on staff development, the work

performed by the IT Analysts does not overlap with the work performed by the Clinical Instructor and Clinical Educator in such a manner that would create impermissible work jurisdiction issues within the employer's workforce. Accordingly, the Clinical Instructor and Clinical Educator positions share a community of interest with the registered nurses in the union's bargaining unit. This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

BACKGROUND

The employer operates a public hospital that is divided into multiple departments, including Patient Care Services and Planning & System Development. The Patient Care Services Department is responsible for ensuring that adequate care is provided to the hospital's patients and is divided into multiple divisions, such as the nursing units, Laboratory Services, and Imaging Services. Most of the employer's registered nurses are assigned to Patient Care Services and work in the hospital's main building.

The Planning & System Development Department includes the Staff Development section, which is responsible for new employee orientation and employee training. This section oversees the employer's learning management system, monitors the training needs of all employees, and tracks employee training to ensure that the employees are in compliance with current medical standards. The Staff Development section also maintains learning resources for employees through the employer's Community Health Library.

The Staff Development section is located in a building that is separate and apart from the main hospital building. There are three employees in the section: the Clinical Instructor, the Clinical Educator, and the Staff Development Assistant, which is an administrative position. The Staff Development section also shares a Project Analyst position with the Community Health Library. The Clinical Instructor position is currently occupied by Babette Bramstedt, and the Clinical Educator position is currently occupied by Debra Scheib.

Clinical Instructor

The Clinical Instructor position is responsible for the clinical training and education of newly hired employees who will be entering patients' rooms, including registered nurses and patient care technicians. The Clinical Instructor demonstrates to new employees how to use certain medical and bedside equipment, such as glucometers, intravenous pumps, Kangaroo pumps, ports, and central lines. The Clinical Instructor teaches employees how to use personal protective equipment and provides training in rapid response and safe patient handling. Safe patient handling involves learning how to use overhead lifts. The Clinical Instructor position is not responsible for patient care and is not assigned any patient care duties.

Training occurs in both classroom settings and patient areas of the hospital's main facility. Orientations are held twice a month. The Clinical Instructor will often arrange for subject matter experts to teach specialized trainings. On occasion, the Staff Development Assistant will assist the Clinical Instructor in presenting trainings. However, all of the planning and organization of the training is conducted by the Clinical Instructor.

The job qualifications for the Clinical Instructor require certification in basic life support as well as a preference for five years of experience in an acute care setting. The Clinical Instructor also needs at least three years' experience with the McKesson Paragon electronic clinical documentation system. The position requires the successful candidate to have preceptor, mentorship, and leadership nursing experience as well as strong presentation, written, and verbal communication skills.

Bramstedt is the only Clinical Instructor in the employer's workforce. She currently spends approximately two-thirds of her time performing the Clinical Instructor duties and one third of her time working as a registered nurse in the Obstetrics (OB) Department.¹ Bramstedt spends approximately 60 percent of her Clinical Instructor time training employees. The rest of her Clinical Instructor time is spent reviewing and revising training curriculums to ensure that the

¹ Bramstedt currently works as a 0.90 full-time employee. Her work in the OB department is registered nurse work that is included in the union's bargaining unit work jurisdiction.

trainings are meeting the hospital's initiatives and goals. She is compensated at the same level as the other registered nurses in the employer's workforce who are represented by the union.

Clinical Educator

The Clinical Educator position teaches and trains all hospital staff how to use the employer's medical charting software. Charting is the process of documenting the medical status of a patient so that the medical doctor can properly diagnose the patient and prescribe the proper treatment. For example, a patient in the critical care unit could be charted at a minimum of every four hours or on a minute-by-minute basis depending on the patient and symptoms. All chart information is recorded on computers using the employer's charting software.

The employer's workforce includes two IT Analysts who are responsible for building the charting software templates. When the IT Analysts develop a change to the charting software, they train the Clinical Educator how to use the updated charting software. The Clinical Educator in turn trains all of the hospital employees who use the charting software as part of their work, including physicians, pharmacists, pharmacy interns, registered nurses, unit secretaries, and case managers. Charting software training is provided either at the employer's computer lab or on the hospital floor at nursing stations, in hallways, or in patients' rooms. When the Clinical Educator teaches on the hospital floor, she often wears nursing scrubs similar to the other registered nurses.

The job qualifications for the Clinical Educator require certification in basic life support as well as a preference for five years of experience in an acute care setting. The Clinical Educator also needs at least three years' experience with the McKesson Paragon electronic clinical documentation system. Although Staff Development Director Arla Dunlop testified that she would prefer the Clinical Educator position be filled by a candidate with a master's degree and that she recommended the job description be changed to reflect that qualification, the position description at the time of the hearing did not require the advanced degree.

Scheib is the only Clinical Educator in the employer's workforce and is responsible for all of the charting software training. Although Scheib's Clinical Educator position is part of the Staff

Development section, she shares an office with the IT Analysts. Additionally, while the IT Analysts may occasionally answer questions about the charting software, the Clinical Educator is the only position that performs the software training. The Clinical Educator is paid a salary that is set by the employer and is not tied to the registered nurses' collective bargaining agreement.

Registered Nurses

The registered nurses are responsible for direct patient care, including assessing, diagnosing, planning, implementing, and evaluating the delivery of care. The registered nurses are required to learn how to recognize changes in a patient's symptoms and to communicate those changes to the appropriate staff. The registered nurses are also expected to document those changes through the charting software. All registered nurses, including newly hired registered nurses, receive training from both the Clinical Instructor and Clinical Educator.

The job qualifications for a registered nurse include being a graduate of an accredited nursing program and licensure in the state of Washington as well as maintaining a current cardiopulmonary resuscitation (CPR) certification card. Additionally, registered nurses working in specific departments may need specialty training, such as Advanced Cardiovascular Life Support (ACLS) training.

The Registered Nurses Bargaining Unit

As referenced above, the registered nurses are included in a bargaining unit represented by the union. That bargaining unit includes "all full-time and regular part-time registered nurses" of the employer. *Kittitas Valley Community Hospital, Decision 7113 (PECB, 2000)*. The certification requires that all full-time and regular part-time registered nurses be included in the bargaining unit. The parties' collective bargaining agreement demonstrates that there are several subtitles given to registered nurses in the bargaining unit, including Resident Nurse, Staff Nurse, Charge Nurse, Full-Time Nurse, Part-Time Nurse, Per Diem Nurse, and Preceptor. Preceptors are experienced nurses who are responsible for planning, organizing, and evaluating the new skill development of nurses, nurse students, or surgical technologists.

There is some indication that the union and employer attempted to reach a voluntary agreement to include the Clinical Instructor and Clinical Educator in the registered nurses bargaining unit in July 2013. However, the record is not clear as to whether there was any concrete agreement between the parties and the union filed a grievance in 2014, seeking to at least include the Clinical Educator position in the bargaining unit under the recognition article of the collective bargaining agreement.

The only other represented employees in the employer's workforce are the laundry and housekeeping staff, who are represented by the International Brotherhood of Teamsters.

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. PERC*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). 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). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

In addition to certifying appropriate new bargaining units, this agency also has the authority to modify existing bargaining units. RCW 41.56.060. A self-determination election is one method for modifying bargaining units. WAC 391-25-440. The self-determination process is designed to allow an individual employee or a small group of employees the opportunity to vote to be included in the larger unit. *Pierce County*, Decision 10992 (PECB, 2011). In order for a self-determination petition to be successful, the resulting bargaining unit of the existing and petitioned-

for employees must be appropriate under the statute. If the resulting bargaining unit is appropriate, then the petitioned-for employees will have an opportunity to vote on their inclusion in the existing bargaining unit.

When determining whether a bargaining unit is appropriate, RCW 41.56.060(1) directs this agency to consider “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.”² The 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).

When crafting or modifying bargaining units, this agency is not required to determine the “most” appropriate bargaining unit. Rather, it is only necessary that the petitioned-for or resulting bargaining unit be an appropriate unit. The fact that there may be other bargaining unit configurations which would also be appropriate, or even more appropriate, does not require setting aside a unit determination.³ *University of Washington*, Decision 8392 (PSRA, 2004); *City of Winslow*, Decision 3520-A (PECB, 1990).

Application of Standards

Including the Clinical Instructor and Clinical Educator in the union’s registered nurses bargaining unit would not render that bargaining unit inappropriate. Rather, the facts establish that the

² Although “the desire of the public employees” is one of the unit determination criteria listed in RCW 41.56.060, testimony under oath is an inherently coercive and inappropriate method for ascertaining the desires of employees. *Valley Communications Center*, Decision 4465-A (PECB, 1994). Unless an accretion is appropriate, the desires of employees are ascertained through the election process. *Central Washington University*, Decision 9963-B (PSRA, 2010).

³ A presumption exists that the existing bargaining unit is already an appropriate bargaining unit. Accordingly, if the petitioned-for employees in a self-determination election vote against their inclusion in the larger bargaining unit, the unit determination standards are not violated. Rather, it simply means there are other bargaining unit configurations available for the petitioned-for employees.

Clinical Instructor and Clinical Educator share a community of interest with the registered nurses. Including those positions in the registered nurses bargaining unit creates *an* appropriate bargaining unit configuration when compared against the employer's overall workforce.

The duties, skills, and working conditions of the Clinical Instructor, Clinical Educator, and the registered nurses support a conclusion that these employees share a community of interest. The Clinical Instructor and Clinical Educator interact with the registered nurses on a regular basis, including during employee training and orientation. The Clinical Educator regularly teaches the registered nurses how to use the charting software, and the Clinical Instructor regularly orients newly hired registered nurses to the employer's workplace environment and equipment. Similarly, the registered nurses who perform preceptor duties are also involved in training nurses. The fact that the Clinical Instructor and Clinical Educator teach other non-represented employees in the employer's workforce is not an indicator that these positions do not share a community of interest with the registered nurses bargaining unit. Rather, it only demonstrates that there may be other appropriate bargaining unit configurations for these employees.

The job requirements of the Clinical Instructor and Clinical Educator also demonstrate that the positions share a community of interest with the registered nurses bargaining unit. Like the registered nurses, both positions require the successful candidate to hold a Washington State Registered Nurse License that is in good standing. The Clinical Instructor and Clinical Educator are also required to be certified in basic life support and have at least five years' experience as registered nurses. Additionally, while the Clinical Educator's pay scale is independent of the registered nurses, the Clinical Instructor receives the same pay and benefits as the registered nurses. Thus, similarities between the duties, skills, and working conditions of the petitioned-for positions and the registered nurses bargaining unit already exist.

The history of collective bargaining minimally supports a conclusion that the Clinical Instructor shares a community of interest with the registered nurses bargaining unit. The employer has been compensating the Clinical Instructor position at the same level as the registered nurses under the collective bargaining agreement negotiated between the employer and union. Thus, the employer

essentially treats the Clinical Instructor position as a bargaining unit position even though that position was not formally included in the registered nurses bargaining unit.

The history of bargaining neither supports nor works against the Clinical Educator position sharing a community of interest with the registered nurses bargaining unit. The employer and union have always treated the Clinical Educator as a position outside of the bargaining unit. However, while the Clinical Educator has been historically excluded from the registered nurses bargaining unit, it cannot be said that the union could not bargain on that position's behalf.⁴

The extent of organization of the employer's workforce supports a conclusion that the Clinical Instructor and Clinical Educator share a community of interest with the registered nurses bargaining unit. Although there is no direct overlap of nursing duties between the Clinical Instructor, Clinical Educator, and the registered nurses, no other employees in the employer's workforce perform the specific duties that the Clinical Instructor and Clinical Educator perform. The work of these employees is more aligned with the work of the registered nurses than that of other employees. Both positions require the successful candidate to hold a nursing degree and be an experienced nurse. Additionally, the Clinical Instructor and Clinical Educator spend a significant portion of their time on the hospital floor training registered nurses.

Although the IT Analysts and Staff Development Assistant play a role in training, the record demonstrates that those occurrences are sporadic and these employees do not perform the same level of training as the Clinical Instructor and Clinical Educator. The IT Analysts make changes to the charting software and may answer limited questions that the medical staff has about the software. The IT Analysts do not work on the hospital floor and are not qualified to train registered nurses or doctors on the hospital's equipment. Similarly, although the Staff

4 The fact that the union filed a grievance about the inclusion of the Clinical Educator position in the registered nurses bargaining unit is not history of bargaining evidence that supports including the Clinical Educator position in the bargaining unit. Private arbitrators have no statutory authority to rule on bargaining unit configurations and this agency is not bound to accept decisions issued by arbitrators on such matters. *Seattle School District*, Decision 5220 (PECB, 1995). Even if a private arbitrator had ruled the Clinical Educator should be included in the registered nurses bargaining unit, that decision would have no binding effect on this proceeding.

Development Assistant at times helps the petitioned-for employees with training, that help is more clerical in nature and the position is not qualified to independently train medical staff. Thus, no ongoing work jurisdiction issues would be created by including the petitioned-for employees in the registered nurses bargaining unit.

Finally, including these positions in the registered nurses bargaining unit would not fragment the employer's workforce. The Clinical Instructor and Clinical Educator, along with the Staff Development Assistant, are the employees in the Staff Development section. The Staff Development Assistant is an administrative position that presumptively shares a community of interest with the other administrative positions in the employer's workforce. Thus, all of the non-supervisory employees in the Staff Development section aside from administrative employees would be included in the registered nurses bargaining unit.

CONCLUSION

The Clinical Instructor and Clinical Educator share a community of interest with the union's registered nurses bargaining unit. This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

FINDINGS OF FACT

1. Kittitas Valley Healthcare (Kittitas County Public Hospital District 1) is a public employer within the meaning of RCW 41.56.030(12).
2. The Washington State Nurses Association (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer operates a public hospital that is divided into multiple departments, including Patient Care Services and Planning & System Development.

4. The Patient Care Services Department is responsible for ensuring that adequate care is provided to the hospital's patients and is divided into multiple divisions, such as the nursing units, Laboratory Services, and Imaging Services. Most of the employer's registered nurses are assigned to Patient Care Services and work in the hospital's main building.
5. The Planning & System Development Department includes the Staff Development section, which is responsible for new employee orientation and employee training. The Staff Development section is located in a building that is separate and apart from the main hospital building. There are three employees in the section: the Clinical Instructor, the Clinical Educator, and the Staff Development Assistant, which is an administrative position.
6. The Clinical Instructor position is responsible for the clinical training and education of newly hired employees who will be entering patients' rooms, including registered nurses and patient care technicians. The Clinical Instructor demonstrates to new employees how to use certain medical and bedside equipment, such as glucometers, intravenous pumps, Kangaroo pumps, ports, and central lines.
7. The Clinical Educator position teaches and trains all hospital staff how to use the employer's medical charting software. Charting is the process of documenting the medical status of a patient so that the medical doctor can properly diagnose the patient and prescribe the proper treatment. For example, a patient in the critical care unit could be charted at a minimum of every four hours or on a minute-by-minute basis depending on the patient and symptoms. All chart information is recorded on computers using the employer's charting software.
8. The employer's workforce includes two Information Technology Analysts (IT Analysts) who are responsible for building the charting software templates. When the IT Analysts develop a change to the charting software, they train the Clinical Educator how to use the updated charting software.

9. The registered nurses are responsible for direct patient care, including assessing, diagnosing, planning, implementing, and evaluating the delivery of care. The registered nurses are required to learn how to recognize changes in a patient's symptoms and to communicate those changes to the appropriate staff. The registered nurses are also expected to document those changes through the charting software. All registered nurses, including newly hired registered nurses, receive training from both the Clinical Instructor and Clinical Educator.
10. The registered nurses are included in a bargaining unit represented by the union. That bargaining unit includes "all full-time and regular part-time registered nurses" of the employer. *Kittitas Valley Community Hospital, Decision 7113.*
11. The Clinical Instructor and Clinical Educator interact with the registered nurses on a regular basis, including during employee training and orientation. The Clinical Educator regularly teaches the registered nurses how to use the charting software, and the Clinical Instructor regularly orients newly hired registered nurses to the employer's workplace environment and equipment. Similarly, the registered nurses who perform preceptor duties are also involved in training nurses.
12. The job requirements of the Clinical Instructor and Clinical Educator are similar to the registered nurses. Like the registered nurses, both positions require the successful candidate to hold a Washington State Registered Nurse License that is in good standing. The Clinical Instructor and Clinical Educator are also required to be certified in basic life support and have at least five years' experience as registered nurses.
13. The employer has been compensating the Clinical Instructor position at the same level as the registered nurses under the collective bargaining agreement negotiated between the employer and union. The employer and union have always treated the Clinical Educator as a position outside of the bargaining unit.

14. Although there is no direct overlap of nursing duties between the Clinical Instructor, Clinical Educator, and the registered nurses, no other employees in the employer's workforce perform the specific duties that the Clinical Instructor and Clinical Educator perform. The work of these employees is more aligned with the work of the registered nurses than that of other employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. Based upon Findings of Fact 3 through 14, including the Clinical Instructor position described in Finding of Fact 8 and the Clinical Educator position described in Finding of Fact 9 in the bargaining unit described in Finding of Fact 6 would create an appropriate bargaining unit under RCW 41.56.060.

ORDER

This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 8th day of December, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-590.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 12/8/2015

DECISION 12494 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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