

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

JENNIFER COOPER

Involving certain employees of:

NEWPORT HOSPITAL (PEND OREILLE  
PUBLIC HOSPITAL DISTRICT 1)

CASE 24036-E-11-3653

DECISION 11197-A - PECB

DECISION OF COMMISSION

*Jennifer Cooper*, appeared *pro se*.

K&L Gates LLP, by *Brian M. Werst*, Attorney at Law, for the employer.

Douglas Drachler McKee & Gilbrough LLP, by *Paul Drachler*, Attorney at Law,  
for the union.

On June 13, 2011, Jennifer Cooper (Cooper) filed a petition for investigation of a question concerning representation seeking to decertify Service Employees International Union Healthcare 1199NW (union) as the exclusive bargaining representative of employees at Newport Hospital (employer).

On July 13, 2011, Representation Coordinator Sally Iverson held an investigation conference. The union asserted that Cooper was a supervisory employee, thus the decertification petition was defective. Executive Director Cathleen Callahan determined that Cooper was not a supervisor.<sup>1</sup> The union filed a timely appeal of the Executive Director's determination.

ISSUE

Is Jennifer Cooper a supervisory employee within the meaning of Chapter 41.56 RCW and WAC 391-35-340?

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<sup>1</sup> *Newport Hospital (Pend Oreille Public Hospital District 1)*, Decision 11197 (PECB, 2011).

Based upon the record, substantial evidence supports the Executive Director's finding that Cooper was not a supervisor. Cooper neither performed a preponderance of supervisory duties, nor spent a preponderance of her time engaged in supervisory duties.

#### APPLICABLE LEGAL STANDARDS

The determination and modification of bargaining units is a function delegated to this Commission by the Legislature. RCW 41.56.060. The Commission has exercised its unit determination authority to maintain a separation of supervisors from their subordinates and has adopted a rule requiring the exclusion of supervisors from bargaining units containing their subordinates:

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

*See also Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977); *City of Lynnwood*, Decision 8080-B (PECB, 2006); *City of Richland*, Decision 279-A (PECB, 1978); and *City of Tacoma*, Decision 95-A (PECB, 1977).

Chapter 41.56 RCW does not define supervisor. Accordingly, the Commission has adopted the test set forth in RCW 41.59.020(4)(d) that covers educational employees of school districts. *Snohomish Health District*, Decision 4735-A (PECB, 1995). Under that statute, an employee is considered to be a supervisor if the preponderance of an employee's duties demonstrate that the employee has 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, if ... the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment.”

An employee may meet the preponderance requirement two ways. Either the employee spends a preponderance of his or her time engaged in supervisory duties, or the employee performs a

preponderance of the supervisory duties, but spends less of his or her time engaged in supervisory duties. *City of Sequim*, Decision 10995 (PECB, 2011), citing *Richland School District*, 10151 (PECB, 2008), and *King County*, Decision 10075 (PECB, 2008).

Supervisors are distinguishable from lead workers, who are included in bargaining units with employees they lead. A lead worker is an employee who performs some supervisory duties, but does not meet the statutory definition of supervisor. *City of Lynnwood*, Decision 8080-B (PECB, 2006). In order to satisfy the statutory definition of supervisor, the employee must perform a sufficient number of supervisory duties. *Ronald Wastewater District*, Decision 9874-C (PECB, 2009), citing *City of Lynnwood*, Decision 8080-B. Discretionary authority in administrative matters or the ability to direct employees in daily job assignments may not rise to the level of possessing independent authority to act or effectively recommend personnel actions. *Granite Falls School District*, Decision 7719-A (PECB, 2003); *City of Gig Harbor*, Decision 4020-A (PECB, 1992). Lead workers lack the true authority and independent judgment that are the hallmarks of supervisory power. In order to be considered a supervisor, the employee's power to exercise the employer's authority must be effective. *King County*, Decision 10075 (PECB, 2008).

While a job title may suggest supervisory status, the job title is not dispositive. The employee's actual duties must be examined in order to determine whether the position possesses sufficient authority to be excluded from the rank-and-file bargaining unit as a supervisor. *Morton General Hospital*, Decision 3521-B (PECB, 1991). Additionally, job descriptions may not reflect the employee's job duties.

### ANALYSIS

The union represents a bargaining unit of:

All full-time and regular part-time employees of Pend Oreille Public Hospital District 1 (Newport Hospital and Health Services) in the following job classifications: LPN, certified nursing assistant (nursing assistnat-certified [sic], HUC/NAC, NAC-activities aide, restorative therapy aide, restorative aide, HUC/NAC admitting: activities coordinator), nursing assistant-registered, health unit secretary (HUCs), emergency department technician, (ed tech), medical

assistant and or technician (scrub tech) employed at Newport Community Hospital (sic), the long term care unit, River Mountain Village, Family Medicine Newport and Family Health Center Newport, excluding supervisors, confidential employees, casual employees and all other employees.

*Newport Hospital (Pend Oreille Public Hospital District 1), Decision 10776 (PECB, 2010).*

The Executive Director examined Cooper's current duties and found that Cooper was a lead worker. The Executive Director based her determination on the fact that Cooper had authority to evaluate, schedule, direct, and verbally discipline employees; however, Cooper neither performed a preponderance of the supervisory duties nor spent a preponderance of her time performing supervisory duties. We agree.

Cooper has been employed by the employer for approximately 20 years. For approximately 10 years, Cooper held the position of Activities Coordinator. In addition to Cooper, two Activities Aides worked in the Activities Department. The Activities Aides reported to Cooper. Cooper evaluated, scheduled, and directed the Activities Aides' work. Cooper's duties included placing volunteers in different departments and coordinating activities for residents in the employer's long term care unit. Cooper reported to Shannon Ennis, the Director of Residential Care Services.

As the Executive Director found in her decision, Cooper does not have the independent authority to hire employees. Cooper has filled two Activities Aide positions in the Activities Department. Cooper posted the positions internally, interviewed the candidates alone, and spoke to the former Director of Nursing Services, who each time supported Cooper's decision. Both of the Activities Aide positions Cooper has filled had only one internal candidate. While Ennis trusts Cooper's judgment, each time an Activities Aide position opened, Cooper discussed her recommendation with the Director of Nursing Services before hiring.

When the Activities Department needed additional coverage, Cooper spoke with the former Director of Nursing Services. The fill-in position was not posted. The Director of Nursing Services approached Cooper to see if an employee could work as a fill-in.

Cooper made a recommendation about the staffing level in the Activities Department, but has not laid off or recalled an employee. When the employer examined its budget, Ennis approached Cooper about whether the Activities Department could absorb the work of a retiring Activities Aide. Cooper informed Ennis that the department could absorb the work, which Ennis conveyed at a directors meeting. The ultimate decision to absorb the work and not refill the position was made by the directors.

Speculative testimony about duties a position might perform is neither admissible nor dispositive. Cooper testified about training she received in disciplining employees. Training for duties an employee does not perform is not dispositive evidence that an employee is a supervisor. Cooper's authority to discipline is limited to verbal discipline. For any further discipline, Cooper would go to Ennis. When the employer investigated an employee discipline issue, Cooper and Ennis participated in the interview. Ennis was responsible for the outcome of the investigation.

The preponderance of Cooper's duties involved working with residents in the long term care department. Cooper scheduled and coordinated resident activities, conducted activity assessments of new residents, participated in resident care planning meetings, and developed resident activity plans. As the Executive Director found, Cooper worked side-by-side with the Activity Aides performing the same duties. Cooper testified that half of her day was spent in contact with residents.

We agree with the Executive Director; Cooper was a lead employee. As the Executive Director found in her decision, Cooper was responsible for evaluating and scheduling and directing the work of the Activities Aides. Cooper neither performs a preponderance of the supervisory duties, nor does she spend a preponderance of her time engaged in supervisory duties. These duties are insufficient to satisfy the supervisory test.

### CONCLUSION

Cooper was not a supervisor, and was therefore eligible to file a decertification petition.

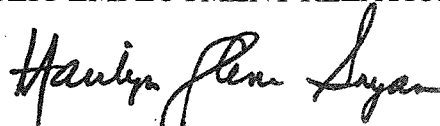
NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order of Executive Director Cathleen Callahan are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Order of the Commission.

ISSUED at Olympia, Washington, this 16<sup>th</sup> day of February, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner



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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

  
BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 24036-E-11-03653 FILED: 06/13/2011 FILED BY: PARTY 2  
DISPUTE: QCR DECERT  
BAR UNIT: ALL EMPLOYEES  
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