

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
Kelso Education Association

And

Kelso School District No. 453
For Clarification of a Bargaining
Unit of Employees of
Kelso School District No. 453

CASE NO. 554-C-76-14

DECISION NO. 303 EDUC

MEMORANDUM DECISION

APPEARANCES:

JUDITH LONNQUIST, Attorney At Law, for the Kelso Education Association.

BRUCE BISCHOF, Attorney At Law, for the Kelso School District No. 453.

Kelso Education Association and Kelso School District 453 filed a joint petition with the Public Employment Relations Commission on October 5, 1976, wherein they requested a ruling with respect to whether the Music Supervisor, Vocational Director, and Athletic Director are supervisors as defined in RCW 41.59. A hearing was held in Kelso, Washington on June 21, 1977 before Rex L. Lacy, Hearing Officer.

POSITIONS OF THE PARTIES:

The Employer contends that the Music Supervisor, Athletic Director, and Vocational Director are all supervisors within the meaning of RCW 41.59; that their duties, skills, and working conditions are sufficiently different from other certificated employees to warrant their exclusion from the bargaining unit; and that the affected employees should be severed from the existing bargaining unit and be allowed to affiliate with the Principals' Association.

The Association contends that the affected employees do not meet the requirements of RCW 41.59.020(4)(d) to be classified as "Supervisors"; that a preponderance of their duties are not supervisory; and that their decisions and recommendations are advisory rather than directive. The Association points out that approval from higher authority is required before decisions of the disputed individuals are implemented.

STATUTORY AUTHORITY:

The statutory basis for consideration of employees qualifying for supervisor status is derived from RCW 41.59:

RCW 41.59.020(4)(d):

"Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which means any employee having authority, in the interest of an employer, 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 in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority."

RCW 41.59.080:

"Determination of bargaining unit--Standards. The commission upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070(3), and after hearing upon reasonable notice, shall determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of such employees indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts.

These proceedings are conducted pursuant to WAC 391-30-300, et seq.

DISCUSSION:

At the outset, it should be noted that both parties have cited and relied upon the definition of "supervisor" contained in Section 2(11) of the National Labor Relations Act and the decisions of the National Labor Relations Board interpreting that definition. Unlike the NLRA, RCW 41.59 calls for application of a "preponderance" test to the types of authority specified in the NLRA definition. The NLRB precedents may, therefore, not be completely satisfactory in this context.

Some of the evidence submitted at the hearing consisted of job descriptions of the disputed positions. The joint petition for unit clarification was filed with PERC in October, 1976. The job descriptions placed in evidence at the hearing were admittedly reviewed and re-adopted in November, 1976 with input from the individuals then occupying the disputed positions. Those individuals had earlier corresponded with this agency seeking removal from the non-supervisory bargaining unit. Under these circumstances, the probative value of the revised job descriptions is somewhat limited, and principal reliance is placed herein on the testimony concerning the actual duties and responsibilities of the affected employees.

MUSIC SUPERVISOR (TOM HALL)

Mr. Hall has been employed by the Kelso School District for twenty-two (22) years, as music teacher, band instructor and, for the past two years, as music supervisor. Mr. Hall's classroom activities require two and one-half (2½) hours weekly. The balance of Mr. Hall's work week is spent outside the classroom performing duties related to supervision and coordination of the District's music program.

Mr. Hall has sole responsibility for evaluating seven (7) of the eleven (11) music department teachers, and provides input for evaluations of the remaining four (4) music teachers. His authority to evaluate has recently been decreased as a result of State legislation requiring that principals evaluate certificated employees assigned to their building. Hall was previously the evaluator for all music department teachers.

Mr. Hall develops the music department budget submitted to the Superintendent; purchases supplies for the music department; recommends the procurement of new instruments and is responsible for scheduling special music performances by outside musical groups. While some staff input is accepted and recognized, Mr. Hall has been assigned the responsibility to assure the success of the budgetary process involving the music department.

Mr. Hall can effectively recommend the hiring of a music teacher and has done so many times since 1966. His authority with respect to hiring could be equated to that of a building principal, inasmuch as the final decision rests ultimately with the Superintendent after consultation with the Director of Personnel. Hall also assigns traveling teachers, arranges for transfers between buildings, dispatches substitutes when needed and prepares the music department curriculum.

The Association cites Catholic University, 201 NLRB 929 (1973) in support of its claim that the Music Supervisor should not be regarded as supervisory under the provisions of RCW 41.59. Several significant distinctions are noted, however, between the situation of the Associate Dean in Catholic University and the Music Supervisor in Kelso, starting with the distinctly different natures of the institution. The NLRB was dealing with a law school which was part of a much larger institution, the "second" and "third" in command in that law school and a "normal" teaching load of 6 to 6½ hours per week. We are dealing here with a music department which spans the breadth of the entire institution, the "top man" in that department, and a much larger normal workload to which 2½ hours per week represents a very small proportion. While certainly to be considered, the NLRB precedents arising out of colleges and universities are not always readily applicable to the situations existing in K-12 school districts. The record establishes that Hall possesses and exercises a preponderance of the types of authority detailed in RCW 41.59.020(4)(d), and that he spends a preponderance of his time in the exercise of such authority.

VOCATIONAL DIRECTOR (MIKE BJUR)

Mr. Bjur has been employed by the District as "Vocational Director" for three years. In addition to his duties as Vocational Director, Bjur teaches vocational agriculture classes two hours per day. As Vocational Director, Bjur has ministerial and recordkeeping duties relating to the budget, curriculum, and program compliance; as well as responsibility for the establishment of vocational advisory committees. The Vocational Director is responsible for the preparation and submission of a number of required reports. Bjur has been assigned by the building principal to make independent evaluations for

some staff members, and that evaluation process provides the Vocational Director with some input into the evaluations of members of the Vocational Education Department staff. However, State law requires that the final evaluations of all these employees be performed by the building principals.

The job description for "Vocational Director" submitted at the hearing specifically provides that the general responsibility for all of the "supervisory" activities and duties of the Vocational Director are reserved to higher ranking members of the District administration. The evidence does not establish that Bjur's authority over other employees is sufficient to warrant his exclusion under RCW 41.59.020(4)(d).

ATHLETIC DIRECTOR (LEROY FALING)

Mr. Faling is in the first year of employment as Athletic Director. In addition to his duties as Athletic Director, Faling teaches algebra two hours per day.

As Athletic Director, Faling is responsible for coordination of the interscholastic athletic program of the District, including assistance with budgetary procedures, general management and facilities upkeep, and selection of the coaching staff. The Athletic Director does not formally evaluate the coaching staff of the District and, in fact, evaluations are not required for coaches in their capacity as coaches. Most of the coaches are classroom teachers under regular teaching contracts with the District who perform coaching duties under supplemental contracts. The preponderance of Mr. Faling's time is spent on administrative routine, classroom duties and attendance at athletic functions. No evidence was presented indicating that Faling could overrule the decision of any of the coaching staff or adversely affect the terms and conditions of their primary employment. It does not appear that the Athletic Director would be involved in the processing of employee grievances or in promotions, layoffs, recalls or the discipline and discharge procedures of the District.

Had the legislature intended that unit exclusions be determined by simple, arbitrary indicators such as assigned titles of positions or proportion of time spent in student-contact classroom activities, it could have constructed such a test. There is no question here that the Athletic Director bears a quasi-administrative title and that he spends less than a majority of his time in classroom teaching. However, the time which he spends as Athletic Director appears to be spent largely in ministerial duties in support of the overall educational program.

He has very little in the way of supervisory authority over other employees, and does not meet the multi-faceted standard which has been established by the legislature in RCW 41.59.020(4)(d).

FINDINGS OF FACT

1. Kelso School District is, and has been at all times material herein, an employer within the meaning of RCW 41.59.
2. Kelso Education Association is, and has been at all times material herein, the exclusive bargaining representative for all non-supervisory educational employees of the Employer.

3. The 1976-1977 Collective Bargaining Agreement between the Employer and the Association included the following statement:

"The Board and the KEA are in dispute on the inclusion of three supervisors, i.e., Music, Vocational and Athletic Director and Substitutes. The parties shall submit a letter to PERC for determination or settlement of the dispute. All clauses in the Agreement concerning the people in dispute shall be negotiated upon settlement of the dispute."

This proceeding was initiated as provided for therein.

4. The 1976-1977 negotiated Agreement contains no reference to a salary schedule for the involved positions. The method of calculation of the salary for the disputed positions included remuneration for responsibility. The additional amounts included, total remuneration and length of contract for the disputed positions and were unilaterally adopted after the 1976-1977 Agreement was consummated by the parties.
5. The hiring of certificated employees is accomplished by action of the Board of Directors of the District, upon recommendation of the Superintendent. The occupants of the positions in dispute are consulted for their input and/or recommendation after the screening process has been completed, but any such recommendation is subject to reversal or rejection at higher levels of authority. The recommendations of the Music Supervisor are generally effective.
6. The assignment, transfer, layoff, and recall of employees are matters of contractual agreement between the Employer and the Association and generally beyond the scope of authority of the occupants of the positions in dispute. The Music Supervisor has authority, within the provisions of the agreement, to assign and transfer employees. Teachers in the Vocational Education Department and Interscholastic Athletics Department are assigned to specific positions as part of their individual contractual arrangements with the District.

7. The discipline, suspension and discharge of certificated employees of school districts are controlled by the Revised Code of Washington and by the grievance procedure contained in the Collective Bargaining Agreement between the Employer and the Association. The Athletic Director does not have authority to affect or make effective recommendations concerning these matters. The Vocational Director makes evaluations of employees only as input to statutorily required evaluations of the same employees by building principals. The Music Supervisor makes evaluations of employees and has authority to make effective recommendations concerning these matters.

8. The adjustment of grievances is a matter of contractual agreement between the Employer and the Association. The Collective Bargaining Agreement provides for the filing of grievances with the "immediate supervisor" of the employee, with appeal to the Superintendent and ultimately to arbitration. The Music Supervisor is recognized as the sole immediate supervisor of seven employees. The Vocational Director and Athletic Director are not recognized as the sole immediate supervisor of any class of employees, and all employees under their jurisdiction are also under the jurisdiction of a building principal who is recognized as their supervisor for purposes of grievance adjustment. The Vocational Director was involved in the processing of a grievance filed against him by an employee in the Vocational Education Department, and has adjusted mileage vouchers for employees under his jurisdiction, but any final disposition of such grievance was the responsibility of the building principal or higher administrative authority within the District.

CONCLUSIONS OF LAW

1. The Music Supervisor is a "supervisor" within the meaning of RCW 41.59.020(4)(d).
2. The Vocational Director and Athletic Supervisor are non-supervisory educational employees within the meaning of RCW 41.59.020(8).

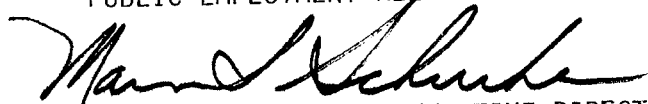
ORDER CLARIFYING BARGAINING UNIT

1. The position of Music Supervisor shall be, and hereby is, excluded from the bargaining unit consisting of all non-supervisory educational employees of Kelso School District No. 453, as described in the 1976-77 Collective Bargaining Agreement between the Kelso Education Association and Kelso School District No. 453.

2. The positions of Vocational Director and Athletic Director shall be, and hereby are, included in the bargaining unit consisting of all non-supervisory educational employees of Kelso School District No. 453, as described in the 1976-77 Collective Bargaining Agreement between the Kelso Education Association and Kelso School District No. 453.

DATED at Olympia, Washington this 3rd day of November, 1977

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, EXECUTIVE DIRECTOR