

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

BETHEL EDUCATION ASSOCIATION

For clarification of an existing bargaining
unit of employees of:

BETHEL SCHOOL DISTRICT

CASE 24008-C-11-1451

DECISION 11273 - EDUC

ORDER OF DISMISSAL

Michael J. Gawley, Attorney at Law, for the union.

Vandenberg, Johnson & Gandara, LLP, by *William A. Coates*, Attorney at Law,
and *Daniel C. Montopoli*, Attorney at Law, for the employer.

On May 24, 2011, the Bethel Education Association (union) filed a unit clarification petition seeking to include certificated teachers working at the Pierce County Skills Center (PCSC) in its existing bargaining unit consisting of all certificated employees of the Bethel School District.¹ The Bethel School District objected to inclusion of the skills center teachers on the grounds that the employees at issue in the petition are employed by the PCSC, which is jointly operated by multiple school district in the region, and 2) that the terms and conditions of employment of the skills center teachers are controlled by the PCSC Board and not the Bethel School District. On August 11, 2011, Hearing Officer Jessica J. Bradley conducted a hearing in this matter and the parties filed post-hearing briefs that were considered.

ISSUE PRESENTED

Should the existing Bethel School District certificated employees bargaining unit be clarified to include certificated employees of the PCSC?

¹ The Bethel School District certificated employees bargaining unit was not certified by the Commission.

For the reasons set forth below, the union's petition is dismissed. The PCSC is a separate entity which is not controlled by the Bethel School District or any other participating school district. The PCSC Board, which is comprised of representatives from seven school districts, determines the terms and conditions of employment for certificated employees who have employment contracts with the PCSC. Accordingly, the Bethel School District is not the employer of the PCSC certificated employees for purposes of collective bargaining.

DISCUSSION

Applicable Legal Standard

"For collective bargaining to have any reasonable prospect for success, collective bargaining units must be structured and bargaining representatives certified so as to create relationships between employees and the employer having real authority over their wages, hours and working conditions." *Sno-Isle Vocational Skills Center*, Decision 841 (EDUC, 1980). Any employee organization should similarly be interested in bargaining with the entity that controls the wages, hours, and working conditions of the employees it represents. *Kitsap Peninsula Vocation Skills Center*, Decision 838 (EDUC, 1980).

Chapter 41.59 RCW addresses the collective bargaining rights of educational employees of the school districts of the State of Washington. RCW 41.59.080 charges the Commission with determining appropriate bargaining units, and states:

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

...

(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.

...

Although RCW 41.59.080(1) recognizes that a unit of “nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer,” RCW 41.56.080(6) nevertheless provides an exception for certificated employees at vocational-technical institutes or occupational skills centers. In *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d 435 (1984), the Supreme Court of Washington held that the Legislature did not intend to preclude separate bargaining units of certificated employees under RCW 41.59.080(6), provided the unit determination criteria listed in RCW 41.59.080 warranted a separate unit. To hold otherwise would render the statute a nullity. *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d at 442-3.

Because the focus of the analysis in cases such as this rests upon a working relationship between an employer and an employee organization, the first step is to identify the entity that actually controls the terms and conditions of employment for the employees at issue. If a school district is deemed to be the employer of the certificated employees at a vocational-technical institute or occupational skills center, then those employees may be clarified into any existing bargaining unit of certificated employees at that school district, provided the resulting unit is appropriate under the provisions of RCW 41.59.080. However, if the school district is not the employer of the vocational-technical institute or occupational skills center teachers, then it is inappropriate to clarify those teachers into an existing unit of certificated employees.

For example, in *Sno-Isle Vocational Skills Center*, nine school districts entered into an agreement to create and govern the operation of the Sno-Isle Vocational Skills Center. An administrative council of representatives from each of the nine school districts met once a month to set the policies of the skills center, such as determining which courses would be offered, the center’s operating budget, and staffing levels. The administrative council also hired a director responsible for running the skills center and selecting and hiring the center’s employees. The

Mukilteo School District served as the “host-district” for the skills center, and the skill center facilities were located within the Mukilteo School District. The Mukilteo School District also provided administrative support for the skills center, such as payroll and recordkeeping services. Although the Mukilteo School District served as the host district, it was not given any special voting rights and had an equal voting voice on the administrative council.

After the creation of the skills center, a bargaining representative petitioned to represent the teachers at the skills center. The Mukilteo Education Association (MEA), the exclusive bargaining representative of the certificated employees at the Mukilteo School District, moved to intervene in the proceeding as the incumbent labor organization of the skills center employees. To support its motion, the MEA argued the Mukilteo School District was the employer of the skills center teacher, and therefore the teachers at the skills center should be part of the MEA’s existing bargaining unit.

The Executive Director disagreed, and held that the vocational skills center was a distinct operation of the several participating school districts, as opposed to being a department or division of the Mukilteo School District. The Executive Director also found that under the terms of the operating agreement, the administrative council, and not Mukilteo School District, set the terms and conditions of employment. Therefore, the Mukilteo School District was not the employer because it was not in a position to independently engage in meaningful negotiations with an employee organization representing the employees of the skills center.

A similar result was reached in *Kitsap Peninsula Vocational Skills Center*, Decision 838 (EDUC, 1980) and Decision 838-A (EDUC, 1981). In those cases, six participating districts opened a skills center that was operated by a board consisting of the superintendents of the six districts. The administrative agreement forming the skills center provided that the director of the center would be an employee of the host district. The skills center also utilized the host district’s personnel office for many administrative functions related to operating the center, such as posting job announcements, which were sent on the letterhead of the host district, and process job applications. Once the job announcement closed, the host district would forward the applicant pool to the director of the skills center, who would then interview the candidates and

make a recommendation to the Governing Board. Furthermore, the teachers working at the host district did not have the ability to freely transfer to the new skills center. Because the agreement vested control of the skills center in the board, the center was deemed to be a distinct employer. *Kitsap Peninsula Vocational Skills Center*, Decision 828-A.

The Pierce County Skills Center

The PCSC is a public career and technical occupational skills center that was established cooperatively by an interdistrict cooperative agreement (ICA) between the Bethel School District, Eatonville School District, Franklin Pierce School District, Orting School District, Sumner School District, Tacoma School District and White River School District. Exhibit 2. The Bethel School District serves as the host district for the PCSC, and the PCSC campus is physically located within the Bethel School District. The PCSC began offering classes to students in September 2010. At the time of hearing, the PCSC was preparing to begin its second year of academic instruction.

Division of Duties between the PCSC Governing Board and the Host District

The ICA establishes the PCSC Governing Board, which consists of the superintendent or his/her designee from each of the six member school districts and the host district. The PCSC Governing Board meets quarterly and makes decisions surrounding operational policies, curriculum, terms and conditions of employment, and budget. Each member of the Governing Board has an equal vote, and under Section VII of the agreement, a majority vote of the Governing Board shall govern in all matters.

The PCSC pays the Bethel School District to serve as the host district. The ICA delegates responsibilities between the PCSC Board and the host district. Specifically the ICA states:

D. The Governing Board will govern the PCSC under the direction and policies formulated and shall have the following responsibilities:

1. Insure that the cooperative is operating in a manner consistent with this Agreement and in accordance with the laws and regulations of Washington State.
2. Formulate and establish policy relating to the operations of the PCSC.

3. Receive and act on recommendations from the member districts, the PCSC director, and such advisory committees as might subsequently be established.
4. Review and/or approve rules and regulations concerning operations of the PCSC.
5. Determine organization and staffing levels of the PCSC.
6. Review and approve course offerings.
7. Determine the slot assignments of students from the representative districts.
8. Establish and amend by-laws to govern Governing Board organization, composition and conduct.

E. The host district will have the following responsibilities:

1. Select, supervise, evaluate, and employ the PCSC Director on terms and conditions approved by the Governing Board.
2. Hire, evaluate, and if necessary, terminate the employment of employees consistent with the budget and the policies and procedures of the Governing Board.
3. Provide support in the areas of personnel, finance, and special education.

The ICA also grants the board the authority to create a satellite or branch campus when appropriate. The ICA does not require that the satellite or branch campus be located within the boundaries of the Bethel School District.

The PCSC Director's Responsibilities

The PCSC Director, Jacob Jackson, is responsible for the day-to-day operations of the PCSC. Transcript at 102-103. Under the ICA, the host district's responsibilities include "Select, supervise, evaluate and employ the PCSC Director on terms and conditions approved by the Governing Board." Transcript at 103-104. Jackson's performance is evaluated by Mike Christianson, the director of career and technical education for the Bethel School District. Transcript at 129-130.

The PCSC director is responsible for interviewing applicants and deciding which candidate should be hired. Although the Bethel School District's Human Resources Department assists with the hiring process by posting open jobs, collecting applications, participating in interviews and conducting background and reference checks on applicants, Jackson testified that he is

responsible for actually writing the job postings, selecting and evaluating employees, and determining the overall staffing level of the PCSC. Transcript at 119-120. Thomas Seigel, the Bethel School District Superintendent, testified that the Bethel School District is not involved in the hiring process at PCSC other than maintaining administrative oversight of the hiring process to ensure that the PCSC remains within its budget. Transcript at 26-7. Todd Mitchell, the Executive Director of Human Resources for the Bethel School District, testified that the employer's human resources department has "very little" to do with the hiring process of employees other than posting the position through the district's applicant tracking system. Transcript at 47. Mitchell also testified that the director of the PCSC makes the final hiring determination along with the PCSC Board. Transcript at 47.

Terms of Employment and Other Working Conditions

As the PCSC Governing Board does with the PCSC Director, the board determines the terms and conditions of employment for the instructional employees who have employment contracts with the PCSC, such as leave benefits, working periods rates of pay, and health benefits. Exhibit 3. Currently, the educational employees at the skills center are paid according to the state salary schedule. Exhibit 3; *see also* Transcript at 65. The compensation rates and benefit programs for certificated employees who have employment contracts with the PCSC are set independent from the compensation and benefits that certificated employees in the Bethel School District bargaining unit receive under their collective bargaining agreement.

Teachers who are employed by Bethel School District and desire to work at the PCSC must go through the same application process as outside applicants. For example, when Dana Ladowski, a Bethel School District science teacher, decided she wanted to work for the PCSC, she first obtained approval from the Bethel School District to take a leave of absence for the 2010-2011 school year. When Ladowski decided to continue working for the PCSC in the 2011-2012 school year, she resigned from employment with the Bethel School District. Similarly, Lynne Truitt resigned from her position as a District Educational Specialist with the Bethel School District after accepting a position with the PCSC.

The PCSC has employment contracts with four certificated employees and a special education liaison, who is also a certificated employee. The four certificated employees signed employment contracts stating that “the Employees herein: Shall be employed by the PCSC for the 2010-2011 school year. . . .”

The PCSC also has a contract with the Bethel School District to provide fire science instruction. The fire science teacher is an employee of the Bethel School District and is included in the existing Bethel School District certificated bargaining unit. The PCSC also has a contract with the Tacoma School District to provide marine technology instruction. The marine technology teacher is an employee of the Tacoma School District and is included in the Tacoma Education Association’s bargaining unit.

In addition to having contracts with four certificated employees, the PCSC has professional teaching services contracts with the Bethel School District, the Tacoma School District, DigiPen Institute, Pierce College, and Clover Park Technical Institute. These service contracts clearly reflect that the contractors provide services to the PCSC, and not to the Bethel School District.

History of Bargaining

The PCSC certificated employees have no history of collective bargaining. The union has consistently asserted that the certificated employees at the PCSC should be part of the Bethel School District bargaining unit, but both the Bethel School District and the PCSC declined to recognize the union as the representative of the teachers at the PCSC.

Application of Standards

The record in this case demonstrates that the PCSC Governing Board is the employer of the certificated employees of the PCSC Skills Center for purposes of collective bargaining because the PCSC Governing Board has the ultimate authority to set the terms and conditions of employment. Like *Sno-Isle Vocational Skills Center*, the PCSC is a joint operation of several participating school districts rather than a department or division of the Bethel School District. The PCSC is newly created and has no history of bargaining that ties its employees to any of the participating school districts. Much like the host district in *Sno-Isle Vocational Skills Center*, the

Bethel School District serves in a twofold capacity: (1) as one of seven equal participants on the PCSC Governing Board; and (2) as the designated host district that provides fiscal oversight and administrative services, for compensation, to the PCSC. Furthermore, the evidence clearly shows that the PCSC Director has the authority to select the employee who will teach at the center and enter into teaching contracts with outside vendors. The Bethel School District does not have the independent authority to countermand these types of decisions made by the PCSC director.

Furthermore, the Bethel School District provides the same type of administrative support that the host district provided *Kitsap Peninsula Vocational Skills Center*. The functions delegated to the Bethel School District require the district to act under the policies formulated by the PCSC Governing Board. Simply stated, under the terms of the ICA, the Bethel School District is responsible for ministerial matters related to the operation of the PCSC consistent with the policies established by the PCSC Board, such as the processing of personnel matters. The Bethel School District it is not free to act independently in the administration of its duties.

The union argues the *Kitsap Peninsula Vocational Skills Center* decision stands for the proposition that only the written agreement creating a skills center may be examined when determining who the employer is of the skills center employees. In the union's opinion, the ICA clearly states that the Bethel School District is responsible for the hiring and firing of employees. The union also argues that the relationship between the PCSC and the Bethel School District is more analogous with the situation in *Kennewick School District*, Decision 2008 (EDUC, 1984), where the host school district was found to be the employer of teachers of a skills center. Both contentions must be rejected.

In *Kitsap Peninsula Vocational Skills Center*, the agreement establishing the skills center provided that the six host districts agreed to jointly operate the skills center, and the host district had certain ministerial duties related to the operation of the skills center, but had no operational authority. However, the superintendents of the participating school districts testified that they believed the host district, and not the skills center's governing board, was the employer of the skills center employees. The Executive Director first held the skills center operated under

former RCW 28A.58.075,² which only permitted school districts to cooperate for the joint maintenance and operation of a skills center, provided a written agreement exists for such operation. The Executive Director then held that because the parties' written agreement only delegated administrative and ministerial acts to the host district, to the extent that the parties' practice contradicted the written agreement, RCW 28A.58.075 required the written agreement to control.

Unlike the evidence in *Kitsap Peninsula Vocational Skills Center*, the record demonstrates that the parties' practices did not contradict the expressed terms of the ICA. As explained above, the evidence in the record demonstrates that any role that the Bethel School District had in personnel matters had to be consistent with the policies adopted by the PCSC Governing Board. Much like the host district in *Kitsap Peninsula Vocational Skills Center*, the Bethel School District's role is mostly ministerial. In this case, the facts demonstrate that the PCSC Governing Board establishes the policies and procedures that govern personnel issues and determines staffing levels.

The union's reliance upon *Kennewick School District* is also misplaced as two important factual distinctions exist between the two cases. First, the Kennewick School District established a substantial history of bargaining under Chapter 41.59 RCW between the Kennewick Education Association's (KEA) bargaining unit and the vocational education instructors." Specifically KEA had "processed grievances through the grievance procedure found in the collective bargaining agreement between the school district and the Kennewick Education Association" on behalf of vocational instructors. Additionally, the vocational instructors in *Kennewick School District* had also "participated in the collective bargaining process under Chapter 41.59 RCW" as members of the Kennewick School District bargaining unit. In this case, the certificated instructors who have employment contracts with the PCSC do not have any history of collective bargaining with the Bethel School District.

Finally, in *Kennewick School District*, "School district administrators retain authority to hire, discipline, evaluate and discharge vocational instructors. Grievances involving such matters are

² Former RCW 28A.58.075 was amended and recodified as RCW 28A.335.160.

routinely processed by the Kennewick School District.” The decision noted “[t]his specific reservation of final personnel authority to a single school district distinguishes this case from *Sno-Isle* and *Kitsap*, where the cooperative group reserved authority to control personnel matters. While the Bethel School District may be responsible for processing paperwork surrounding employment actions, final authority rests with the PCSC Governing Board and its Director.

Conclusion

The PCSC is a distinct operation governed by the PCSC Governing Board. Accordingly, it would be inappropriate to clarify the certificated teachers at the PCSC into the Bethel Education Association’s existing bargaining unit of certificated teachers.

FINDINGS OF FACT

1. The Pierce County Skills Center is an entity existing pursuant to an Intergovernmental Cooperative Agreement (ICA) for the Financing and Operation of a Skills Center executed pursuant to Chapter 28A.245 RCW by the Bethel School District, Eatonville School District, Franklin Pierce School District, Orting School District, Sumner School District, Tacoma School District and White River School District, each of which is a school district organized pursuant to Title 28A RCW and an employer within the meaning of RCW 41.59.020(5).
2. The Bethel Education Association is an exclusive bargaining representative within the meaning of RCW 41.59.020(6).
3. The union is the exclusive bargaining representative of all certificated educational employees of the Bethel School District, excluding supervisors and confidential employees.
4. The PCSC pays the Bethel School District to serve as the PCSC host district. The ICA delegates responsibilities between the PCSC Governing Board and the host district.

5. The PCSC ICA establishes the PCSC Governing Board, which consists of the superintendant or his/her designee from each of the member school districts and the host district. The PCSC Governing Board makes decisions surrounding operational policies, curriculum, terms and conditions of employment, and budget of the PCSC.
6. The PCSC certificated instructional employees have no history of collective bargaining.
7. Jacob Jackson is the Director of the PCSC. Jackson is responsible for the day to day operations of the PCSC.
8. The PCSC has employment contracts with four certificated instructional employees and a special education liaison.
9. The certificated instructional employees who have employment contracts with the PCSC are not covered by the collective bargaining agreement between the Bethel School District and the Bethel Education Association.
10. The certificated instructional employees at the PCSC whose services are provided through professional service contracts with the Bethel School District, the Tacoma School District, DigiPen Institute, Pierce College, and Clover Park Technical Institute are not employees of the PCSC.
11. The PCSC Governing Board determines compensation, terms and conditions of employment, and layoff/recall of certificated instructional employees who have employment contracts with the PCSC. The PCSC Governing Board also determines the PCSC personnel policies that are administered by the host district. The compensation rates and benefit programs for certificated instructors who have employment contracts with the PCSC are independent and distinct from the compensation and benefits that certificated instructional employees in the Bethel School District bargaining unit receive under their collective bargaining agreement.

12. In its capacity as host district, the Bethel School District is responsible for selecting, supervising and, if necessary, terminating employees of the PCSC, provided it does so in a manner that is consistent with the budget, policies and procedures that are set by the PCSC Governing Board.
13. Although the Bethel School district administers human resources functions for the PCSC, the PCSC certificated instructional employees are not treated as Bethel School District employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.59 RCW and Chapter 391-35 WAC.
2. Based upon Findings of Fact 1 and 4 through 13, the Pierce County Skills Center is a joint employer entity which is not controlled by the Bethel School District or any other participating school district.

ORDER

The unit clarification petition filed in Case 24008-C-11-1451 is hereby DISMISSED.

ISSUED at Olympia, Washington, this 11th day of January, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

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CASE NUMBER: 24008-C-11-01451 FILED: 05/25/2011 FILED BY: PARTY 2
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