

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON

For clarification of an existing bargaining
unit of employees of:

INCHELIUM SCHOOL DISTRICT

CASE 23736-C-11-1444

DECISION 11178 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Jason K. MacKay, Attorney at Law, for the union.

Ron L. Washington, Superintendent, for the employer.

On January 13, 2011, Public School Employees of Washington (union) filed a timely¹ unit clarification petition under Chapter 391-35 WAC, seeking to clarify a unit of Inchelium School District's (employer) nonsupervisory classified employees to include the head cook position because it is not supervisory. Hearing Officer Emily H. Martin held a hearing on April 20, 2011. After the hearing, both parties filed written briefs which were considered.

ISSUE

Should the head cook be included in the non-supervisory classified bargaining unit?

While the head cook has some supervisory authority, this authority is similar to that of a lead worker. Therefore, the position is included in the non-supervisory bargaining unit.

¹ Although not a matter of contention, the union's petition is in fact timely under WAC 391-35-020(2), as the record reflected that the union raised the issue of Head Cook's supervisory status during bargaining with the employer.

APPLICABLE LEGAL PRINCIPLES

Supervisors are employees within the meaning of Chapter 41.56 RCW and are entitled to organize for the purpose of collective bargaining. *METRO v. Department of Labor and Industries*, 88 Wn.2d 925 (1977). In order to prevent a conflict of interest, supervisors are separated from the bargaining units that contain the employees they supervise. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). This principle has been codified in WAC 391-35-340(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.

Chapter 41.56 RCW does not contain a definition of supervisor, but the agency has traditionally looked to the definition of supervisor set forth in RCW 41.59.020(4)(d). *Granite Falls School District*, Decision 7719-A (PECB, 2003). According to that definition, a supervisor is:

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. . . . The term “supervisor” shall include only those employees who perform a preponderance of the above-specified acts of authority.

A supervisor can perform a “preponderance” of the supervisory duties in two ways. If a majority of an individual’s time is spent performing supervisory duties, that individual is a supervisor. *Richland School District*, Decision 10151 (PECB, 2008). Alternatively, an individual who spends less time performing supervisory duties but performs a preponderance of the enumerated duties, may be considered a supervisor. *King County*, Decision 10075 (PECB, 2008). As stated in the statute, supervisory authority must be more than merely routine or clerical in nature. RCW 41.59.020(4)(d).

Actual duties and authority exercised by the disputed employee – not the job title or job description – play the predominant role in determining whether that individual is a supervisor excluded from a rank-and-file bargaining unit. *Morton General Hospital*, Decision 3521-B (PECB, 1991). The Commission has distinguished between supervisors and “lead workers” who lack authority and independent judgment in several cases, including *City of Toppenish*, Decision 1973-A (PECB, 1985), which held that lead workers “may be given some supervisory responsibilities, but not a full complement, or they may be allowed to share supervisory responsibilities with their own superiors.” In *Grant County*, Decision 4501 (PECB, 1993), the Executive Director determined that “[w]hile lead workers may possess authority to direct subordinates in their daily job assignments, they generally do not have the authority necessary to make meaningful changes in the employment relationship.” A lead worker’s authority might extend to evaluating a subordinate’s job performance because the lead worker is in the best position to observe that performance, but this activity does not automatically create a conflict of interest that would warrant a supervisory exclusion. *City of Lynnwood*, Decision 8080-B (PECB, 2006); *see also State - Fish and Wildlife*, Decision 10962 (PSRA, 2011).

ANALYSIS

The bargaining unit was certified by the Commission in *Inchelium School District*, Decision 7695, as:

[A]ll full-time and regular part-time custodians, grounds, maintenance, and transportation employees of the Inchelium School District, excluding supervisors, confidential employees and all other employees.

This unit apparently changed, perhaps through the voluntary recognition process available pursuant to Chapter 41.56 RCW to include mechanic and food service employees. The unit defined by the parties’ 2007-2010 collective bargaining agreement excludes: (1) Transportation Supervisor and (1) Food Service Supervisor.

The employer is a small school district with one kitchen and lunchroom and two regular food service positions. Juanita Warren holds the full-time head cook position. Patricia Crandall holds

the part-time assistant cook/custodian position. In addition to her daily six hours of food service work, Crandall also has two hours of custodial work each day. While Warren and Crandall are assisted by individuals enrolled in a job training program, these individuals are not school district employees.

The head cook is responsible for the employer's school meal service. She maintains inventory, plans menus, prepares the meals in accordance with various regulations, and completes reports. Warren begins a typical day by preparing and serving breakfast while Crandall does custodial work. After breakfast, Crandall cleans the lunchroom. Warren and Crandall prepare and serve lunch together. They clean the lunchroom and kitchen and Crandall ends her shift. Warren stays as long as four more hours to complete paperwork. Warren also works some evenings and weekends when community groups use the school's facilities or when she conducts food handler trainings. Warren's work beyond her eight-hour shift is considered voluntary and she is not paid overtime.

Warren has been the head cook since 1997, aside from a two year leave of absence which began in 2008. Before Warren's absence, the parties had agreed that the head cook position was not in the union. During her absence, Crandall was temporarily promoted to head cook and the parties agreed that Crandall would remain in the union during the temporary promotion. After Warren returned, the union raised the issue of Warren's status during the parties' next collective bargaining negotiations, and filed this unit clarification petition when the parties did not agree on the issue.

Preponderance of Duties

An employee will be classified as a supervisor if the employee has the authority to engage in a preponderance of supervisory duties. *King County, Decision 10075 (PECB, 2008)*. The following duties are typically considered when determining if an employee is a supervisor: hiring, assignment of work, promotion, transfer, layoff, recall, suspension, discipline, discharge and adjustment of grievances. These duties are discussed below.

Hiring - Warren does not have the authority to hire employees. When the employer fills a position internally, the superintendent consults with Warren, but the superintendent makes the decision which is forwarded to the school board for final approval. Likewise, Warren does not have the authority to hire external candidates. Several years ago, Warren served on a hiring committee for several positions. As a committee member, Warren participated in the joint decision of making a recommendation to the superintendent, whose decision was then approved by the school board. When the committee considered the food service candidates, Warren's input was not controlling and was considered only as part of the committee's decision. Furthermore, on at least one occasion, an external candidate had been hired despite Warren's concerns. While Warren gives input, the actual hiring decisions are made by the superintendent and the school board.

Assignment of work - Although Warren and Crandall may have a daily routine, Warren established this routine. As Warren makes decisions about who will do each food service task, Warren has the authority to assign work to Crandall.

Promotion and transfer - As the entire food service department only has two regular positions, there has been little opportunity for Warren to make decisions about promotions or transfers. Warren testified that she does not have the authority to make transfer decisions. Several years ago, the state determined that the food service department should begin a breakfast program. The state also determined that because of an increase in student enrollment, the food service department should have a third position. The employer then added a position. A decision was made about which employee should be assigned to the assistant cook position or to the new position. Warren testified that she made this decision about "categorizing" the food service employees jointly with the superintendent. While Warren had input into that particular decision, a joint decision does not demonstrate that the head cook has authority to promote or transfer employees.

Layoff and recall - In the years that Warren has been the head cook, there has not been a layoff or recall of any food service employees. The nearest comparable action occurred several year ago, when a reduction in the school enrollment meant a reduction in the budget for the food service staff. The superintendent consulted Warren, and Warren gave her recommendation to reduce the

assistant cook's hours in accordance with state guidelines. Warren had input into the decision but Warren's recommendation was to follow the state guidelines. This incident does not indicate that Warren had the authority to make layoff or recall decisions.

Suspend, discipline or discharge - Warren testified that she has given oral warning to food service employees, but not any other form of discipline. Several years ago, when custodial and maintenance employees were "a little out of control", Warren was assigned to supervise them. In that role, she was involved in disciplining two employees and she wrote reports regarding the incidents. Since that time, Warren no longer oversees custodial or maintenance employees and the record does not establish that Warren would have the authority to suspend or discharge food service employees. Instead, the record only shows that she has the authority to give oral warnings, nothing more.

Adjustment of grievances - There is also little history of any grievances being processed by Warren. Warren testified that she has little memory of her role in a grievance filed when the assistant cook's hours were reduced and that she forwarded the grievance to the superintendent as soon as possible. While the superintendent testified that Warren handled the first step of the grievance process, he did not provide any information about what she did to resolve the grievance. The superintendent's testimony is insufficient to contradict Warren's testimony that she only forwarded the grievance to the next level. Thus, the evidence fails to demonstrate that Warren has the authority to adjust grievances. Instead, as with most of the other supervisory duties, Warren has input, but the actual decision making authority regarding food service employees belongs to the superintendent.

Other indicia of supervisory status - Other duties such as completing performance evaluations and approving leave can be considered indicia of supervisory authority. Warren independently completes and meets with Crandall concerning her performance evaluations. Also, Warren's approval of Crandall's leave has never been overruled by the superintendent. These duties support a finding that Warren has some supervisory authority over Crandall, but not enough to show that Warren has the authority regarding the preponderance of supervisory duties. Instead, Warren's authority is more similar to that of a lead worker than a supervisor.

Preponderance of Time

The second way to establish if an employee is a supervisor is to show that the employee holding the position spends a majority of his or her time engaged in supervisory duties. *Richland School District*, Decision 10151 (PECB, 2008). Warren testified that, as she is responsible for the food service department, she must supervise Crandall as they prepare and serve meals together. As the food service department only has two regular positions, the majority of Warren's work time is spent performing food service duties. Monitoring the work of a fellow employee, even if done constantly, is not enough to satisfy the "preponderance of time" standard. The Commission has recognized that lead workers are not supervisors even though they might have some supervisory responsibilities over fellow employees. *City of Lynnwood*, Decision 8080-B (PECB, 2006). And so, Warren's oversight of Crandall, as they work side by side, is not sufficient to make Warren a supervisor.

CONCLUSION

The head cook is not a supervisor. The majority of her time is spent performing non-supervisory duties – preparing and serving meals. Her supervisory duties only include approving leave, evaluating performance, assigning work and issuing minor discipline. She does not have the authority to make independent decisions regarding hiring, promotion, transfer, layoff, suspension, discharge or adjusting grievances, or to effectively recommend such actions. While Warren's input is considered, the actual supervisory authority over food service employees is retained by the superintendent.

FINDING OF FACT

1. Inchelium School District is a public employer within the meaning of RCW 41.56.030(13).
2. Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The employer has two regular food service employees: a head cook and assistant cook. The assistant cook in the non-supervisory classified bargaining unit is represented by Public School Employees.
4. The head cook maintains inventory, plans menus, prepares the meals in accordance with various regulations, and completes state and federal reports.
5. The head cook's supervisory authority over the assistant cook is limited to approving leave, evaluating performance, assigning work, and issuing minor discipline.
6. The head cook does not have authority over hiring, promotion, transfer, layoff, suspension, discharge or adjusting grievances. While the head cook's input may be considered, the decision making authority is retained by the superintendent.
7. The head cook and the assistant cook work together in preparing and serving school meals and cleaning up after meal service. In addition to those duties, the head cook engages in a large amount of administrative work such as meal planning, inventory, and writing reports. Although the head cook oversees the assistant cook as they work together, very little of the head cook's time is spent solely on supervisory duties.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The head cook is not a supervisor under WAC 391-35-340.

ORDER

1. The head cook is included in the non-supervisory classified bargaining unit.

2. The bargaining unit description shall be modified to read as follows:

[A]ll full-time and regular part-time classified Custodians, Grounds, Maintenance, Transportation, Mechanic, and Food Service employees, excluding the Transportation Supervisor and all other employees.

ISSUED at Olympia, Washington, this 28th of September, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, 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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