

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES

For clarification of an existing bargaining
unit of employees of:

KITTITAS COUNTY

CASE 21980-C-08-1384

DECISION 10412-A - PECB

DECISION OF COMMISSION

Audrey B. Eide, General Counsel, for the union.

Menke Jackson Beyer Ehlis & Harper, by *Rocky L. Jackson*, for the employer.

On September 17, 2008, the Washington State Council of County and City Employees (union) filed a petition seeking to include the Kittitas County Public Health Department business manager position in its existing bargaining unit of health, public works, and courthouse employees. Kittitas County (employer) opposed the union's petition and argued that the business manager position was a supervisory position that needed to remain excluded from the bargaining unit. Executive Director Cathleen Callahan ordered a hearing and, based upon the record, ruled that the position should be included in the bargaining unit.¹ The employer now appeals that decision.

ISSUE PRESENTED

1. Is the union's unit clarification petition timely?
2. If the petition is timely, should the business manager position occupied by Amber Simon be excluded from the bargaining unit as a supervisory employee?

¹ *Kittitas County*, Decision 10412 (PECB, 2010).

For the reasons set forth below, we affirm the Executive Director’s decision.² The union’s unit clarification petition was timely filed because the employer’s removal of the accountant work from the bargaining unit represented a change in circumstances. With respect to Simon’s status as a supervisory employee, this record demonstrated that Simon’s duties do not meet the criteria that would establish her as a supervisory employee.

DISCUSSION

A brief recitation of the facts is appropriate to place our decision in the proper context. In 2001, the employer created a business manager position in its public health department. Although the employer created the position in 2001, it was not filled until 2004. The business manager is “responsible for the professional and timely management of the Health Department accounting and finance system.” Exhibit 12. This record also demonstrates that the employer had a difficult time keeping the non-bargaining unit business manager position filled.

In 2007, the employer created an accountant position in its public health department. The accountant position “provides accounting support to the Public Health Department” and performs “routine fiscally related work using established procedures to prepare, review, verify and process fiscal/accounting documents.” Exhibit 13. At that time, the employer and union agreed that the accountant position was a bargaining unit position. The employer hired Simon for the accountant position in October of 2007.

Shortly after Simon started working in the accountant position, the employer reassigned her to the business manager position and removed Simon from the bargaining unit, leaving the accountant position vacant.

² This Commission reviews conclusions and applications of law and interpretations of statutes de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings support the Executive Director’s conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). Substantial evidence exists if the record contains a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the matter. *Renton Technical College*, Decision 7441-A (CCOL, 2002).

The Executive Director ruled that the business manager position should be included in the bargaining unit. In reaching this conclusion, the Executive Director found that even though Simon's job title changed, she continued to perform most, if not all, of the same duties that she previously performed in the accountant position and at the same wage rate. The Executive Director also found that none of Simon's current duties qualified her as a supervisory employee because Simon did not promote, transfer, lay off, recall, discipline, suspend, discharge, or adjust employee grievances.

ISSUE 1 – Timeliness of the Union's Petition

Applicable Legal Standard

Longstanding Commission precedents and rules govern the times when unit clarification petitions may be filed. A unit clarification petition may be filed at any time if there are changes in circumstances, if there is a newly created position, or if there is a dispute between an employer and a bargaining representative about the confidential status of an employee. WAC 391-35-020(1). Unit clarification petitions may also be filed within a reasonable period of time after a change in circumstances that alters the community of interest of an employee or a position. WAC 391-35-020(4).

However, when the parties disagree about the supervisory status of an employee or whether an employee is casual or part-time, the party seeking change must wait until negotiations on a successor collective bargaining agreement begin and propose a change of the employee's status during those negotiations. WAC 391-35-020(2); *see also Toppenish School District*, Decision 1143-A (PECB, 1981). Thereafter, a party seeking change may file a unit clarification petition.

Application of Standard

The employer argues that the union's petition is not timely because the union did not challenge the supervisory status of the business manager position during bargaining as required by WAC 391-35-020(2). The employer also argues that the Executive Director erred in ruling that the employer's action was a "change in circumstance" that allowed the petition to be filed at any

time. In the employer's opinion, re-filling the business manager position was not an action that can be considered a change of circumstances. We disagree.

When the employer assigned Simon the business manager duties and removed her from the bargaining unit, she continued to perform previously assigned accountant duties.³ Because the accountant duties were historically bargaining unit work, removal of that work from the non-supervisory bargaining unit created the "change in circumstances" that allowed the union to seek clarification as to whether the historically excluded business manager should have been included in the non-supervisory bargaining unit because it was performing historical bargaining unit work, and therefore satisfying WAC 391-35-020(4).

Having determined that the union's petition was timely, we next must determine whether Simon should be excluded from the bargaining unit as a supervisory employee.

ISSUE 2 – Simon's Supervisory Status

Applicable Legal Standard

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 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.

³ Arguably, the union could have filed an unfair labor practice complaint alleging unilateral transfer of bargaining unit work.

In the absence of a test within Chapter 41.56 RCW, Commission precedents adopt the test set forth in RCW 41.59.020(4)(d) that distinguishes supervisors from employees who are merely lead workers. *Ronald Wastewater District*, Decision 9874-C (PECB, 2008). Under that statute, if the preponderance of an employee's duties demonstrates that the employee has the 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," the employee shall be considered a supervisory employee.

While there may be some indicia within a record demonstrating that "lead workers" exercise some supervisory authority, there still must be a sufficient preponderance of supervisory duties to warrant their separation from the rank-and-file employees they lead. *City of Lynnwood*, Decision 8080-B. Discretionary authority in administrative matters or having 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).

Application of Standard

The employer argues that the Executive Director committed reversible error when she determined that the business manager position should be included in the bargaining unit. The employer points out that the business manager position has historically been excluded from the bargaining unit, and that many of the business manager duties are supervisory in nature. The employer supports its argument by pointing out that the business manager writes all fiscal policy and is in charge of supervising all fiscal matters of the department. Employer's Brief at 4. The employer also points out that the business manager is responsible for managing grants. Finally, the employer asserts that the business manager developed a database to assist the County Commissioners and Board of Health with different lay-off scenarios, and was involved in executive level meetings with the employer about decisions relating to the lay-off of employees.

Despite the employer's arguments, we agree with the Executive Director that Simon's current duties do not qualify her as a supervisory employee. Although many of Simon's duties require a

high level of skill and knowledge and her responsibilities include training and assigning finance-related work to certain employees, she is not responsible for setting employee schedules, hiring employees, disciplining, or promoting employees. Simon testified that she cannot terminate or suspend an employee and that those types of decisions are left to her superiors. Furthermore, Simon has never adjusted an employee grievance, and although she testified that she may be involved with grievances in the future, her testimony is speculative in nature and cannot be used to determine her actual job duties. *See State – Natural Resources*, Decision 8458-B (PSRA, 2005).

In sum, substantial evidence supports the Executive Director's findings and conclusions that Simon is not a supervisory employee.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by 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 15th day of September, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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PAMELA G. BRADBURN, Commissioner



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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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