

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:

EASTERN WASHINGTON
UNIVERSITY

CASE 128450-C-16

DECISION 12763 - PECB

ORDER CLARIFYING
BARGAINING UNIT

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On September 20, 2016, Public School Employees of Washington (union) filed a unit clarification petition seeking to add four recently created senior advisor positions to its bargaining unit of exempt employees that includes academic advisors at Eastern Washington University (employer). The academic advisors and senior advisors are exempt from the civil service law, Chapter 41.06 RCW, and may collectively bargain under Chapter 41.56 RCW.

The union claims the senior advisors should be included in its bargaining unit because they are not supervisors under this agency's supervisory standard. The employer, however, claims the senior advisors are supervisors and should thus be excluded from the bargaining unit.¹ Hearing Officer Sean A. Bratner held a hearing on March 21, 2017, and the parties filed post-hearing briefs on May 12, 2017, to complete the record.

¹ The parties agree that if the senior advisors are non-supervisory employees under this agency's standards, they share a community of interest with and belong in the union's bargaining unit.

The issue in this case is whether the senior advisors should remain excluded from the bargaining unit because they are supervisors under WAC 391-35-340. Based on the evidence and testimony, the senior advisors do not perform a preponderance of the statutory supervisory duties, and they do not spend a preponderance of their time performing supervisory duties. The independent authority exercised by the senior advisors on behalf of the employer does not result in meaningful changes to the employment relationship of their subordinate employees. Further, the authority exercised by the senior advisors creates no potential for conflicts of interest that would warrant the senior advisors' exclusion from the unit. The senior advisors are not supervisors, and the union's exempt employee bargaining unit is clarified to include the senior advisor positions.

BACKGROUND

The employer is a regional comprehensive university that enrolls approximately 5,500 graduate and undergraduate students. Academic advisors are employed by the university to help students understand their general education requirements and select classes that fulfill those requirements. The academic advisors also assist students in connecting with the academic departments and campus support resources. The union represents the academic advisors as part of its exempt employee bargaining unit. *Eastern Washington University*, Decision 11674 (PECB, 2013).

Historically, the academic advisors were assigned to the various colleges within the university. In 2014 the employer formed a task force to evaluate its undergraduate academic advising process and to determine best practices for advising students. Following this study, the employer decided to reorganize and centralize its advising workforce by creating the Center for Academic Advising and Retention (CAAR). The employer moved the academic advisors to CAAR from the various colleges.

Within CAAR, the employer established four advising "teams." Each team is led by a senior advisor and includes three to five academic advisors. The four senior advisors (Susan Magyar, Sheri Meyer, Mark Ward, and Von Astudillo) were hired between November and December 2016. The senior advisors report to Associate Director Roy Caligan, who reports to Director Heather

Page. Page in turn reports to Associate Vice President Mark Baldwin. Baldwin reports to the Provost of Academic Affairs Scott Gordon, who has appointing authority.

The stated goal is for each academic advisor to have a caseload of 350 students. The senior advisors also maintain caseloads, although they are substantially smaller than those of the academic advisors. The senior advisors routinely assign themselves challenging cases, such as those involving international students with complex documentation and communication issues. At the time of the hearing, the four senior advisors had caseloads of 118, 36, 36, and 207 cases, respectively. The senior advisor with the largest caseload was transitioning from an academic advisor to a senior advisor position, and his caseload was expected to decrease. Magyar meets with one to four students a day, which takes approximately one and a half to two hours of her time. Meyer meets with up to four students a day, each for about 30 minutes.

The senior advisors draft and edit an operations manual that establishes procedures and policies for the academic advisors. With the exception of a training checklist portion, Caligan, Page, and Baldwin review and approve the senior advisors' work on the operations manual. Meyer has also worked on developing an operating curriculum for CAAR and related student learning outcomes which required approval from Page and Baldwin. Meyer testified that she attends several meetings, including weekly leadership meetings, senior faculty meetings, meetings regarding the curriculum development and operations manual, biweekly meetings with the other senior advisors, and meetings with the coordinator of her college. In leadership meetings, the senior advisors offer "on the ground" feedback to Caligan and Page, who can make adjustments to the advising program based on this feedback. Other senior advisor duties include developing and modifying a learning management system, taking the lead in organizing seminars and workshops, and planning the program's involvement in student orientation.

Supervisory Duties

The senior advisors do not independently hire employees, but they are part of the hiring process for new academic advisors. In this capacity, they review applications, select interviewees, conduct panel interviews, check references, and recommend candidates to Caligan and Page. The senior advisors have made five to seven hiring recommendations, all of which have been followed. The

senior advisors have also made salary range recommendations for new hires, but there is no evidence to suggest these recommendations were followed. Once a hiring recommendation is made, Page makes a specific salary recommendation based on education and experience. The hiring and salary recommendations are then provided to Vice Provost David May for approval.

The senior advisors assign newly hired academic advisors to one of the four teams. The senior advisors may seek to transfer academic advisors between teams, but such transfers require a supervisor's approval. On two different occasions the senior advisors sought and received approval to transfer an academic advisor to another team. One transfer occurred when an academic advisor asked to move teams. Page was involved in the logistics of this transfer, which Baldwin then approved. The other transfer occurred when the senior advisors felt it was necessary, and they sought and received approval from Caligan and Page.

The senior advisors assign the work. Meyer testified that assigning cases is an "every-other-day task" that generally takes about 30 minutes. At the start of the school year, the amount of time spent assigning cases could increase to approximately two hours per day. The senior advisors monitor the academic advisors' appointments, but the academic advisors control their own appointment schedules.

The employer established the work hours for the academic advisors prior to hiring the senior advisors. The senior advisors can approve alternative work schedules for the academic advisors if requested. The senior advisors also approve the academic advisors' leave requests. However, Page must approve any academic advisors' leave requests that fall on specified "blackout" dates, such as student orientation days. When the senior advisors created a protocol that allowed some leave during blackout dates, that protocol required Page's approval. Senior advisors do not approve overtime, but they are responsible for determining whether there is a legitimate business need for overtime work. Any overtime must be approved by Page because of its budget impact.

The senior advisors are responsible for evaluating the academic advisors. They have yet to actually complete any evaluations. Page will review the completed evaluations and sign off on them. The

senior advisors also conduct informal investigations into performance issues which could result in coaching, counseling, or discipline.

The senior advisors have no authority to promote, as any such advancement is achieved through the regular recruitment hiring process. The senior advisors also have no authority to give pay increases. Senior advisors cannot recall after layoff, and the layoff and recall procedure is governed by the collective bargaining agreement. The senior advisors have not been through a layoff process due to the limited time they have been in their positions.

The senior advisors have not disciplined any employees. Their authority to impose discipline is limited to oral and written reprimands. The provost's office facilitates the pre-disciplinary process for any suspension, demotion, or termination. The senior advisors are responsible for responding to grievances at the step one level.

ANALYSIS

Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the Legislature. RCW 41.56.060; *Central Washington University*, Decision 10215-B (PSRA, 2010). The goal in making unit determinations is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

RCW 41.56.060(1) provides that this agency, in examining whether there is a community of interest, shall consider "the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees." The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). Not all of the factors will arise in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A

(EDUC, 1978), *aff'd*, *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d 435 (1984).

This agency's role is to determine whether there is *a* community of interest, not the *best* community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015), *citing Snohomish County*, Decision 12071 (PECB, 2014), *and City of Winslow*, Decision 3520-A (PECB, 1990).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify an existing bargaining unit, upon request, through a unit clarification proceeding. Chapter 391-35 WAC; *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). The general purpose of the unit clarification process is to provide a mechanism to make changes to an appropriate bargaining unit based upon a change of circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

Generally, supervisors are not included in the same bargaining units as the employees they supervise. WAC 391-35-340. The exclusion of supervisors from the bargaining units of their rank-and-file subordinates is presumed appropriate when they exercise authority on behalf of the employer over subordinate employees, and any such exclusion avoids a potential for conflicts of interest. *Id.* The Commission places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. *State – Office of Administrative Hearings*, Decision 11503 (PSRA, 2012), *citing State – Corrections*, Decision 9024-A (PSRA, 2006). If an employee merely executes the instructions of a higher ranking employee when making meaningful changes to the workplace, that employee has not exercised independent judgment. *State – Office of Administrative Hearings*, Decision 11503, *citing City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006).

A determination under the Commission's definition of supervisor does not negate or strip away any titular or other supervisory authority of the affected employee. Indeed, an employee may possess a lower level of supervisory authority than the statutory definition contemplates and still be deemed a "supervisor" by subordinates. The distinguishing characteristic is that the authority does not rise to the level of conflict expressed in the statute which would require separating the employee out of the bargaining unit. *Rosalia School District*, Decision 11523 (PECB, 2012).

The Commission distinguishes supervisors from employees who are "lead workers." Lead workers are not excluded from a subordinate bargaining unit. *City of Lynnwood*, Decision 8080-A. The lead worker may have limited discretionary authority in administrative matters or to direct subordinates in daily job assignments. However, the lead worker does not have independent authority to make meaningful changes in the employment relationship, which is the hallmark of supervisory status. *Id.*; *Grant County*, Decision 4501 (PECB, 1993).

A supervisory employee is any employee whose *preponderance* of actual duties includes the independent 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. *Granite Falls School District*, Decision 7719-A (PECB, 2003).

"Preponderance" can be met in two different ways. An employee may be a supervisor if he or she spends a preponderance of his or her time performing one or more of the statutory supervisory activities. *City of East Wenatchee*, Decision 11371 (PECB, 2012); *Inchelium School District*, Decision 11178 (PECB, 2011). An employee may also be a supervisor if he or she spends less than a preponderance of his or her time performing supervisory activities but performs a preponderance of the types of supervisory activities. *City of East Wenatchee*, Decision 11371; *King County*, Decision 10075 (PECB, 2008). The determination of whether an employee possesses sufficient authority to be excluded from a rank-and-file bargaining unit as a supervisor is made by examining the actual duties and authority exercised by that individual, not on the basis of the employee's title or job description. *Rosalia School District*, Decision 11523; *Morton General Hospital*, Decision 3521-B (PECB, 1991).

Application of Standards

The senior advisors are not supervisors under WAC 391-35-340 because they do not perform a preponderance of supervisory duties, and they do not spend a preponderance of their time performing supervisory duties. The senior advisors do not have the independent authority to act in the interest of the employer and make meaningful changes in the employment relationship for the academic advisors. The duties performed by the senior advisors do not create conflicts of interest between them and the academic advisors that would warrant the senior advisors' exclusion from the bargaining unit.

The senior advisors do not have independent authority to make hiring decisions. The senior advisors sit on hiring panels where they ask questions, discuss observations, and give input and opinions to their superiors, who make the final hiring decisions. The panel process was characterized as a consensus process where everyone's input is weighed equally. The role of the senior advisors in that process does not equate to an effective recommendation.

The senior advisors assign, monitor, and prioritize the work of the academic advisors. They can independently adjust the academic advisors' work schedules and generally approve leave requests. The senior advisors also conduct informal investigations concerning performance issues which could result in coaching, counseling, or discipline. They must obtain approval to transfer academic advisors between teams. Senior advisors will conduct performance evaluations of the academic advisors. The senior advisors' authority to impose discipline is limited to oral and written reprimands. The senior advisors are responsible for responding to academic advisor grievances at the step one level.

The senior advisors may have some higher level of independent authority, but they do not exercise the type of independent authority that makes them supervisory employees under WAC 391-35-340. While the employees exercise varying levels of authority to assign work, grant time off, issue oral reprimands, and evaluate and train employees whom they oversee, that level of authority does not create the type of conflict that requires their exclusion from the bargaining unit. Further, the senior advisors have yet to actually perform some of these duties. It is not possible to

say at this stage that the duties rise to a level that would render the senior advisors supervisors under this agency's standards.

The senior advisors also do not spend a preponderance of their time performing supervisory duties. The record lacks evidence establishing that the senior advisors spend a preponderance of their time approving leave, evaluating academic advisors, monitoring the academic advisors' case documentation, implementing discipline, or responding to grievances.

The employer argues that the senior advisors spend 65 percent of their time engaged in supervisory and managerial tasks. To support this argument, the employer points out that the senior advisor job description states they spend 35 percent of their time providing team leadership, vision, and management; 35 percent of their time engaging in direct student support; and the remaining 30 percent of their time assisting in the planning, delivery, and assessment of the overall advising program. This calculation is not persuasive.

The preponderance of the senior advisors' time is spent serving the overall function of the academic advising program and supporting students directly. The senior advisors have their own workloads of complex cases. The senior advisors also spend a considerable amount of time organizing seminars and workshops, planning the program's involvement in student orientation, drafting and editing the operations manual, developing an operating curriculum for CAAR and related student learning outcomes, and attending weekly leadership meetings. None of these duties have the potential to create conflicts of interest between the senior advisors and academic advisors that would render the senior advisors statutory supervisors.

Time spent serving the overall function and operation of the academic advising program does not equate to time spent performing supervisory duties; rather, it is time spent implementing the core program's mission, which is dictated by authority above the senior advisors. When the senior advisors draft policies and procedures for the operations manual, for example, they are not creating the potential for conflicts of interest.

CONCLUSION

The senior advisors do not perform a preponderance of the supervisory duties and do not spend the preponderance of their time performing supervisory duties. Because the senior advisors share a community of interest with the union's exempt employee bargaining unit, the unit shall be clarified to include the senior advisor positions.

FINDINGS OF FACT

1. Eastern Washington University is a public employer within the meaning of RCW 41.56.030(11).
2. Public School Employees of Washington (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Academic advisors are employed by the university to help students understand their general education requirements and select classes that fulfill those requirements. The academic advisors also assist students in connecting with the academic departments and campus support resources. The union represents the academic advisors as part of its exempt employee bargaining unit.
4. Historically, the academic advisors were assigned to the various colleges within the university. The employer then decided to reorganize and centralize its advising workforce by creating the Center for Academic Advising and Retention (CAAR). The employer moved the academic advisors to CAAR from the various colleges.
5. Within CAAR, the employer established four advising "teams." Each team is led by a senior advisor and includes three to five academic advisors. The four senior advisors were hired between November and December 2016. The senior advisors report to Associate Director Roy Caligan, who reports to Director Heather Page. Page in turn reports to

Associate Vice President Mark Baldwin. Baldwin reports to the Provost of Academic Affairs Scott Gordon, who has appointing authority.

6. The stated goal is for each academic advisor to have a caseload of 350 students. The senior advisors also maintain caseloads, although they are substantially smaller than those of the academic advisors. The senior advisors routinely assign themselves challenging cases, such as those involving international students with complex documentation and communication issues.
7. The senior advisors draft and edit an operations manual that establishes procedures and policies for the academic advisors. The senior advisors also worked on developing an operating curriculum for CAAR and related student learning outcomes. The senior advisors attend several meetings, including weekly leadership meetings, senior faculty meetings, meetings regarding the curriculum development and operations manual, biweekly meetings with the other senior advisors, and meetings with the coordinator of the colleges.
8. Other senior advisor duties include developing and modifying a learning management system, taking the lead in organizing seminars and workshops, and planning the program's involvement in student orientation.
9. The senior advisors do not independently hire employees, but they are part of the hiring process for new academic advisors. In this capacity, they review applications, select interviewees, conduct panel interviews, check references, and recommend candidates to Caligan and Page. The senior advisors have made five to seven hiring recommendations, all of which have been followed. The senior advisors have also made salary range recommendations for new hires, but there is no evidence to suggest these recommendations were followed. Once a hiring recommendation is made, Page makes a specific salary recommendation based on education and experience. The hiring and salary recommendations are then provided to Vice Provost David May for approval.

10. The senior advisors assign newly hired academic advisors to one of the four teams. The senior advisors may seek to transfer academic advisors between teams, but such transfers require a supervisor's approval.
11. The senior advisors assign the work. Assigning cases is an "every-other-day task" that generally takes about 30 minutes. At the start of the school year, the amount of time spent assigning cases could increase to approximately two hours per day. The senior advisors monitor the academic advisors' appointments, but the academic advisors control their own appointment schedules.
12. The employer established the work hours for the academic advisors prior to hiring the senior advisors. The senior advisors can approve alternative work schedules for the academic advisors if requested. The senior advisors also approve the academic advisors' leave requests.
13. The senior advisors are responsible for evaluating the academic advisors. They have yet to actually complete any evaluations. Page will review the completed evaluations and sign off on them. The senior advisors also conduct informal investigations into performance issues which could result in coaching, counseling, or discipline.
14. The senior advisors have no authority to promote, as any such advancement is achieved through the regular recruitment hiring process. The senior advisors also have no authority to give pay increases. Senior advisors cannot recall after layoff, and the layoff and recall procedure is governed by the collective bargaining agreement. The senior advisors have not been through a layoff process due to the limited time they have been in their positions.
15. The senior advisors have not disciplined any employees. Their authority to impose discipline is limited to oral and written reprimands. The provost's office facilitates the pre-disciplinary process for any suspension, demotion, or termination. The senior advisors are responsible for responding to grievances at the step one level.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon Findings of Fact 5 through 15, the senior advisors described in Finding of Fact 5 are not supervisors within the meaning of WAC 391-35-340.

ORDER

The bargaining unit described in Finding of Fact 3 is clarified to include the senior advisors.

ISSUED at Olympia, Washington, this 11th day of August, 2017.

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.



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RECORD OF SERVICE - ISSUED 08/11/2017

DECISION 12763 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


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