

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

DISTRICT EMPLOYEES SUPPORT
ASSOCIATION

Involving certain employees of:

SEQUIM SCHOOL DISTRICT

CASE 132604-E-20

DECISION 13337 - PECB

DIRECTION OF ELECTION

Maria Seabolt, Representative, for the District Employees Support Association.

Lorraine Wilson and *Christina Weidner*, Attorneys at Law, Porter Foster Rorick
LLP, for the Sequim School District.

On February 28, 2020, the District Employees Support Association (DESA) filed a petition seeking to represent certain employees of the Sequim School District (employer). Except for five positions, the employer stipulated to the appropriateness of the petitioned-for bargaining unit. The employer contends that the Human Resources Specialist and the Executive Assistant to the Superintendent are confidential employees excluded from coverage of chapter 41.56 RCW. The employer also argues that the Directors of Transportation, Maintenance and Operations, and Technology must be excluded from the petitioned-for bargaining unit because they are supervisors and cannot be included in a unit with nonsupervisory employees.

Subsequent to DESA's filing of the representation petition, Public School Employees of Washington (PSE) filed a unit clarification petition in case 132820-C-20 concerning certain employees of the employer. As a result, DESA's petition and PSE's petition were consolidated for hearing. At hearing, PSE amended its petitions to withdraw claims related to all but the Student Support Specialist. In *Sequim School District*, Decision 13316 (PECB, 2021), PSE's petition to accrete the Student Support Specialist was dismissed.

The Executive Assistant to the Superintendent is a confidential employee because the position assists and acts in a confidential capacity to the employer's Superintendent. In contrast, the Human Resources Specialist is not a confidential employee because the position's role in the employer's labor relations process is limited to non-confidential duties. The three director positions are appropriately included in the petitioned-for bargaining unit. The Director of Technology does not possess a preponderance of the supervisory indicia and does not spend a preponderance of the time performing supervisory duties. The Directors of Transportation and Maintenance and Operations do not supervise anyone DESA seeks to represent. The three director positions also share a sufficient community of interest with other employees in DESA's proposed residual bargaining unit.

BACKGROUND

The employer is a small school district located in Clallam County. It operates two elementary schools, a middle school, and a high school. It also started a virtual school for the 2020–21 school year and a separate school for students at risk of not graduating. With the exception of one elementary school, all of the employer's buildings, including the district office, are located on the same property. The district employs approximately 315 employees and has a total student enrollment of around 2,400. The Superintendent is responsible for the overall operation of the school district, including all labor relations matters.

The employer's top managers are collectively referred to as the "cabinet." The cabinet is composed of the Superintendent, Assistant Superintendent, Director of Business Operations, and Director of Human Resources. They meet weekly to discuss and review the employer's operations, including labor relations and bargaining strategy. The employer also has leadership team meetings approximately once a month. The leadership team includes the cabinet members, plus school principals and department directors. The Executive Assistant to the Superintendent attends both cabinet and leadership meetings and is responsible for creating the agenda, taking notes, and drafting action items.

The employer's workforce is divided into a number of different bargaining units represented by different unions. Certificated staff are represented by the Sequim Education Association, while paraeducators are represented by another affiliate of the Washington Education Association. The maintenance, grounds keeping, and custodial staff are represented by the United Food and Commercial Workers International Union (UFCW). Bus drivers and mechanics in the Transportation department are represented by Teamsters Local 589. The Sequim Administrators Association represents principals and assistant principals. PSE represents all office clerical employees.

The bargaining unit sought by DESA includes all eligible unrepresented classified employees. It is composed primarily of employees working in the employer's district office. Most work year round. The reporting structure is varied. Among others, the employees report to the Superintendent, the Assistant Superintendent, and the Director of Business Operations. The minimum education requirements for positions in the DESA unit also vary. A significant portion of the positions require some level of post-secondary education, such as an associate's degree. Many positions in the petitioned-for bargaining unit require the exercise of independent judgment and considerable discretion.

The Disputed Positions

Executive Assistant to the Superintendent

The Executive Assistant to the Superintendent provides clerical support to the employer's Superintendent and the members of the school board. The position's responsibilities include maintaining the Superintendent's schedule, reviewing correspondence, and managing other aspects of communication. The position also performs similar tasks for the school board. The Executive Assistant to the Superintendent prepares the agenda for board meetings, attends the meetings, and takes minutes. Trayce Norman is the Executive Assistant to the Superintendent.

Norman attends the employer's cabinet meetings, where the district's top managers formulate bargaining strategy and discuss proposals. These discussions span labor relations issues for all of the employer's bargaining units. Norman is responsible for drafting the agenda for the meetings, taking notes, and clarifying items for follow up. After the meeting concludes, Norman archives

the meeting minutes in the Superintendent's office. Norman is also present occasionally when the board goes into executive session to discuss, among other things, personnel matters and bargaining strategy.

Norman also attends meetings of the employer's bargaining team prior to meeting with the relevant union, as well as the bargaining session itself. When the parties meet together, Norman is frequently tasked with taking notes. After the meeting is over, Norman emails the notes to all participants and files a copy in the employer's bargaining files. Norman handles various administrative tasks for the employer during bargaining with some groups, such as collecting information and printing proposals. Norman's duties include assisting in the maintenance of the Superintendent's own personal records for bargaining.

Human Resources Specialist

The Human Resources Specialist reports to the employer's Director of Human Resources, Victoria Balint, who oversees the employer's human resources and labor relations functions. The Human Resources Specialist's responsibilities include maintaining documents related to the employer's hiring process, as well as various personnel files and other employment records. In connection with that role, the Human Resources Specialist is expected to interpret and apply the provisions of collective bargaining agreements. The position also assists in the creating and filing of various state and federal reports. Valorie Knieper is the employer's Human Resources Specialist.

Knieper has access to certain labor relations materials. Drafts of grievance responses, investigative reports, and bargaining proposals are stored electronically. In addition to Knieper, the Director of Human Resources and the Human Resources Records Assistant also have access to the electronic files.

Prior to May 2019, Knieper performed some labor relations functions for the employer. Knieper attended bargaining sessions as part of the employer's team for the purposes of taking notes while the parties were in joint session. After the bargaining session was over, Knieper filed the notes in a cabinet located in the Director of Human Resource's office. Approximately four years ago, Knieper was asked to perform research for the district in preparation for bargaining. Knieper

collected salary schedules and various contracts from similarly situated districts. Knieper provided this information to the Director of Human Resources who formulated the district's proposals with the rest of the employer's bargaining team. Knieper has not been involved in the decision-making process in drafting proposals for the district and determining whether to accept or reject proposals from representatives of the employer's various bargaining units. Since May 2019 Knieper has played no significant role in the employer's labor relations processes.

Director of Transportation

The Director of Transportation plans, directs, coordinates, and oversees all functions related to the employer's transportation program. The work includes assigning buses, routes, and extra trips to drivers based on the process established by the Teamsters' collective bargaining agreement. Richard Fulmer is the Director of Transportation and reports to the Director of Business Operations.

In an ordinary school year, Fulmer oversees around 40 employees, including Bus Drivers, Bus Aides, Dispatchers, a Bus Washer, a Driver Trainer, and a Mechanic. The ongoing pandemic has significantly altered the employer's transportation operations, resulting in a 25 percent temporary decrease in the number of employees in the Transportation Department. Recently, Fulmer has been covering the Mechanic's responsibilities while that position has been vacant. Otherwise, Fulmer estimates that he performs supervisory duties 90 percent of the time. The employees in the Transportation Department are represented by Teamsters Local 589.

Fulmer evaluates the employees in the Transportation Department. Fulmer has no authority to hire or fire employees. Fulmer performs the work of the staff as necessary. Fulmer works year round, normally working eight hours a day, unless otherwise dictated by department needs. Fulmer's office is located away from the district's office complex and near where the buses are parked. Fulmer is overtime exempt and paid on a salaried basis. Other than specialized experience working in transportation, no education experience beyond a high school diploma GED is required.

Director of Maintenance and Operations

The Director of Maintenance and Operations is responsible for managing all aspects of the employer's Facilities and Maintenance Department. The work includes planning, organizing, coordinating, and supervising facility operations, repairs, construction, and maintenance. John McAndie is the Director of Maintenance and Operations and reports to the Superintendent.

McAndie oversees 23 employees, including custodial, grounds keeping, and maintenance staff. Twenty-two of those employees are represented by the UFCW, and one is represented by PSE. McAndie assigns work to employees in the department and establishes their priorities. McAndie evaluates those employees. Periodically, McAndie will assist employees with their work.

McAndie works year round out of a building next to the district office. McAndie interacts with employees throughout the district, including those in DESA's petitioned-for bargaining unit, but he works mostly with employees in his office, contractors, and vendors. The position is overtime exempt, and McAndie is a salaried employee. The position requires a bachelor's degree in management, business, maintenance, engineering, or a related field.

Director of Technology

The Director of Technology is responsible for the information technology functions of the district. The Director of Technology works year round in the district office. The position is overtime exempt and is salaried. Beauregarde Young is the Director of Technology and reports to the Assistant Superintendent.

Young oversees a Network Technician, a Technology Support employee, and an Operations Technology Manager, all of whom are included in DESA's petitioned-for bargaining unit. Young evaluates those employees. Young's work is 70 percent technical. The technical work performed by Young overlaps a significant extent with the work performed by the three employees reporting to Young. Areas of overlap include managing surplus computer equipment, researching and procuring new systems, responding to questions and problems from district employees, and installing and maintaining various hardware and software systems.

Tasks and projects are assigned in several ways. For larger, nonrecurring projects identified by the department, Young will divide tasks between the three employees depending on their positions, respective skill sets, and availability. Requests for technology assistance from other staff are managed via a cloud-based system. Requests are added to a queue that is accessible by the Technology Department staff as well as several other employees. The majority of the requests are self-assigned by Young and the three department employees based on the issue raised. The Technology Department employees typically work the same schedule and, other than when completing tasks at other buildings in the district, have the same general work location.

Young does not have authority to discipline employees. Young also does not have authority to hire but has participated in the hiring process. Young participated in the hiring of one temporary employee who was not included in the proposed DESA bargaining unit. For that position, the employer made the initial determination about whether to post the position. The employer asked Young for feedback on the content of the job. Young suggested the posting require certain skills and outline particular duties. The employer rejected those suggestions, instead deciding to utilize a preexisting position description. After the position was posted, Young determined interview panel members, screened applicants, determined who to interview, and participated on the interview panel that made a collective recommendation to the hiring authority.

ANALYSIS

Applicable Legal Standards

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The purpose of this function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

In making bargaining unit determinations, this agency considers “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.” RCW 41.56.060(1). These criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). Not all 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)).

Confidential Status

Only those personnel who qualify as “public employee[s]” may exercise collective bargaining rights under the statute. RCW 41.56.030(12). Excluded from this definition are employees whose duties imply a confidential relationship to the bargaining unit or to the executive management of the employer, such as an appointee to a board, commission, or committee for a particular term of an elected official. RCW 41.56.030(12)(c)(i–iii). Accordingly, anyone who meets the confidential employee definition is precluded from exercising collective bargaining rights under the statute. *Id.* Because confidential employees are precluded from exercising collective bargaining rights, a heavy burden is placed on the party seeking that confidential determination. *City of Seattle*, Decision 689-A (PECB, 1979).

A confidential employee is further defined as any employee who participates directly on behalf of the employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements. WAC 391-35-320(1). The nature of the work that creates the confidential status should be more than routine or clerical in nature. Rather, the work must call for the consistent exercise of independent judgment. *Id.*; *see also City of Lynden*, Decision 7527-B (PECB, 2002).

In determining whether the work performed by an employee is confidential in nature, a labor relations nexus test is used to examine the employee's current duties. *City of Yakima*, Decision 9983-A (PECB, 2008). The labor nexus test examines whether the employee's current duties imply a confidential relationship that flows from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. *International Association of Fire Fighters, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978).

The confidential exclusion depends on the particular association of the persons involved, rather than on any arbitrary test including title, position on organization chart, job description, or role. *See Shelton School District*, Decision 1609-B (PECB, 1984). "The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including formulation of labor relations policy." *City of Yakima*, 91 Wn.2d at 107. The exclusion prevents potential conflicts of interest between the employee's duty to their employer and status as a union member. *Walla Walla School District*, Decision 5860-A (PECB, 1997). An employee's official duties may provide them with access to sensitive information regarding the employer's collective bargaining position. In that case, the employee's loyalties should not be placed in a position where they could be questioned by either the employer or the bargaining unit. *State – Natural Resources*, Decision 8458-B (PSRA, 2005). Any relied-upon labor relations responsibilities must be necessary, regular, and ongoing. *Yakima School District*, Decision 7124-A (PECB, 2001) (citing *Oak Harbor School District*, Decision 3581 (PECB, 1990)).

Employees and, in particular, supervisors who are sources of important information to the employer's bargaining team are not rendered confidential merely because they might have access to the employer's confidential labor relations materials or provide input to the employer's labor relations team. *Pierce County*, Decision 8892-A (PECB, 2006). General supervisory responsibility is insufficient to render an employee confidential. *City of Yakima*, 91 Wn.2d at 107. Furthermore, an employer must communicate to an employee its expectation that the labor relations information or material be kept confidential. *See, e.g., Pateros School District*, Decision 3911-B (PECB, 1992) (finding that employee was not confidential where the record was void of any indication that the

employer expected the information she prepared to be kept confidential at any time). Finally, an employer may not obtain an excessive number of confidential exclusions by spreading out confidential duties to a large number of employees. *See, e.g., Clover Park School District*, Decision 2243-A (PECB, 1987), *aff'd*, Decision 2243-B (PECB, 1987).

Supervisory Status

Generally, supervisors are not included in the same bargaining units as the employees they supervise. WAC 391-35-340. Separating supervisors from the rank-and-file bargaining unit avoids the potential for conflicts of interest that would otherwise exist in a combined bargaining unit. *Id.* A supervisory employee is any employee whose preponderance of duties include 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) (citing RCW 41.59.020(4)(d)). “Preponderance” can be met in two different ways. An employee may be a supervisor if a preponderance of the employee’s time is spent 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 less than a preponderance of that employee’s time is spent performing supervisory activities but the employee performs a preponderance of supervisory activities. *City of East Wenatchee*, Decision 11371; *King County*, Decision 12079 (PECB, 2014).

The Commission places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful employment changes in the employment relationship. *City of Lakewood*, Decision 12453 (PECB, 2015); *State – Office of Administrative Hearings*, Decision 11503 (PSRA, 2012). If a position merely executes the instructions of a higher-ranking employee when making meaningful change to the workplace, that employee has not exercised independent judgment. *Id.* (citing *City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006)).

The distinguishing characteristic is that the authority does not rise to the level of conflict expressed in the statute that would require separating the employee out of the bargaining unit. *Rosalia School*

District, Decision 11523 (PECB, 2012). In determining supervisory status, the agency considers the extent of authority of first-line supervisors to hire, terminate, suspend without pay, or to effectively recommend such actions as being the paramount criteria. *Okanogan County*, Decision 6142-A (PECB, 1998). An employee's exercise of authority to assign and direct work, grant time off, authorize overtime, issue oral or written reprimands, and evaluate and train subordinate employees may be insufficient when that individual does not have authority to hire, terminate, suspend without pay, or effectively recommend such actions. *Id.*

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).

Application of Standards

With the exception of the Executive Assistant to the Superintendent, all of the disputed positions are appropriately included in the petitioned-for bargaining unit. The Executive Assistant's duties imply a confidential relationship to the employer's executive head and have a sufficient labor relations nexus to require exclusion. On the other hand, the Human Resources Specialist does not perform sufficient confidential labor relations duties to require exclusion from coverage of chapter 41.56 RCW. None of the three disputed directors are supervisors that require their exclusion from the petitioned-for bargaining unit. The level of supervisory authority possessed by these positions does not disrupt their community of interest with the rest of the bargaining unit. The petitioned-for bargaining unit of residual unrepresented classified employees is appropriate.

Executive Assistant to the Superintendent

Norman is a confidential employee excluded from coverage under chapter 41.56 RCW. Norman does not participate directly in the formulation of the employer's labor relations policy but assists and acts in a confidential capacity to those who do. The Superintendent is the employer's executive

head of the district within the meaning of RCW 41.56.030(12)(i), while the members of the Board of Directors are elected by popular vote. Norman provides clerical support to both.

Norman attends board meetings and is responsible for taking minutes and transcribing notes. Norman is present at times when the employer's top managers go into executive session to discuss, among other items, personnel and labor relations matters. In light of the sensitive information discussed during executive sessions, Norman's presence implies a confidential relationship to both the Superintendent and the Board of Directors.

Norman's role during the employer's cabinet and leadership team meetings also supports a conclusion of confidential status. The employer's managers discuss various labor relations matters during both cabinet and leadership meetings. Bargaining strategy, including bargaining parameters, is often debated and set during cabinet meetings. Norman is present for both types of meetings, creates the agendas, takes notes, and ensures any necessary participant follow-up. This type of information, if disclosed, would damage the bargaining process. The evidence supports finding Norman to be confidential. *See, e.g., Edmonds School District, Decision 231 (PECB, 1977).*

Excluding Norman as a confidential employee is consistent with a long line of PERC precedent. The Commission has excluded as confidential administrative assistants who serve in a similar capacity during board executive sessions. *Tahoma School District, Decision 1125 (PECB, 1981); Colville School District, Decision 5319-A (PECB, 1996).* Although the state's school districts have the freedom to structure their own operations, many have chosen to do so in a similar manner. Given these similarities, the Commission has frequently found the administrative assistant to the

superintendent to be a confidential employee.¹ Here, Norman assists the employer's leadership in a confidential capacity and should be excluded from the bargaining unit.

Human Resources Specialist

In contrast to Norman, Knieper's current job duties do not involve confidential labor relations tasks. Knieper has access to a shared drive containing various labor relations material, including draft grievance responses and bargaining proposals. However, there is no evidence that Knieper regularly accesses this information. The ability to simply view private files of this type does not imply confidential status. *Seattle School District*, Decision 10986 (PECB, 2011) ("It is not enough for an employee to be able to access confidential labor-relations information, check the mail or e-mail that might include a proposal or have access to a computer system containing confidential labor relations materials."). Knieper may be required to interpret and apply the employer's various collective bargaining agreements in maintaining personnel files. These tasks are not confidential labor relations work. *Clover Park Technical College*, Decision 10157-D (PECB, 2009). Balint would like Knieper to play a larger role in labor relations in the future, but speculative hopes do not support finding that Knieper should be excluded from coverage of chapter 41.56 RCW. *City of Yakima*, Decision 9983-A (PECB, 2008) (holding that the agency examines the factual situation as it exists at the time a petition is filed).

Knieper has not participated in the bargaining process since at least May 2019 when the previous Director of Human Resources left the employer. Evidence of past duties are of limited value and do not render a position confidential. *Id.* An employee's status as confidential may change over time as job responsibilities are removed or redistributed. *City of La Center*, Decision 12176 (PECB, 2014). Knieper's previous duties also do not provide compelling evidence of a confidential status. Taking notes during joint session does not involve confidential work as there is no expectation that the statements made in bilateral negotiations remain private. *North Franklin*

¹ See *Pateros School District*, Decision 3911 (PECB, 1991); *Wishkah Valley School District*, Decision 3910 (PECB, 1991); *San Juan Island School District*, Decision 1321 (PECB, 1982); *Pe Ell School District*, Decision 1068-A (PECB, 1981).

School District, Decision 6499 (PECB, 1998). In the past Knieper also occasionally performed research for the employer in connection with bargaining. This responsibility is not regular and ongoing. Providing information that others utilize to formulate bargaining proposals is insufficient to establish confidential status. *Pierce County*, Decision 8892-A (PECB, 2006).

Disputed Director Positions

The Disputed Director Positions Are Not Supervisors under WAC 391-35-340

The Directors of Transportation and Maintenance and Operations are not excluded under WAC 391-35-340 because they do not supervise employees within the proposed DESA bargaining unit.² The stated purpose of the supervisory standard is to exclude supervisors from bargaining units of rank-and-file employees in order “to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.” *Id.* The conflict arises when supervisors and rank-and-file employees are included in the same bargaining unit and the supervisors oversee the rank-and-file employees. There is no conflict if supervisors in a bargaining unit supervise rank-and-file employees outside their bargaining unit. *Kennewick School District*, Decision 12977 (PECB, 2019); *Everett Community College*, Decision 10392-A (PECB, 2010).

The employer concedes that none of the employees overseen by the Directors of Transportation and Maintenance and Operations are in the petitioned-for bargaining unit. All of the employees in the Transportation Department are in a bargaining unit represented by the Teamsters Local 589. All of the employees in the Maintenance and Operations Department are represented by UFCW. Thus, there is no potential conflict of interest requiring the exclusion of the two director positions as supervisors.

The Director of Technology is not a supervisor within the meaning of WAC 391-35-340. Young does not perform a preponderance of supervisory duties and does not exercise the type of authority

² Therefore, it is not necessary to address whether these two positions meet the definition of supervisor under WAC 391-35-340.

that requires separation from the bargaining unit. The position does not engage in any of the activities considered to be the paramount criteria of supervisory status.

Young neither hires nor fires employees. Young has been involved in the hiring of one temporary employee. In that instance, Young screened the applicants, selected the interview panel, and participated on the interview panel that made a collective recommendation to the hiring authority. Participation in a hiring committee that provides a recommendation is generally insufficient to render one a supervisor for bargaining unit exclusion. *University of Washington*, Decision 13149-A (PECB, 2020); *Thurston County*, Decision 12727 (PECB, 2017).

Young has authority to assign work to employees in the Technology Department and evaluates those three employees. An employee's exercise of authority to assign and direct work, grant time off, authorize overtime, issue oral or written reprimands, and evaluate and train subordinate employees may be insufficient when that individual does not have authority to hire, terminate, suspend without pay, or effectively recommend such actions. *Okanogan County*, Decision 6142-A (PECB, 1998). That is the case here, particularly where Young performs nonsupervisory duties 70 percent of the time.

The Disputed Directors Share a Community of Interest with the Employees in the Petitioned-for Bargaining Unit

In its closing brief, the employer refined its argument regarding the three disputed director positions. As stated above, the employer concedes that the Directors of Transportation and Maintenance and Operations are not required to be excluded from the petitioned-for bargaining unit as supervisors because they do not supervise employees in the petitioned-for unit. The employer now asserts that the "supervisory" functions performed by the three employees precludes finding a community of interest with the employees in the petitioned-for bargaining unit. The employer further argues that the Directors of Transportation and Maintenance and Operation should be excluded so as to not strand the Director of Technology.

This new argument was raised well after the employer agreed to the propriety of the petitioned-for bargaining unit and after it agreed that it was challenging the inclusion of these positions only on

the basis that they were supervisors. This agency has precluded parties from raising issues or arguments not articulated during the initial processing of a representation petition. *See, e.g., North Highline Fire District*, Decision 6550 (PECB, 1999); *Everett Community College*, Decision 448 (CCOL, 1978). It has also rejected as untimely arguments raised for the first time in the closing brief. *City of Lynden*, Decision 7527 (PECB, 2001). Nonetheless, the nature of these proceedings are investigatory in nature, and this agency has the ultimate responsibility to determine the appropriateness of bargaining units. *City of Puyallup*, Decision 5639-A (PECB, 1996); *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). Accordingly, the employer's arguments will not be dismissed out of hand as untimely. Rather, they are dismissed on their merit.

The three directors are appropriately included in the petitioned-for bargaining unit. The starting point for unit determinations is the configuration proposed by the petitioner. *Kitsap County*, Decision 12182 (PECB, 2014). A wall-to-wall bargaining unit of all employees employed by an employer is inherently appropriate because "all employees share a community of interest in dealing with their common employer." *State – Social and Health Services*, Decision 12542-B (PSRA, 2016) (citing *Lakehaven Utility District*, Decision 3228 (PECB, 1989)). *See also City of Winslow*, Decision 3520 (PECB, 1990). Residual bargaining units of all unrepresented employees are similarly appropriate. *Quillayute Valley School District*, Decision 2809 (PECB, 1987); *City of Vancouver*, Decision 3160 (PECB, 1989). Although it is not explicitly framed as such, the unit proposed by DESA is composed of all unrepresented classified employees employed by the employer. No party argues it is underinclusive in that it fails to include all of the unrepresented staff. The petitioned-for wall-to-wall group of employees inherently shares a sufficient community of interest to make the unit appropriate.

Most of the positions in the petitioned-for bargaining unit are more single contributors. That does not preclude finding a community of interest. In this instance, it supports such a finding. The extent of organization, education and training requirements, certain terms and conditions of employment, and the degree of contact supports finding that the directors share a community of interest with

other employees in the petitioned-for bargaining unit. Many of the petitioned-for employees report to either the Superintendent, Assistant Superintendent, or Director of Business Operations. The three department directors share common supervision with the employees in the petitioned-for bargaining unit. The educational requirements for two of the directors is similar to that of other bargaining unit employees. In contrast to many other district employees, most of the employees in the proposed DESA bargaining unit, including the three directors, work 260 days a year. They also have significant contact with other district office employees. The Director of Technology works in close proximity to Technology Department employees that the parties have stipulated to include in the unit. The record also contains evidence that the Directors of Transportation and Maintenance and Operations similarly have regular contact with other DESA employees. The employer implies that the three disputed director positions share a more appropriate or stronger community of interest with each other. However, the question is not whether the petitioned-for employees form the most appropriate unit. Rather, the question is whether the petitioned-for employees form an appropriate unit.

Finally, excluding the Director of Technology would create work jurisdiction issues. In making unit determinations, the Commission strives to avoid creating work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). These disputes arise when there are regular and ongoing overlapping duties between represented and unrepresented employees. *City of Fircrest*, Decision 12379 (PECB, 2015). Approximately 70 percent of the Director of Technology's time is spent performing technical work. This work overlaps extensively with that performed by the three employees reporting directly to the position. Excluding the director from the bargaining unit would nearly guarantee that work jurisdiction disputes would arise.

The petitioned-for bargaining unit is appropriate. Substantial evidence supports finding that the three directors share a community of interest with other employees in the unit proposed by DESA. Excluding them would not only unnecessarily fragment the employer's workforce but also create the possibility for significant work jurisdiction disputes. The Directors of Transportation, Maintenance and Operations, and Technology are included.

CONCLUSION

The Executive Assistant to the Superintendent acts in a confidential capacity with respect to the employer's senior leadership and on that basis is excluded from the bargaining unit. In contrast, the Human Resources Specialist does not create or formulate labor relations policy and does not serve in a confidential capacity to someone who does. The position is included in the proposed DESA bargaining unit. Finally, the Directors of Technology, Transportation, and Maintenance and Operations are not supervisors who have an impermissible conflict of interest with the petitioned-for bargaining unit. The petitioned-for bargaining unit is appropriate on its face and the three directors share a community of interest with other unit employees.

FINDINGS OF FACT

1. The Sequim School District (employer) is a public employer within the meaning of RCW 41.56.030(13).
2. The District Employees Support Association (DESA) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer is a small school district located in Clallam County. It operates two elementary schools, a middle school, and a high school. It also started a virtual school for the 2020–21 school year and a separate school for students at risk of not graduating. With the exception of one elementary school, all of the employer's buildings, including the district office, are located on the same property. The district employs approximately 315 employees and has a total student enrollment of around 2,400. The Superintendent is responsible for the overall operation of the school district, including all labor relations matters.
4. The employer's top managers are collectively referred to as the "cabinet." The cabinet is composed of the Superintendent, Assistant Superintendent, Director of Business Operations, and Director of Human Resources. They meet weekly to discuss and review the employer's operations, including labor relations and bargaining strategy. The employer

also has leadership team meetings approximately once a month. The leadership team includes the cabinet members, plus school principals and department directors. The Executive Assistant to the Superintendent attends both cabinet and leadership meetings and is responsible for creating the agenda, taking notes, and drafting action items.

5. The employer's workforce is divided into a number of different bargaining units represented by different unions. Certificated staff are represented by the Sequim Education Association, while paraeducators are represented by another affiliate of the Washington Education Association. The maintenance, grounds keeping, and custodial staff are represented by the United Food and Commercial Workers International Union (UFCW). Bus drivers and mechanics in the Transportation Department are represented by Teamsters Local 589. The Sequim Administrators Association represents principals and assistant principals. Public School Employees of Washington (PSE) represents all office clerical employees.
6. The bargaining unit sought by DESA includes all eligible unrepresented classified employees. It is composed primarily of employees working in the employer's district office. Most work year round. The reporting structure is varied. Among others, the employees report to the Superintendent, the Assistant Superintendent, and the Director of Business Operations. The minimum education requirements for positions in the DESA unit also vary. A significant portion of the positions require some level of post-secondary education, such as an associate's degree. Many positions in the petitioned-for bargaining unit require the exercise of independent judgment and considerable discretion.
7. The Executive Assistant to the Superintendent provides clerical support to the employer's Superintendent and the members of the school board. The position's responsibilities include maintaining the Superintendent's schedule, reviewing correspondence, and managing other aspects of communication. The position also performs similar tasks for the school board. The Executive Assistant to the Superintendent prepares the agenda for board meetings, attends the meetings, and takes minutes. Trayce Norman is the Executive Assistant to the Superintendent.

8. Norman attends the employer's cabinet meetings, where the district's top managers formulate bargaining strategy and discuss proposals. These discussions span labor relations issues for all of the employer's bargaining units. Norman is responsible for drafting the agenda for the meetings, taking notes, and clarifying items for follow up. After the meeting concludes, Norman archives the meeting minutes in the Superintendent's office. Norman is also present occasionally when the board goes into executive session to discuss, among other things, personnel matters and bargaining strategy.
9. Norman also attends meetings of the employer's bargaining team prior to meeting with the relevant union, as well as the bargaining session itself. When the parties meet together, Norman is frequently tasked with taking notes. After the meeting is over, Norman emails the notes to all participants and files a copy in the employer's bargaining files. Norman handles various administrative tasks for the employer during bargaining with some groups, such as collecting information and printing proposals. Norman's duties include assisting in the maintenance of the Superintendent's own personal records for bargaining.
10. The Human Resources Specialist reports to the employer's Director of Human Resources, Victoria Balint, who oversees the employer's human resources and labor relations functions. The Human Resources Specialist's responsibilities include maintaining documents related to the employer's hiring process, as well as various personnel files and other employment records. In connection with that role, the Human Resources Specialist is expected to interpret and apply the provisions of collective bargaining agreements. The position also assists in the creating and filing of various state and federal reports. Valorie Knieper is the employer's Human Resources Specialist.
11. Knieper has access to certain labor relations materials. Drafts of grievance responses, investigative reports, and bargaining proposals are stored electronically. In addition to Knieper, the Director of Human Resources and the Human Resources Records Assistant also have access to the electronic files.
12. Prior to May 2019, Knieper performed some labor relations functions for the employer. Knieper attended bargaining sessions as part of the employer's team for the purposes of

taking notes while the parties were in joint session. After the bargaining session was over, Knieper filed the notes in a cabinet located in the Director of Human Resource's office. Approximately four years ago, Knieper was asked to perform research for the district in preparation for bargaining. Knieper collected salary schedules and various contracts from similarly situated districts. Knieper provided this information to the Director of Human Resources who formulated the district's proposals with the rest of the employer's bargaining team. Knieper has not been involved in the decision-making process in drafting proposals for the district and determining whether to accept or reject proposals from representatives of the employer's various bargaining units. Since May 2019 Knieper has played no significant role in the employer's labor relations processes.

13. The Director of Transportation plans, directs, coordinates, and oversees all functions related to the employer's transportation program. The work includes assigning buses, routes, and extra trips to drivers based on the process established by the Teamsters' collective bargaining agreement. Richard Fulmer is the Director of Transportation and reports to the Director of Business Operations.
14. In an ordinary school year, Fulmer oversees around 40 employees, including Bus Drivers, Bus Aides, Dispatchers, a Bus Washer, a Driver Trainer, and a Mechanic. The ongoing pandemic has significantly altered the employer's transportation operations, resulting in a 25 percent temporary decrease in the number of employees in the Transportation Department. Recently, Fulmer has been covering the Mechanic's responsibilities while that position has been vacant. Otherwise, Fulmer estimates that he performs supervisory duties 90 percent of the time. The employees in the Transportation Department are represented by Teamsters Local 589.
15. Fulmer evaluates the employees in the Transportation Department. Fulmer has no authority to hire or fire employees. Fulmer performs the work of the staff as necessary. Fulmer works year round, normally working eight hours a day, unless otherwise dictated by department needs. Fulmer's office is located away from the district's office complex and near where the buses are parked. Fulmer is overtime exempt and paid on a salaried basis. Other than

specialized experience working in transportation, no education experience beyond a high school diploma GED is required.

16. The Director of Maintenance and Operations is responsible for managing all aspects of the employer's Facilities and Maintenance Department. The work includes planning, organizing, coordinating, and supervising facility operations, repairs, construction, and maintenance. John McAndie is the Director of Maintenance and Operations and reports to the Superintendent.
17. McAndie oversees 23 employees, including custodial, grounds keeping, and maintenance staff. Twenty-two of those employees are represented by the UFCW, and one is represented by PSE. McAndie assigns work to employees in the department and establishes their priorities. McAndie evaluates those employees. Periodically, McAndie will assist employees with their work.
18. McAndie works year round out of a building next to the district office. McAndie interacts with employees throughout the district, including those in DESA's petitioned-for bargaining unit, but he works mostly with employees in his office, contractors, and vendors. The position is overtime exempt, and McAndie is a salaried employee. The position requires a bachelor's degree in management, business, maintenance, engineering, or a related field.
19. The Director of Technology is responsible for the information technology functions of the district. The Director of Technology works year round in the district office. The position is overtime exempt and is salaried. Beauregarde Young is the Director of Technology and reports to the Assistant Superintendent.
20. Young oversees a Network Technician, a Technology Support employee, and an Operations Technology Manager, all of whom are included in DESA's petitioned-for bargaining unit. Young evaluates those employees. Young's work is 70 percent technical. The technical work performed by Young overlaps a significant extent with the work performed by the three employees reporting to Young. Areas of overlap include managing

surplus computer equipment, researching and procuring new systems, responding to questions and problems from district employees, and installing and maintaining various hardware and software systems.

21. Tasks and projects are assigned in several ways. For larger, nonrecurring projects identified by the department, Young will divide tasks between the three employees depending on their positions, respective skill sets, and availability. Requests for technology assistance from other staff are managed via a cloud-based system. Requests are added to a queue that is accessible by the Technology Department staff as well as several other employees. The majority of the requests are self-assigned by Young and the three department employees based on the issue raised. The Technology Department employees typically work the same schedule and, other than when completing tasks at other buildings in the district, have the same general work location.
22. Young does not have authority to discipline employees. Young also does not have authority to hire but has participated in the hiring process. Young participated in the hiring of one temporary employee who was not included in the proposed DESA bargaining unit. For that position, the employer made the initial determination about whether to post the position. The employer asked Young for feedback on the content of the job. Young suggested the posting require certain skills and outline particular duties. The employer rejected those suggestions, instead deciding to utilize a preexisting position description. After the position was posted, Young determined interview panel members, screened applicants, determined who to interview, and participated on the interview panel that made a collective recommendation to the hiring authority.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 7 through 9, the Executive Assistant to the Superintendent is a confidential employee and should be excluded from the petitioned-for bargaining unit.

3. Based upon findings of fact 10 through 12, the Human Resources Specialist is not a confidential employee and should be included in the petitioned-for bargaining unit.
4. Based upon findings of fact 13 through 15, the Director of Transportation is not a supervisor under the statute and should be included in the petitioned-for bargaining unit.
5. Based upon findings of fact 16 through 18, the Director of Maintenance and Operations is not a supervisor under the statute and should be included in the petitioned-for bargaining unit.
6. Based upon findings of fact 19 through 22, the Director of Technology is not a supervisor under the statute and should be included in the petitioned-for bargaining unit.

ORDER

The matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 13th day of April, 2021.

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 391-25-660.



RECORD OF SERVICE

ISSUED ON 04/13/2021

DECISION 13337- PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 132604-E-20

EMPLOYER: SEQUIM SCHOOL DISTRICT

REP BY: ROBERT CLARK
SEQUIM SCHOOL DISTRICT
503 N SEQUIM AVE
SEQUIM, WA 98382
rclark@sequimschools.org

LORRAINE WILSON
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101
lorraine@pfrwa.com

CHRISTINA WEIDNER
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101
christina@pfrwa.com

PARTY 2: DISTRICT EMPLOYEES SUPPORT ASSOCIATION

REP BY: MARIA SEABOLT
DISTRICT EMPLOYEES SUPPORT ASSOCIATION
503 N SEQUIM AVE
SEQUIM, WA 98382
mseabolt@sequimschools.org