

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:

GRANITE FALLS SCHOOL DISTRICT

CASE 134694-C-21

DECISION 13628 - EDUC

ORDER OF DISMISSAL

Ariella Wagonfeld, General Counsel, for the Washington Education Association.

Elyse B. Maffeo, General Counsel, for the Public School Employees of Washington.

Jay W. Schulkin and Olivia Hagel, Attorneys at Law, Porter Foster Rorick LLP, for the Granite Falls School District.

On December 10, 2021, the Public School Employees of Washington (PSE) filed a unit clarification petition seeking to add the certificated District Nurse position for the Granite Falls School District (district/employer) to its classified employee bargaining unit. This position is currently represented by the Granite Falls Education Association (GFEA) in its certificated employee bargaining unit. Hearing Officer Elizabeth Snyder conducted a hearing on September 28, 2022, and the parties filed post-hearing briefs to complete the record.

The issue is whether the District Nurse position should be moved from the GFEA's certificated employee bargaining unit to PSE's classified employee bargaining unit. RCW 41.59.080(1) mandates that all positions requiring a certification be in one bargaining unit per district. The employer currently requires the District Nurse position to hold a certification, and the incumbent holds a certification. The position is required to be in the GFEA bargaining unit. PSE's unit clarification petition is dismissed.

BACKGROUND

The employer is a K-12 school district with approximately 2000 students and over 300 employees. The employer has employees in three bargaining units: a bargaining unit of classified employees represented by PSE, a bargaining unit of certificated employees represented by the GFEA, and a bargaining unit of coaches and co-curricular advisors also represented by the GFEA.

The PSE bargaining unit is comprised of all regular full-time and regular part-time classified employees in the following job classifications: Office Professionals, Paraprofessionals, Assistants, Child Nutrition, School Maintenance, Technology, and Specialists. There are 153 bargaining unit members in the PSE bargaining group.

The GFEA bargaining unit is comprised of all nonsupervisory certificated employees at the employer, including teachers and education staff associates (ESA). ESA employees have been trained in a specific field and possess a specific ESA certificate from the Washington State Professional State Educator Standards Board (PSESB). Examples of ESA certificated employees include School Nurses, Psychologists, Occupational Therapists, and Physical Therapists.

The employer employs two nurse positions: School Nurse and District Nurse. The two School Nurses are assigned to one or more specific locations to provide on-site nursing support for students and manage on-site activities that require nursing support. The District Nurse oversees the day-to-day functions of the School Nurses. The District Nurse may answer questions from the School Nurses or act as an intermediary between the School Nurses and the Student Services Support and Special Education Director. Both the School Nurses and the District Nurses report to the Student Services Support and Special Education Director. The District Nurse also manages higher-level district initiatives such as training in first aid and CPR as well as teaches portions of health classes. The incumbent taught students on sexual health and HIV during the 2021-2022 school year. Brittney Lundberg is the incumbent District Nurse.

The District Nurse position has moved between the PSE and GFEA bargaining units since 2000. Colette Dahl was the District Nurse from approximately 2000 to 2013. Dahl did not initially have

an ESA certificate when starting in the District Nurse position in 2000. The employer initially placed Dahl in the PSE bargaining unit. In November 2002, Dahl received an ESA certificate. Dahl requested to be moved to the GFEA bargaining unit based upon receiving the certification. The employer moved the position to the GFEA certificated bargaining unit at the beginning of the 2002-2003 school year. While in this position, Dahl also taught career technical education and health science classes. Dahl resigned in July 2013.

Dahl was replaced by Cassie Bounds. Bounds did not have an ESA certificate, so the employer moved the position back to the PSE bargaining unit. While Bounds was in the position, the employer did not require the position to have an ESA certification.

In June 2019, PSE and the employer entered into an agreement which established a specific level on the PSE salary schedule for the District Nurse position. Prior to that, the District Nurse was paid the same as the School Nurses. That agreement expired August 31, 2021.

Bounds resigned on May 15, 2020. The employer conducted an unsuccessful recruitment for the position, so it contracted for the work during the 2020-2021 school year. The employer began recruiting to fill the position in June 2021. Given changes in sexual health education and HIV instruction, the employer decided to make an ESA certification a requirement for the position so that the position could teach on those topics. The posting for the recruitment states that a “[c]urrent Washington State ESA certification as a School Nurse required.”

The employer hired Lundberg at that time. Lundberg held a current ESA certification upon hire. The employer placed Lundberg in the GFEA certified bargaining unit. During the 2021-2022 school year, Lundberg cotaught and provided classroom instruction in health classes on sexual health and HIV instruction.

In October 2021, Lundberg submitted a letter of resignation to the school board due to Lundberg’s planned move out of state. At that time, the employer decided to restructure how it delivered nursing and health services to students. The employer decided it would create a new ESA certificated Health Officer position, remove the ESA certification requirement from the District

Nurse position, and move the District Nurse position back to the PSE bargaining unit. The employer communicated these intentions to both PSE and the GFEA. The employer also posted a recruitment announcement for the District Nurse position that did not require an ESA certificate.

The employer ultimately determined that it could not afford to create the new Health Officer position. The employer decided to maintain the ESA certification requirement for the District Nurse position and canceled the recruitment for the District Nurse that did not require ESA certification. The employer communicated this change in course to both PSE and the GFEA. Lundberg's resignation was rescinded. Lundberg continues to work in the District Nurse position – generally providing those services remotely – and continues to hold an ESA certificate.

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).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of chapter 391-35 WAC.

The change in circumstances that leads to the filing of a unit clarification petition must be a meaningful change in an employee's duties, responsibilities, or working conditions. *University of Washington*, Decision 10496-A (PSRA, 2011) (citing *City of Richland*, Decision 279-A (PECB, 1978)).

Bargaining Units Placement for Certificated Employees

The bargaining rights of employees of school districts are governed by chapter 41.56 RCW and chapter 41.59 RCW. Chapter 41.59 RCW applies to educational employees in school districts while chapter 41.56 RCW applies to all other school district employees. *See* RCW 41.59.020(4); RCW 41.56.030(12).

Both statutes granting collective bargaining rights to school district employees give eligible employees the right to organize for the purposes of collective bargaining through representatives of their own choosing. RCW 41.56.040; RCW 41.59.060(1). Under both chapters, this agency determines units appropriate for the purpose of collective bargaining. RCW 41.56.060; 41.59.080.

Where RCW 41.56.060 directs this agency to utilize the community of interest analysis in determining appropriate bargaining units, RCW 41.59.080 provides more specific direction. With respect to nonsupervisory educational employees, a bargaining unit will only be appropriate if it contains all the nonsupervisory educational employees of the employer.¹ RCW 41.59.080(1).

Educational employees are defined as any certificated employee of a school district. RCW 41.59.020(4). Certificated employees are defined as those employees who hold a certificate authorized by the PSESB. RCW 28A.150.203(3).

The PSESB authorizes certificates for several specific categories or roles in the education setting: (1) teacher, (2) career and technical education, (3) first peoples' language, culture, and oral tribal traditions, (4) administrator, and (5) educational staff associate. WAC 181-79A-140(1)-(5). The ESA certificate authorizes service in a number of roles, including school nurse. WAC 181-79A-140(5). Only those certificates authorized by the PSESB can qualify a school district employee as a "certificated employee" and, hence, an "educational employee" under chapter 41.59 RCW. *See Bellevue School District*, Decision 8390-A (PECB, 2005) (holding that a National Athletic

¹ Nonsupervisory employees are "all educational employees other than principals, assistant principals and supervisors." RCW 41.59.020(8).

Trainers Association certification did not render athletic trainer positions certified under chapter 41.59 RCW because those certificates were not authorized by the PSESB).

Possession of a certificate authorized by the PSESB does not by itself render the position covered by chapter 41.59 RCW. There must also be a requirement for the certification, by either state law or by the employer. *Bellevue School District*, Decision 8390-A; *Castle Rock School District (Castle Rock Education Association)*, Decision 4722-B (EDUC, 1995). *See also Lake Chelan School District*, Decision 8302 (PECB, 2003) (holding that a position that was previously treated as classified was required to be in the certificated bargaining unit when the employer started requiring to have a PSESB authorized certification).

Application of Standards

The District Nurse position must remain in the GFEA certificated bargaining unit. The employer requires the position to be ESA certified. Lundberg possesses such a certification.

PSE points out that the employer has not promulgated a policy or board resolution that the District Nurse position must hold an ESA certification. However, since June 2021 the employer has required the District Nurse position to hold an ESA certificate. The employer publicly advertised the position with that requirement. It communicated that requirement to both PSE and the GFEA. Clearly, they have decided to require the position to hold an ESA certification.

PSE also asserts that Lundberg has not provided daily, direct instruction to students. The employer decided to begin requiring a certification so that the District Nurse could teach portions of health classes due to changes in sexual health education and HIV instruction. The employer has the authority to choose which credentials are required for the position based on its business needs. During the 2021-2022 school year, Lundberg cotaught and provided classroom instruction in health classes on sexual health and HIV instruction.

PSE also points out that the employer entered into an agreement to put the District Nurse position in the PSE bargaining unit. The agreement states that a new position of District Nurse would be added to the PSE salary schedule. That agreement, which has since expired, does not indicate that

the position would always be in the PSE bargaining unit. Rather, the testimony indicated that the agreement was to address creating a separate pay level for the District Nurse who was previously paid the same as the School Nurses.

The fact that the employer previously did not require an ESA certification for the District Nurse position or that it wanted to remove that requirement and create a new certificated Health Officer position does not change the result. In *Lake Chelan School District*, Decision 8302, the Executive Director held that prior allocations or prior agreements were irrelevant to the bargaining unit placement analysis. *Id.* In that case, the employer similarly began requiring a position hold a PSESB authorized certificate and moved the at-issue employee to the certificated bargaining unit once the employee received that certificate. *Id.*

CONCLUSION

The District Nurse is currently a certificated position that is required to be in the GFEA certificated bargaining unit. Returning the District Nurse position to the PSE bargaining unit is not appropriate. PSE's unit clarification petition is dismissed.

FINDINGS OF FACT

1. Granite Falls School District (employer) is a public employer within the meaning of RCW 41.56.030(12) and 41.59.020(5).
2. Public School Employees of Washington (PSE) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Granite Falls Education Association (GFEA) is a bargaining representative within the meaning of RCW 41.59.020(1).
4. The employer is a K-12 school district with approximately 2000 students and over 300 employees. The employer has employees in three bargaining units: a bargaining unit of

classified employees represented by PSE, a bargaining unit of certificated employees represented by the GFEA, and a bargaining unit of coaches and co-curricular advisors also represented by the GFEA.

5. The PSE bargaining unit is comprised of all regular full-time and regular part-time classified employees in the following job classifications: Office Professionals, Paraprofessionals, Assistants, Child Nutrition, School Maintenance, Technology, and Specialists. There are 153 bargaining unit members in the PSE bargaining group.
6. The GFEA bargaining unit is comprised of all nonsupervisory certificated employees at the employer, including teachers and education staff associates (ESA).
7. ESA employees have been trained in a specific field and possess a specific ESA certificate from the Washington State Professional State Educator Standards Board (PSESB). Examples of ESA certificated employees include School Nurses, Psychologists, Occupational Therapists, and Physical Therapists.
8. The employer employs two nurse positions: School Nurse and District Nurse. The two School Nurses are assigned to one or more specific locations to provide on-site nursing support for students and manage on-site activities that require nursing support. The District Nurse oversees the day-to-day functions of the School Nurses. The District Nurse may answer questions from the School Nurses or act as an intermediary between the School Nurses and the Student Services Support and Special Education Director. Both the School Nurses and the District Nurses report to the Student Services Support and Special Education Director. The District Nurse also manages higher-level district initiatives such as training in first aid and CPR as well as teaches portions of health classes. The incumbent taught students on sexual health and HIV during the 2021-2022 school year. Brittney Lundberg is the incumbent District Nurse.
9. The District Nurse position has moved between the PSE and GFEA bargaining units since 2000. Colette Dahl was the District Nurse from approximately 2000 to 2013. Dahl did not

initially have an ESA certificate when starting in the District Nurse position in 2000. The employer initially placed Dahl in the PSE bargaining unit. In November 2002, Dahl received an ESA certificate. Dahl requested to be moved to the GFEA bargaining unit based upon receiving the certification. The employer moved the position to the GFEA certificated bargaining unit at the beginning of the 2002-2003 school year. While in this position, Dahl also taught career technical education and health science classes. Dahl resigned in July 2013.

10. Dahl was replaced by Cassie Bounds. Bounds did not have an ESA certificate, so the employer moved the position back to the PSE bargaining unit. While Bounds was in the position, the employer did not require the position to have an ESA certification.
11. In June 2019, PSE and the employer entered into an agreement which established a specific level on the PSE salary schedule for the District Nurse position. Prior to that, the District Nurse was paid the same as the School Nurses. That agreement expired August 31, 2021.
12. Bounds resigned on May 15, 2020. The employer conducted an unsuccessful recruitment for the position, so it contracted for the work during the 2020-2021 school year. The employer began recruiting to fill the position in June 2021. Given changes in sexual health education and HIV instruction, the employer decided to make an ESA certification a requirement for the position so that the position could teach on those topics. The posting for the recruitment states that a “[c]urrent Washington State ESA certification as a School Nurse required.”
13. The employer hired Lundberg at that time. Lundberg held a current ESA certification upon hire. The employer placed Lundberg in the GFEA certified bargaining unit. During the 2021-2022 school year, Lundberg cotaught and provided classroom instruction in health classes on sexual health and HIV instruction.
14. In October 2021, Lundberg submitted a letter of resignation to the school board due to Lundberg’s planned move out of state. At that time, the employer decided to restructure

how it delivered nursing and health services to students. The employer decided it would create a new ESA certificated Health Officer position, remove the ESA certification requirement from the District Nurse position, and move the District Nurse position back to the PSE bargaining unit. The employer communicated these intentions to both PSE and the GFEA. The employer also posted a recruitment announcement for the District Nurse position that did not require an ESA certificate.

15. The employer ultimately determined that it could not afford to create the new Health Officer position. The employer decided to maintain the ESA certification requirement for the District Nurse position and canceled the recruitment for the District Nurse that did not require ESA certification. The employer communicated this change in course to both PSE and the GFEA. Lundberg's resignation was rescinded. Lundberg continues to work in the District Nurse position – generally providing those services remotely – and continues to hold an ESA certificate.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW, chapter 41.59 RCW, and chapter 391-35 WAC.
2. Based on findings of Fact 4 through 15, returning the District Nurse position to the PSE bargaining unit is not appropriate because the position is a certificated position and is properly in the GFEA certificated bargaining unit under RCW 41.59.080(1).

ORDER

The certificated District Nurse position is properly excluded from PSE's bargaining unit, and the petition is dismissed.

ISSUED at Olympia, Washington, this 14th day of February, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", is written over the printed name of the Executive Director.

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.



RECORD OF SERVICE

ISSUED ON 02/14/2023

DECISION 13628 - EDUC has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

A handwritten signature in blue ink, appearing to read "Debbie Bates", is written over a horizontal line.

BY: DEBBIE BATES

CASE 134694-C-21

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