

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

SPOKANE EDUCATION ASSOCIATION

For clarification of an existing bargaining unit  
of employees of:

SPOKANE SCHOOL DISTRICT

CASE 141587-C-24

DECISION 14116 - PECB

ORDER CLARIFYING BARGAINING  
UNIT

*Jada Walker*, Attorney at Law, Washington Education Association, for the Spokane Education Association.

*Jason K. MacKay* and *Macy Disney*, Attorney at Law, Stevens Clay, PS, for Spokane School District.

The Spokane Education Association (union) represents a bargaining unit of technology support personnel at the Spokane School District (employer). *Spokane School District*, Decision 12991 (PECB, 2019). The bargaining unit employees are responsible for maintaining and securing the hardware, software, and networks that allow staff to enter, store, secure, and transfer data. *Id.* When the bargaining unit was created, the Network Analyst positions appeared on the eligibility list because the positions performed technology support duties. During the representation proceeding, the parties agreed that the employees in the Network Analyst job class were confidential employees within the meaning of RCW 41.56.030(12)(c) and WAC 391-25-320 and were therefore excluded from the Technology Support bargaining unit.

On December 18, 2024, the union filed a unit clarification petition seeking review of the confidential status of the Network Analysts. Representation Case Administrator Dario de la Rosa conducted a investigation conference with the parties and during that meeting the employer agreed that the Network Analysts did not qualify as confidential employees within the meaning of RCW 41.56.030(12)(c) and WAC 391-25-320. The employer also agreed that based upon the

current bargaining unit description, the Network Analysts only belongs in the union's technology support personnel bargaining unit.

The request for clarification is granted. The union's bargaining unit includes all nonsupervisory employees in the employer's workforce that are responsible for maintaining and securing the hardware, software, and networks that allow staff to enter, store, secure, and transfer data. The Network Analysts performs these kinds of information technology duties, and the positions only share a community of interest with the union's bargaining unit. To exclude these positions would unnecessarily fragment the employer's workforce. The Network Analysts shall be added to the union's bargaining unit without the need of an election.

## ANALYSIS

### Applicable Legal Standard

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. RCW 41.80.070; *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), *rev. denied*, 96 Wn.2d 1004 (1981). 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. *Central Washington University*, Decision 9963-B (PSRA, 2010); *Quincy School District*, Decision 3962-A (PECB, 1993).

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 clarifications are governed by the provisions of chapter 391-35 WAC. The general purpose of the unit clarification process is to provide this agency, as well as the parties to a collective bargaining relationship, with a mechanism to make changes to an existing bargaining unit based upon a change in circumstances to ensure its continued appropriateness. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

A unit clarification petition that seeks to add employees to an existing bargaining unit requires a recent meaningful change in circumstances that alters the community of interest such that clarification is necessary. WAC 391-35-020; *University of Washington*, Decision 10496-A (PSRA, 2011) (citing *City of Richland*, Decision 279-A). Among the types of changes that can alter the existing community of interest and necessitate clarification are meaningful changes to job duties, reorganization of the workforce, or other significant changes to the workplace environment. *See Lewis County (Teamsters Local 252)*, Decision 6750 (PECB, 1999). A mere change in job titles is not necessarily a material change in working conditions that would qualify under chapter 391-35 WAC to alter the composition of a bargaining unit through the unit clarification process. *See University of Washington*, Decision 10496-A.

Determining if recent changes are meaningful rests upon whether the bargaining unit is appropriate absent the clarification. In determining if any existing bargaining unit remains appropriate in a unit clarification proceeding, the agency applies the same statutory unit determination criteria as RCW 41.56.060(1), which is used to establish the unit's initial appropriateness.

When a unit clarification petition proposes to add or accrete positions into the bargaining unit, it seeks to do so without a vote of the employees in the at-issue positions. An accretion may be ordered when changed circumstances lead to the existence of positions that logically belong in only one existing bargaining unit. *City of Auburn*, Decision 4880-A (PECB, 1995). An accretion is not appropriate if the positions could stand on their own in a separate bargaining unit or could appropriately be placed in any other bargaining unit. *Id.* For an accretion to be directed, the resulting unit must be appropriate. *Pierce County*, Decision 6051-A (PECB, 1998). An accretion cannot be ordered where the number of employees to be added to the bargaining unit is so large as to call into question the union's majority status in the enlarged unit. *Port of Seattle*, Decision 11131 (PORT, 2011).

#### *Confidential Status*

Only those personnel who qualify as "employee[s]" may exercise collective bargaining rights under the statute. RCW 41.80.005(6). 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 41.80.005(4). 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)).

#### Application of Standard

The Network Analysts are not confidential employees within the meaning of RCW 41.56.030(12)(c) and WAC 391-25-320. None of the Network Analyst's current duties imply that the positions participate 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. It cannot be said that the Network Analysts are the principal assistant to the principal individual responsible for the formation and administration of the employer's labor relations policy.

The Network Analysts only share a community of interest with the union's technology support bargaining unit based upon the extent of organization in the employer's workforce and the avoidance of fragmentation. When crafting bargaining units, this agency ensures that an employee or group of employees are not stranded in a unit too small to effectively exercise its right to collectively bargain. *Washington State University*, Decision 10115 (PSRA, 2008). The bargaining unit employees represented by the union are responsible for maintaining and securing the hardware, software, and networks that allow staff to enter, store, secure, and transfer data. The duties of the Network Analysts fall squarely within the scope of the bargaining units work jurisdiction and the parties agree that the Network Analysts would have been included in the bargaining unit when it was originally created in 2019. The extent of organization among employees strongly supports the conclusion that the Network Analysts only share a community of interest with the union's technology support bargaining unit. The Network Analysts shall be added to the union's Technology Support bargaining unit without the need of an election.

FINDINGS OF FACT

1. The Spokane School District is a public employer within the meaning of RCW 41.56.030(13).
2. The Spokane Education Association is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a technology support bargaining unit. The bargaining unit employees are responsible for maintaining and securing the hardware, software, and networks that allow staff to enter, store, secure, and transfer data.
4. When the bargaining unit was created, the Network Analyst positions appeared on the eligibility list because the positions performed technology support duties. During the representation proceeding, the parties agreed that the employees in the Network Analyst job class were confidential employees within the meaning of RCW 41.56.030(12)(c) and WAC 391-25-320 and were therefore excluded from the Technology Support bargaining unit.
5. None of the Network Analyst's current duties imply that the positions participate 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. It cannot be said that the Network Analysts are the principal assistant to the principal individual responsible for the formation and administration of the employer's labor relations policy.
6. The Network Analysts only share a community of interest with the union's Technology Support bargaining unit based upon the extent of organization in the employer's workforce and the avoidance of fragmentation. The duties of the Network Analysts fall squarely within the scope of the bargaining units work jurisdiction and the parties agree that the

Network Analysts would have been included in the bargaining unit when it was originally created in 2019.

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 4 and 5, the Network Analyst position is not a confidential employee within the meaning of RCW 41.56.030(12)(c) and WAC 391-35-320.
3. Based upon findings of fact 6 the Network Analyst positions only share a community of interest with the bargaining unit described in finding of fact 3.

ORDER

1. The Network Analyst position at the Spokane School District shall be added to the bargaining unit described in finding of fact 3 without the need of an election.
2. The bargaining unit shall continue to be described as

All full-time and regular part-time technology support personnel of the Spokane School District who maintain and secure the hardware, software, and network that allow staff to enter, store, secure, and transfer data. Excluding supervisors, confidential employees, and all other employees of the employer.

ISSUED at Olympia, Washington, this 21st day of May, 2025.

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.



## RECORD OF SERVICE

ISSUED ON 5/21/2025

DECISION 14116 - PECB has been served electronically by the Public Employment Relations Commission to the parties and their representatives listed below. If no email address was provided, a paper copy was sent to the mailing address.

BY: DEBBIE BATES

CASE 141587-C-24

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