

In the Matter of Arbitration

Between

King County, Washinton

And

Washington State
Nurses Association

DATE: May 30, 2025

GRIEVANCE NO. 23-02-0042

FMCS # 240531-06677

BEFORE: David P. Beauvais, Arbitrator

APPEARANCES:

For Washington State Nurses Association: Juliana DeFilippis,
Bernard, Iglitzen & Levitt, LLP

For King County, Washington: Susan Slonecker, Senior Deputy
Prosecuting Attorney, King County

PLACE OF HEARING: Virtual via Zoom platform

COURT REPORTER: Kim Scheuerman, Lakeside Reporting

AWARD: The grievance is sustained .

DATE OF AWARD: August 22, 2025



David P. Beauvais, Arbitrator
David P. Beauvais

INTRODUCTION

This Arbitration proceeding arises pursuant to the Agreement between King County, Washington and the Washington State Nurses Association. The undersigned was selected as Arbitrator in accordance with procedures set forth by the Federal Mediation and Conciliation Service and the parties Collective Bargaining Agreement (CBA) Article 30. Pursuant to the parties' agreement in Article 30.04, the Arbitrator's decision is final and binding.

The hearing was conducted virtually on the Zoom platform on May 30, 2025. The hearing commenced at 9:00 a.m. and concluded at approximately 4:10 p.m. The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence and to examine and cross-examine witnesses. The Parties submitted sixteen (16) joint exhibits, the Union submitted two (2) exhibits and the County submitted 5 (5) exhibits. These documents were received and made part of the record.

The advocates fully and fairly represented their respective parties. Julianna DeFilippis, Bernard, Iglitzen & Bernard, LLP, represented the Union. Susan Slonecker, Senior Deputy Prosecuting Attorney, King County, Washington, represented the County. There were no procedural challenges to the arbitration. The parties submitted the matter based on testimony and evidence presented at the hearing and through written briefs which were received by the Arbitrator on August 4, 2025. This opinion and award will serve as the arbitrator's final and binding decision in this dispute.

ISSUE

The parties agreed to the following Joint Statement of the Issue:
Whether King County violated the Department of Public Health Supervisors & Managers collective bargaining agreement between itself and WSNA by creating a new position, the Community Health Services Supervisor, and filling this position? If so, what remedy?

BACKGROUND

The parties agreed to the following stipulated facts:

1. On August 11, 2022, King County notified WSNA of its intent to create a new position entitled Community Health Services Supervisor (CHSS). The County's notification included an offer to begin discussions on accreting the position into the WSNA Supervisors collective bargaining agreement (CBA) with the County.
2. The County provided the draft CHSS classification specification to WSNA on August 23, 2022.
3. The County created and implemented the CHSS position as a non-represented position on January 2, 2023.
4. The County approached WSNA again on January 31, 2023, to discuss the new position.
5. On February 1, 2023, WSNA sent the County a demand to cease and desist with the creation and posting of the CHSS position.
6. The County posted the CHSS position for hire at the North Meridian Public Health Clinic on February 8, 2023.
7. WSNA timely filed a grievance on February 27, 2023. The grievance alleged that the County violated Article 3.1 of the parties CBA, which reads as follows:

The County hereby recognizes the Association as the exclusive collective bargaining representative for the purposes stated in RCW 41.56 of all employees employed within the bargaining unit defined by the classifications listed in Addendum A to this Agreement. This shall include all employment position types used by the County (e.g., Career Service, Term-Limited Temporary, and Short-Term Temporary).

Addendum A to the CBA lists the following classifications:

Assistant Personal Health Services Supervisor (Clinic)

Assistant Personal Health Services Supervisor (Jail)

Personal Health Services Supervisor (Clinic)

Personal Health Services Supervisor (Jail)

Nurse Recruiter

Nurse Manager (Clinic)

Nurse Manager (Jail)

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3: UNION RECOGNITION, MEMBERSHIP, AND DUES

Section 3.1. Bargaining Unit. The County hereby recognizes the Association as the exclusive collective bargaining representative for the purposes stated in RCW 41.56 of all employees employed within the bargaining unit defined by the classifications listed in Addendum A to this Agreement. This shall include all employment position types used by the County (e.g., Career Service, Term-Limited Temporary, and Short-Term Temporary).

ARTICLE 4: MANAGEMENT RIGHTS

Section 4.1. The Association recognizes the prerogatives of the County to operate and manage its affairs in all respects in accordance with its responsibilities and powers of authority and to direct the workforce except as may be limited by the express provisions of this Agreement. Such functions of the County include, but are not limited to, determining the mission, budget, organization, number of employees; recruiting, examining, evaluating, promoting, training, transferring employees consistent with Article 11, and determining the time and methods of such action; disciplining, suspending, demoting, or dismissing regular employees for just cause; assigning and directing the work force; developing and modifying employee classifications; determining the method, materials, and tools to accomplish the work; establishing reasonable work rules; establishing the hours of work and changing work schedules consistent with Article 10; determining work locations; and the right to take whatever actions may be necessary to carry out the Department's mission in case of emergency. The County agrees to discharge any notice or bargaining obligations to the extent required by law.

Section 4.2. Delivery of services in the most efficient, effective and courteous manner is of paramount importance. As a consequence, the parties hereby recognize the Health Department's right to determine the methods, processes and means of providing service, the rights to increase or diminish operations, in whole or in part, the right to increase, diminish or change department equipment, including

the introduction of any and all new, improved or automated methods or equipment, the assignment of employees to specific jobs, the determination of job content and/or job duties and the combination or consolidation of jobs.

Section 4.3. The Association recognizes the County's right to establish and/or revise performance standards. Such standards may be used to determine acceptable performance levels and to measure the performance of each employee against the standards. In establishing new and/or revising existing performance standards, the County shall provide notice to the Association prior to implementation.

POSITION OF THE PARTIES

Union

The Union contends the establishment of multiple CHSS positions is a violation of Article 3.1, the recognition clause. The Union emphasizes that the Personal Health Services Supervisor (PHSS) position has been held by Nurse Supervisors for well over thirty years. Nurses are educated and trained in multiple disciplines, making them uniquely qualified to manage a team of professionals that provide services to new mothers and newborns.

The Union also argues this is not about just one supervisor position, the County has made it clear they intend to convert additional PHSS to Community Health Services Supervisor (CHSS) positions which do not require a nursing license. The proposed conversions would eliminate about a third of the bargaining unit. The Union also argues that accreting the CHSS positions into the bargaining unit would be inconsistent with nursing regulations applicable to individuals responsible for the supervision of nurses.

Employer

The County contends the Management's Rights clause (Article 4 of the CBA) gives them the authority to direct the workforce, including who to hire, how work should be performed and job classifications.

Specifically, Article 4.1 gives the county exclusive rights to "...assigning and directing the workforce, developing and modifying employee classifications, determining the method, materials, and tools to accomplish the work;" Additionally Section 4.2 invests in Management the right to "determine the methods, processes and means of providing service,,,"

The County also argues that over the course of several decades funding has been reduced and the remaining childcare programs focus more on screening, education, referral and patient care coordination with external providers. This has resulted in a reduction in the number of nurses on each clinical team. The County contends the main duties of either a PHSS or CHSS are administrative in nature and nursing practice support is now a small part of the job.

DISCUSSION

The Arbitrator carefully reviewed the testimony of the witnesses; the documentary evidence entered into the record and the arguments presented by the parties in their respective briefs. The Arbitrator finds the creation of CHSS positions to replace PHSS positions violates Article 3.1 of the Recognition clause in the CBA. My analysis and reasoning follow.

First, the recognition clause in the CBA specifically designates certain positions found in addendum A to fall under the WSNA as the exclusive collective bargaining representative. Therefore, changes to those positions, which include the PHSS positions, are subject to bargaining over the structure and nature of said positions.

Second, the Union established that the new CHSS positions are not new positions with different duties and responsibilities. Rather, they are almost identical to the PHSS positions except for the requirement that the incumbent hold a nursing license. The Union reasonably rejected the inclusion of the CHSS positions in the bargaining unit because they represent nurses who have specialized education, training and licensing requirements.

Third, the Union argued that non-certified employees may not supervise nurses in matters concerning their nursing functions. The Union introduced Union Exhibit 3. Frequently Asked Questions, from the Washington State Board of Nursing. In relevant part, the document states; **"Can a licensed practical nurse, medical assistant, or non-nurse supervisor supervise the registered nurse?** Most health care facilities or employers include an organization structure that defines a person's manager or supervisor. A non-nurse may be a "supervisor" of the registered nurse in an organization structure related to human resource and administrative functions. This is different than the definition of "supervision" of nursing activity. The nursing rules define "supervision" as the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity to require corrective action." The registered nurse practices independently and does not require evaluation of nursing care. Only the registered nurse or advanced registered nurse practitioner may supervise and evaluate the practice of nursing."

The County argues that the issue of whether there is any state regulation requiring nurses to only be supervised by nurses is beyond the scope of the Arbitrator's authority. The County cites Article 30.2 and 30.04 of the CBA in that regard. Moreover, the County argues that even if the statutory or regulatory issues were before the Arbitrator, the RWC, WAC and the advisory opinion cited by the Union do not say a nurse must be supervised by a nurse.

The County is correct on this point. The issue in this case, as stipulated by the parties, is whether the County violated the CBA when they created and filled the CHSS positions, not whether the creation of the positions violated state law.

Fourth, the Union raises a valid point regarding consultation between a registered nurse in the field seeking advice or consultation from a supervising nurse. The County contended that resources were available to nurses in the field should they need consultation, including supervising nurses from other facilities or peers. Union witness Erika Fardig gave a vivid example of the value of nurse to supervisor consultation in the field. County witness Sheryl Davis

testified there were alternative resources available in situations where a CHSS supervised nurses but that testimony was somewhat ambiguous.

Moreover, Article 4.3 of the Management Rights clause gives the County the right to “establish and/or revise performance standards. Such standards may be used to determine acceptable performance levels and to measure the performance of each employee against the standards.” But the County did not explain how a non-nurse could evaluate a nurse’s performance as it relates to their nursing skills.

Fifth, the Union argued the majority of arbitral authority supports their position. In their closing brief, the Union cited numerous arbitration decisions supporting their position. These citations included Arbitrator Merrill (Douglas Aircraft Co.), Arbitrator Belkin (Public School Employees,) and Arbitrator Bauchner (District Council). All these eminent authorities as well as the other persuasive cited arbitration decisions underscored the Union’s arguments.

In my view, the tension between the Recognition clause and Management rights is best expressed in “Management Rights,” Hill and Sinicropi, BNA 1986. The authors cite *Bell Telephone Co.*, 75 LA 750 (Garrett 1980) for the source of an unpublished case decided by Arbitrator Howard as the better weight of authority on the issue of transferring work out of the bargaining unit. In relevant part, Arbitrator Howard stated:

“It is reasonably well-established by arbitral precedent that permanent reassignment of bargaining unit duties to non-bargaining unit employees represents a dilution of the bargaining unit and a loss of representation rights over work formerly under the bargaining agent's control. Even in the absence of express provisions in the collective bargaining agreement limiting such transfers of duties, a constructive obligation exists on the part of the employer by reason of the recognition and seniority provisions, among others, to prevent the invasion of bargaining unit work by non-bargaining unit personnel. The problem of balancing the legitimate interests of the employees and the union in work opportunity within the bargaining unit against the legitimate interests of the employer in efficient operation of the business becomes more difficult when, in the course of a

comprehensive technological change, job duties become significantly changed or modified. Notwithstanding the difficulties, the employer has a clear obligation to respect the integrity of the bargaining unit. "What constitutes 'bargaining unit work' and that constitutes 'maintaining the integrity of the bargaining unit' cannot be defined in broad legal or philosophical principles. Rather, it is a factual question uniquely dependent on the particular characteristics of the job duties that have undergone change and have been reassigned. Where the job duties within the bargaining unit have been eliminated, where the job duties have been significantly changed to encompass duties historically excluded from the bargaining unit, or where the changed duties embrace significantly different skills from those normally possessed by the bargaining unit, there can be little quarrel with the conclusion that there has been no invasion of the bargaining unit or the conclusion that the integrity of the bargaining unit as been maintained."

Here, the job duties of a PHSS and CHSS are virtually identical, save for the requirement of a nursing license. There is no substantial change in duties nor have they been eliminated. But that change in the requirement of a nursing license deprives the bargaining unit of members and dilutes the bargaining power of the Union.

Sixth, the County argued the Union "declined to accrete the CHSS position into their bargaining unit. They cannot complain that the County made the CHSS position non-represented when they refused to include the position into their bargaining unit." I find that argument fails to address the basic issue in this case. There are some public agency positions that are unique. Unions representing law enforcement rarely also represent non-sworn employees. One would not expect a Union representing architects to also represent lifeguards. As the name implies, the Washington State Nurses Association represents nurses. They have bargained for the right to represent certain classifications within the department, including the PHSS positions. That right empowers the Union to determine who is eligible for membership and representation in their organization.

County witness Davis also testified that one reason for creating the CHSS position was because the County was experiencing difficulty filling the PHSS positions. But difficult does not mean impossible. It

would be in the best interests of both parties to work cooperatively to identify and promote qualified candidates for the PHSS positions.

Remedy

As remedy, the County shall cease and desist from creating any further CHSS positions that replace PHSS positions. The Union also requested that all the newly created CHSS incumbents be immediately required to obtain a nursing license or replace by an employee hold a license. Rather than immediately vacating these positions, the County has up to 120 calendar days to do so. This is to mitigate any negative impact on the clinic operations and to ensure an orderly transition. The parties are directed to work cooperatively during that period to replace the vacant positions.

AWARD

The Grievance is sustained.

DATE OF AWARD: August 22, 2025

 Arbitrator
David P. Beauvais