

BEFORE THE EMPLOYMENT RELATIONS BOARD
OF THE STATE OF OREGON

LINN-BENTON-LINCOLN)	
EDUCATION ASSOCIATION,)	
)	Case No. UC-28-01
Petitioner,)	
)	
)	
v.)	PETITIONER'S
)	POST-HEARING BRIEF
LINN-BENTON-LINCOLN)	
EDUCATION SERVICE DISTRICT,)	
)	
Respondent.)	

I. INTRODUCTION

This matter arises from a unit clarification petition filed by the Linn-Benton-Lincoln Education Association (“Association”) seeking the addition of the employees in the classification of Family Support Liaison to the Association’s bargaining unit.

This matter came on for hearing before ALJ William Greer on November 27, 2001. The Association submits this post-hearing brief to assist the ALJ in his resolution of the issues before him.

II. ISSUE

Is it appropriate to add employees in the Family Support Liaison classification to the Association’s bargaining unit, subject to the results of a self-determination election?

III. FACTS

A. The ESD and the Association’s bargaining unit

Respondent Linn-Benton-Education Service District (“ESD”) is an education

service district operating under Oregon law, ORS chapter 334. The ESD's main office is in Albany, Oregon.

The Linn-Benton-Lincoln Education Association represents a bargaining unit of approximately 100 to 120 ESD employees. (Test. McGovern). The Association bargaining unit is made up of employees in twenty-three professional classifications. The unit includes both teachers and a variety of special education service providers, such as Early Childhood Interventionists, Behavior Management Consultants, and Family Support Consultants. (Ex. R -14, pp. 8, 10, 19). The bargaining unit employees all work in the Special Education Department and Student Services Department. (Ex. R-1). The current collective bargaining agreement that covers their positions is in the record as Respondent's Exhibit 15.

The educational requirements for individuals in the bargaining unit range from a Bachelor's degree or comparable advanced training to a Master's degree. Five positions require only a bachelor's degree. (Ex. R-14).¹ One position in the bargaining unit does not require a license. (Ex. R-14).²

The ESD employs approximately 150 classified employees in 48 different classifications (Ex. R-13, pp 3-4; Test. Edwards). The classified employees of the ESD are not part of a recognized bargaining unit.

A. The Service Integration Program

¹ The Early Childhood Interventionists Professional/Technical, Teacher for Juvenile Corrections Facility, Teacher of the Deaf & Hard of Hearing, Teacher of the Regular Education for Juvenile Corrections Facility, Teacher of Special Education for Juvenile Corrections Facility, and Teacher of Vocational Education for Juvenile Corrections Facility.

² Early Childhood Interventionists do not require a license.

1. Organization

The Service Integration Program is a subsection of the Student Services Department of the ESD. The Family Support Liaisons and Family Support Consultants are both positions within the Service Integration Program. Both the Consultants and the Liaisons provide direct services to students and their families in one of three ways: brief work, case management, and clinical intervention.

Judi Edwards is the Coordinator of the Service Integration Program and is the immediate supervisor of the Consultants and of Vicki Harlos, the Special Projects Manager. (Test. Edwards). Harlos is the immediate supervisor for the Liaisons and provides weekly clinical supervision for Consultant Milt Weaver. (Test. Weaver). Clinical supervision is required in order for Weaver to complete his requirements for a Professional Counselor’s License.

Currently, the ESD has three individuals employed as Consultants and five employed as Liaisons. (Test. Edwards). Both the Consultants and the Liaisons are assigned caseloads based on geographic areas. (Test. Edwards; Ex. R- 6).

The following chart depicts the geographic areas serviced by the Liaisons and Consultants.³

SCHOOL DIST.	CONSULTANT	LIAISON
Albany	NONE	Patti Heartsong & Joe Krug
Benton	Rita Vinal	NONE
Central Linn	Phyllis Lind	Eric Blickenstaff

³The information provided in this chart is based on testimony from Edwards and Lind.

Harrisburg	Phyllis Lind	NONE
Sweet Home	Phyllis Lind	Eric Blickenstaff
Lebanon	Milton Weaver	Pamela Fullam
Santiam	Milton Weaver	Ileen Seeley
Scio	Milton Weaver	Ileen Seeley

2. Job Duties

a. The Family Support Consultants

In 1991, the ESD first hired Family Service Consultants (“Consultants”) to work in the Service Integration Program. (Test. Lind, Ex. P-1). From 1991 until the 1998-1999 school year, the Consultants’ primary job functions were to provide case management and to connect students and their families to needed services. (Test. Edwards). The Consultants’ position was a bargaining unit position from the time it was created.

Just before the 1998-1999 school year, the ESD hired Family Support Liaisons (“Liaisons”) to perform many of the Consultants’ duties, especially case management and connecting needed services to students and their families. (Test. Lind). This shifting of Consultant duties to the newly hired Liaisons allowed the Consultants to begin providing clinical intervention and counseling to the at-risk students and families whom they have previously been serving. (Test Lind). However, Consultants continued to perform case management for at-risk students. (Test. Lind). The Consultants’ primary function, at the present time, according to their job description, is to provide clinical intervention for at-risk students and their families. (Ex. R- 3). The written job description accurately describes the positions held by two of the Consultants, Lind and Weaver. A third Consultant, Rita Vinal, works in an area without a liaison, so she continues to provide services in the case management and “briefs” categories,

rather than clinical intervention or individual counseling. Her job duties are more accurately reflected in the Consultants' 1991 original job description.

When providing clinical intervention, the Consultants prepare an "Intervention Plan" for each student on their case load to identify concerns and desired outcomes. (Test. Edwards). The Intervention Plan is completed with the help of the student if the student is old enough to participate. The plan is finalized after consultation with teachers and parents. On average, Consultants have approximately 30 cases. In fulfilling these duties, the Consultants make visits to the students'

homes and schools in order to provide counseling and follow up on case management. (Test Lind).

In addition to counseling students and families, the Consultants teach parenting skills and anger management training to students and parents. (Test. Weaver).

Consultants are also members of regional Youth Services Team ("YST"), which includes representatives from the affected school district, police, mental health service, Services to Children and Families, Alcohol and Drug, a parent representative, a Consultant and a Liaison. (Test. Blickenstaff). The YST furnishes the Consultants and Liaisons with at-risk student referrals. (Test. Edwards). The team also provides ideas for coping with at-risk students and families in their care, and facilitates coordination between service providers. Consultants attend departmental meetings once a month with the Liaisons, Vicki Harlos, and Judi Edwards. In addition to these meetings, Edwards meets once a month with each individual Consultant and once a month with the Consultants as a group. (Test. Blickenstaff)

The ESD job description states that the Consultants are required to have a Master's

degree in social work or some equivalent and an Oregon license in the counseling field. (Ex. R-3). However, in practice the ESD has hired all of its current Consultants without a license and has allowed them to work as Consultants while pursuing a license. (Test. Edwards). Milt Weaver, who recently moved from a

Liaison position to a Consultant position, has just begun a four year program to obtain his counseling license.⁴

b. The Family Support Liaisons

The Liaisons' primary job function, according to ESD job description, is to assist troubled children and their families by meeting clients in their homes to provide guidance, assessing needs, and developing and carrying out support/skill building plans. (Ex. P-13). Liaisons meet with the student or family to create a "Family Plan" which evaluates the student's goals and the strengths and resources available for achieving those goals. (Test. Blickenstaff; Ex. P-3; R- 8). Once this is determined, the Liaison creates an action plan the student and family will use for achieving their goals. The Liaisons also provide the student clients with positive assistance activities and strength based programs to help them meet their goals. After the initial meeting and the Family Plan is completed the Liaisons support the student clients in reaching their goals through positive reinforcement and encouragement. The Liaison continues to follow up with students and their families to determine if the goals are being achieved and if the Family Plan needs to be revised or altered. The follow up consists of telephone calls, visits to the student's home and school. Besides providing this support to students and families, the Liaisons

⁴Neither Edwards nor McGovern had a correct understanding of the length of Weaver's licensing program.

connect students and families with needed resources within the community. (Test. Blickenstaff).

Family Plans are developed primarily by Liaisons. However, Consultant Rita Vinal uses Family Plans rather than Intervention Plans, because her assignment is case management rather than clinical intervention. (Test. Edwards).

On average, the Liaisons maintain an open case load of approximately twenty to twenty-five cases. (Test. Harlos). They are required by grants to serve at least 60 students per year. (Test. Edwards). Although most Liaisons work in the same geographic area as a Consultant, they carry their own case loads.⁵ (Test. Harlos). Eric Blickenstaff, for example, had fifty-four cases since June of 2001. Of the fifty-four cases, he has shared only four cases with the Consultant representing the same district. (Test. Blickenstaff). The Liaisons are not assistants to the Consultants. (Test. Harlos).

Liaisons also provide family anger management and communication skill groups for clients and their families. (Ex. R-2; Test. Weaver).

Like the Consultants, the Liaisons are members of the Youth Services Team (“YST”). They attend monthly departmental meetings with the Consultants. (Ex. R- 2;Test. Blickenstaff). In addition to these meetings, Vicki Harlos meets individually with Liaisons usually once or twice a month.

The extent of supervision the Liaisons receive from Harlos outside of these meetings depends on the individual Liaison. For example, Liaison Eric Blickenstaff calls his supervisor, Harlos, two to three times a week. As a Liaison, Milt Weaver received supervision two to three times a month from Harlos. (Test. Weaver). Milt Weaver currently receives the same level of supervision as a Liaison from Harlos as he currently receives as a Consultant from Edwards.

(Test. Weaver). Edwards also provides direct supervision to Liaisons when needed. (Test. Blickenstaff).

The ESD job description states that the Liaisons must have a Bachelor's degree in counseling, social work, or any other human service profession. (Ex. R-2). No license is required for this position.

Promotional opportunity is available to a Liaison who would like to become a Consultant, if the Liaison obtains a Masters' degree and has the ability to become licensed. (Test. McGovern). Milt Weaver was hired as a Liaison in 1999 and became a Consultant in the fall of 2001. (Test. Weaver).

C. Other Working Conditions

1. Work site

Both the Consultants and the Liaisons work out of the Linn-Benton-Lincoln County ESD located in Albany, Oregon. However, the majority of the time, both the Consultants and the Liaisons work in the field. (Test. McGovern).

2. Benefits and Wages

Both the Consultants and the Liaisons have the same insurance and fringe benefits. (Test. McGovern).

As members of the Association bargaining unit, Consultants are paid according to the collective bargaining agreement. The Consultants' salary range begins at \$29,420 per year. (Ex. R-15, p. 23). The Liaisons' salary range begins at \$2,389 per month, or \$28,668 per year. (Ex. R- 13, p. 1).

3. Work Year and Hours

The Consultants work a 190-day work year. (Ex. R- 15). They work an eight-hour day

with a half-hour lunch. They do not receive any compensatory or overtime for working more than eight hours. (Test. McGovern).

The Liaisons work a 12-month work year. They work a nine-hour day with an hour lunch. In addition, they receive ten to twenty days of vacation time a year. The Liaisons receive compensatory time or overtime. (Test. McGovern).

4. History of collective bargaining

The Liaisons have no history of collective bargaining up to this point.

5. Desires of the employees

The ALJ may take notice of the high showing of interest from the Family Support Liaisons that was submitted with the representation petition.

IV. ARGUMENT: FAMILY SUPPORT LIAISONS SHOULD BE CLARIFIED INTO THE ASSOCIATION BARGAINING UNIT

A. The Liaisons share a community of interests with members of the bargaining unit.

The Liaisons share a community of interest with members of the Association unit: their skills and duties are nearly identical to, and their work functions are completely integrated with the Family Service Consultants.

Both the Liaisons and Consultants share the same basic job function, that of providing appropriate services to at-risk students and their families. Many of the characteristics of the two jobs are interchangeable. Both Consultants and Liaisons have independent case loads. They are responsible for meeting with students and parents in their homes, assessing needs, providing direction, and training and planning outcomes. The only difference is that two of the Consultants provide “clinical intervention,” that is counseling for serious mental health issues, in addition to “brief work” and some “case management”. The third Consultant, Rita Vinal,

performs duties that are essentially identical to those of the Liaisons.

Both Consultants and Liaisons are members of the Youth Services Team. They share a primary work site and have overlapping geographical field assignments. They attend the same departmental meetings and share the same supervisory structure.

The District may argue that the Liaisons are subordinate in some significant way to the Consultants whose territory they share. The evidence does not support this argument. Both the Liaisons and Consultants have their own caseloads for which they bear full responsibility. Each fills out similar forms in completing their duties and assessing the needs of their clients. These forms, the Family Plan and the Intervention Plan, are completed through interviews and input, if applicable, from the student and their families. Both the Liaisons and Consultants follow up on their reports by contacting the students and families on the phone and during home visits or meetings at the school the student attends. Although both the Liaisons and Consultants may work with the same families, it is rare that they are working with the same family at the same time. Furthermore, even the ESD's own witness testified that the Liaisons are not assistants to the Consultant. (Test. Harlos).

The District may also argue that the Liaisons receive more supervision than the Consultants, and therefore do not function as independent professionals. However, this argument is not supported by the testimony at the hearing. Consultant Milton Weaver testified that he received the same amount of supervision, as a Liaison, as he currently does as a Consultant. Furthermore, Eric Blickenstaff testified that he receives as much time with his supervisor as he asks for.

The District may argue that the Liaisons share a community of interests with other classified positions, such as Attendance Officers. This argument is irrelevant. The only issue in

this case is whether the Association is an appropriate bargaining unit under OAR 115-25-005(4), not whether it is the most appropriate bargaining unit.

The ESD has offered as an exhibit an excerpt of the Multnomah Education Service District's collective bargaining agreement with the represented classified employees. (Ex. R-16). Included in the list of positions in the Association is a "Family Support Assistant." (Ex. R-16 p.6). This evidence is irrelevant. No testimony or evidence was offered that described the job functions of a Family Support Assistant or compared the functions of the Assistant to the Liaison. Furthermore, this argument fails because the issue in this case is whether this is an appropriate bargaining unit under OAR 115-25-005(4).

B. The Family Support Liaisons are performing bargaining unit work.

It is important to recognize that for the period of 1991 to 1998, Family Service Consultants performed all of the functions currently performed by Liaisons. (Test. Lind). While providing these services, the Consultants were members of the Association. Consultant Rita Vinal continues to provide the case management duties performed by the Liaisons in other areas. Although the ESD may claim that Vinal provides clinical intervention along with case management, Edwards did not describe Vinal's case load as including any clinical cases. Vinal uses the Family Plan form used by Liaisons.

The District may attempt to argue that Liaisons perform only low level functions, and that Vinal is functioning much as a teacher would without a teacher's aide. However, the testimony fails to support the District's analogy. The Consultants and Liaisons have independent case loads. The Liaisons do not work under the direction of the Consultants as a teacher's aide works under the direction and supervision of a teacher (Test. Harlos). They work as equal team members, each providing a function and service to the at-risk students and families in their

geographic area. Furthermore, the Consultants could not be directing the Liaisons or utilizing the Liaison as assistants because the Liaisons work in the summer when no Consultants would be available if “direction” was necessary.

The District will attempt to emphasize the Consultant’s license requirement as a way to distinguish them from the Liaisons. However, a license is not actually required to perform the work performed by Consultants. The District’s own witnesses testified that they have historically and still hire individuals as Family Support Consultants without a license as long as the individual begins the process for the license. (Test. Edwards). Milt Weaver was recently hired as a Consultant even though he will not complete his licensure program for four years.

Furthermore, a counseling license does not represent the same demarcation of permitted duties that a teaching license represents. The system for licensing social workers, ORS 675.510 to ORS 675.600, is a “title protection law” that simply limits the use of the title “licensed social worker” to licensees, who are required to meet certain ethics requirements and standards of practice. However, the law does not prohibit the practice of social work by unlicensed individuals. By contrast, the system for licensing teachers, ORS 342.121 et. seq. is a “practice law” that prohibits teaching without a license. ORS 342.173. Furthermore, the ESD’s funding sources for the Consultants’ positions, grant funds and a contract with the State of Oregon, do not require the Consultants to be licensed. (Test. Edwards).

C. The Family Support Liaisons have exhibited the desire to become members of the Association.

The District offered into evidence a letter signed by the five Liaisons expressing uncertainty about the outcome of an election if one is held. (Ex. R-11, p.

2). The Association anticipates that the District will argue that the letter is evidence that the Liaisons do not desire to be represented by the Association. However, the letter does not indicate the desires of any particular employee. Rather, the letter reflects a concern about saving funds for the parties. This concern, is not relevant to the Board's determination. Secondly, the letter states that the Liaisons believe that the Association will not prevail in an election. A representation election is the correct procedure to determine if a majority of affected employees wish to belong to the Association.

D. Family Support Liaisons are "academically licensed" employees.

Under ORS 243.650(1), an appropriate bargaining unit cannot include both academically licensed and unlicensed or non-academically licensed school employees.

In *Linn-Benton-Lincoln Education Association v. Linn-Benton-Lincoln ESD*, 163 Or App 558, 989 P2d 25 (1999), the court affirmed ERB's decision to include the position of Early Childhood Interventionist in the Association's unit of academically licensed employees. The Interventionists were required to have a bachelor's degree or have comparable advanced training in a relevant field, but no license was required from Teachers Standards and Practices Commission or any other agency. In this case, the Liaisons are required to have a bachelor's degree and provide a direct service to students and their families. The Liaisons' position is a "similar position" to counselors as evidenced by the extent to which their job duties overlap with Consultants. Therefore, ORS 243.650(1) does not prohibit the Liaisons from inclusion in the Association.

V. CONCLUSION

The Association bargaining unit is an appropriate unit for the Liaisons as professional employees. For all of the above reasons, the Liaisons should be clarified into the Association

bargaining unit.

DATED this ____ day of December, 2001.

Respectfully Submitted,
SMITH, GAMSON, DIAMOND & OLNEY

Stacy J. Chamberlain, OSB #01229
Of Attorneys for Petitioner

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GARRETT, HEMANN, ROBERTSON,
JENNINGS, COMSTOCK & TRETHERY P.C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

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BEFORE THE
EMPLOYMENT RELATIONS BOARD
OF THE
STATE OF OREGON

LINN-BENTON-LINCOLN)
EDUCATION ASSOCIATION,) DISTRICT'S POST-HEARING BRIEF
)
Petitioner,) No. UC-28-01
)
v.)
)
LINN-BENTON-LINCOLN)
EDUCATION SERVICE DISTRICT,)
)
Respondent.)

On or about July 3, 2001, the Linn-Benton-Lincoln Education Association (Association) filed the above-captioned Petition for unit clarification seeking to include the Family Support Liaisons to its existing bargaining unit. On or about July 30, 2001, the Linn-Benton-Lincoln Education Service District (District) filed timely objections to the Petition, based upon the appropriateness of adding the positions to the existing bargaining unit.

The case was heard by Chief Administrative Law Judge William Greer on November 27, 2001, at the administrative offices of the Linn-Benton-Lincoln Education Service District in Albany, Oregon. At the conclusion of the hearing, the ALJ granted the parties leave to file post-hearing briefs with such to be postmarked on or before December 27, 2001.

The issue presented for determination by the Board is whether or not it is appropriate to add employees in the Family Support Liaison classification to the Association's bargaining unit, subject to the results of a self-determination election? The District submits that it is not appropriate to add the Family Support Liaison classification to the existing bargaining unit and the District urges dismissal of the Petition.

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Lincoln Education Assoc. v. Linn-Benton-Lincoln ESD

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GARRETT, HEMANN, ROBERTSON,
JENNINGS, COMSTOCK & TRETHERY P.C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

FINDINGS OF FACT

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1. The Association is a labor organization and the exclusive representative of a bargaining unit of certain of the District’s employees. The District is a public employer. ORS 243.650.

2. The District is administratively organized into five departments, administrative services, instructional services, special education, student services, and technology services. The service integration program is a subdivision of student services. That program is supervised by Judi Edwards. Ms. Edwards’ subordinate, Vicki Harlos, is the supervisor for the Family Support Liaisons (Liaisons). At the time of the hearing, there were only five Liaisons on staff.

3. By job description, the Liaisons are required to possess a bachelor’s degree in counseling, social work or in some other human service profession. No licensure, certification, or any other post-graduate academic qualification is required of the Liaisons. The primary work responsibility for Liaisons is case management with troubled youth and their families. The Liaisons report to the projects manager, Vicki Harlos. Many of the functions performed by Liaisons were originally performed by Family Service Consultants (Consultants) prior to the mid-1990s when the Liaison classification was created. The Liaison classification has been grouped with the District’s classified employees. (See below.)

4. The Family Service Consultant classification is included in the Association’s bargaining unit. Consultants are required to have a master’s degree in social work or its equivalent, along with an Oregon license in the counseling field. Successful Consultant applicants must have the license or be able to acquire the license within a reasonable training period. The Association’s president, Phyllis Lind, was hired prior to acquisition of her license, but is now licensed, subsequent to her training program. The Consultant classification is primarily oriented towards the provision of professional, clinical social work services to students demonstrating risk behaviors and their families. This is a professional-level position.

5. Back in the mid-1990s, the District determined that the Liaison classification

1 needed to be created in order to more efficiently utilize the professional training and license(s) of
2 the Consultants in the delivery of clinical social work services. As a result, the Liaison
3 classification was created in order to allow for administrative case management functions to be
4 performed by the lesser qualified Liaisons rather than by the Consultants.

5 6. The program to be performed by the Consultants (and Liaisons) is defined by each
6 County's local Commission on Children. In Lincoln County, the Commission there has
7 determined to accept pass-through dollars. Linn County utilizes the services of two Consultants.
8 Two Liaisons are also assigned to Linn County for case management. Benton County, on the
9 other hand, utilizes the services of only one Consultant and that position is rather autonomous,
10 with the incumbent performing both the job description of the Consultant as well as the Liaison.
11 (The Benton County Consultant is a member of the Association's bargaining unit.)

12 7. While there is some overlap between the duties and responsibilities of a
13 Consultant and those of a Liaison, similar to the overlap that would exist between a licensed
14 special education teacher and an instructional assistant or between a licensed physical therapist
15 and a licensed physical therapy assistant, the Consultant's main responsibilities are in the
16 professional clinical services area. The perspective of person-in-situation is central to clinical
17 social work practice (i.e., the Consultants). Clinical social work performed by Consultants
18 includes interventions directed to interpersonal interactions, intrapsychic dynamics and life
19 support and management issues. Clinical social work services consist of assessment, diagnosis,
20 treatment including psychotherapy and counseling, client-centered advocacy, consultation, and
21 evaluation. The process of clinical social work by a Consultant is undertaken within the
22 objectives of social work and the principals and values contained in the National Association of
23 Social Work Code of Ethics. (Exhibit R-4, p. 5.)

24 8. The Consultants are included in the Association's bargaining unit which is covered
25 by a collective bargaining agreement with effective dates of 1999 through June 30, 2002. (Exhibit
26 R-15.) The recognition clause of that Agreement provides the following:

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“The DISTRICT hereby recognizes the ASSOCIATION as the sole and exclusive bargaining representative with respect to wages, hours, and conditions of employment as set forth in Oregon Law, Chapter 243, for the term hereof of all regular full-time and part-time EMPLOYEES employed by the DISTRICT whose job requires licensure by Teacher Standards & Practices Commission or a State of Oregon licensing board or an appropriate license and degree, as required by the Oregon Department of Education.

“A. The following employees are specifically included:

- “1. Regular full-time and part-time employees are those employees whose work year consists of:
 - “a) 190-192* regular work days at half days or more, or
 - “b) 95-97* regular work days or more at full days, or
 - “c) any number of days at any number of hours which equates to a .5 full-time equivalency or more.
- “2. Others as designed by specific letter of agreement.

“B. The following employees are specifically excluded:

- “1. Substitute, temporary, and part-time employees defined as follows:
 - “a) Substitute employees are defined as those hired to replace a bargaining unit employee who is temporarily absent.
 - “b) Temporary employees are defined as those hired to fill a position designated as temporary or experimental, or to fill a vacancy caused by the death, disability, retirement, resignation, or dismissal of a bargaining unit employee.
 - “c) Part-time employees are defined as those employees who are employed in less than half-time positions.
- “2. Administrative, supervisory, confidential, and classified employees.

“*For newly-hired employees only and only for first year of hire.”

9. The Association’s collective bargaining agreement was negotiated subsequent to the Board’s issuance of its decision in *Linn-Benton-Lincoln Education Association/OEA/NEA v. Linn-Benton Lincoln ESD*, UC-22-96, 17 PECBR 228 (1997). That case ordered a self-determination election to determine the inclusion of early interventionists. Since that time, interventionists have become licensed or certified by the Oregon Department of Education

GARRETT, HEMANN, ROBERTSON,
JENNINGS, COMSTOCK & TRETHERY P.C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

1 (testimony of William McGovern). The Association and the District again agreed to include only
2 licensed professionals in the bargaining unit; that would now include interventionists too. (The
3 job description for the Liaisons does not require licensure of any kind nor a professional degree or
4 other qualifications beyond a baccalaureate degree.)

5 10. The classified employee collector group in which the Liaisons are located consists
6 of a broad range of employee classifications. Those classifications include several clerical and
7 accounting type positions as well as some very highly compensated engineers, programmers, and
8 analysts. The Liaisons are compensated somewhat in the middle of all of these classified
9 classifications at rates of pay comparable to a copy center technician, a transition specialist,
10 attendance officers, custodial maintenance employees, and accounting clerks. All of the
11 classifications, however, in the classified group have one thing in common: there is no
12 requirement of any professional level license or certification (as opposed to a technical license of
13 some sort) and there is no requirement of a professional level degree, post graduate.

14 11. The positions that fall within the Association's recognized bargaining unit are
15 wide ranging. The classification titles range from augmentative communications specialist to
16 teacher of vocational education for a juvenile corrections facility. Except for two job descriptions,
17 all of the job descriptions in the Association's bargaining unit require licensure or a master's
18 degree, or both. In many cases, a master's degree is preferred. The Behavior Management
19 Consultant does not require any particular licensure but does require a master's degree. The
20 person filling this position would, however, be providing consultation services to other
21 counselors, psychologists or social workers who would be, in turn, providing direct services to
22 students. The other position not requiring a master's degree is the early childhood interventionist.
23 However, according to the testimony of William McGovern, the District now requires this
24 position to have the licensure or certificate that is issued by the Oregon Department of Education.

25 12. Liaisons' salaries and fringe benefits are established by the classified employee
26 manual. While the classified employee group is not formally organized, the District does engage
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1 in a meet-and-confer relationship with representatives of the classified employees in order to
2 establish the wages, hours, and conditions of employment. Currently, Liaisons are paid on a
3 salary schedule that ranges from \$2,389 per month to \$2,953 per month. Consultants' salaries and
4 benefits are established by way of the collective bargaining process with the Association which
5 represents the licensed, professional employees. Consultants, along with every other
6 classification in the recognized bargaining unit are paid according to the six-column salary
7 schedule contained in the contract. The 1999-2000 salary schedule ranged from a low of \$27,241
8 per year to \$52,172 per year, or (on a 12-month basis) \$2,270 per month to \$4,348 per month.

9 13. By and large, all of the classifications in the classified group are covered by the
10 Fair Labor Standards Act; these positions are subject to overtime at 1.5 times the normal rate of
11 pay. Consultants and all other classifications in the Association's bargaining unit are treated as
12 professionals and are exempt from the federal and state wage and hour laws regarding overtime.

13 14. Liaisons work on a full calendar year basis with certain levels of paid vacation.
14 Members of the Association's bargaining unit, generally speaking, work on a 190 to 192 day per
15 year contract. (Consultants have this shortened workyear.)

16 15. The Association's licensed, professional bargaining unit has been organized for
17 some years. Liaisons and the other classified employee classifications have not engaged in
18 collective bargaining. With respect to the classified employee classifications, there is similarly a
19 long history of a meet-and-confer, informal negotiations relationship.

20 16. The Association presented no evidence of the desires of the Liaisons to become
21 members of the Association's bargaining unit and to engage in collective bargaining, although the
22 Association did call one Liaison for testimony during the hearing. The District presented
23 evidence of an unsolicited letter from the five remaining Liaisons that indicated that all five of the
24 Liaisons were not interested in pursuing representation. Among the signators of the exhibit
25 (Exhibit R-11) is Eric Blickenstaff, the Association's witness.

26 17. The duties and responsibilities for Liaisons are unique with respect to comparison

1 with all other ESD job classifications. However, the uncontroverted testimony of William
2 McGovern and Judi Edwards likened the Liaisons' work responsibilities to two classifications:
3 transition specialists and attendance officers. Both of these witnesses claim that these two
4 classified group classifications were as comparable to the Liaisons' responsibilities as any other
5 classification.

6 18. Liaisons may only be "promoted" or transferred to a Consultant position, or any
7 other position in the District, if the Liaison possesses the necessary educational attainment as well
8 as the appropriate license. (As indicated above, in some instances, the District will establish a
9 training program to allow the person to become licensed while working in the new classification.
10 However, these individuals still need to possess the minimum educational requirements in order
11 to move to the higher position and they must be able to demonstrate that they are able to attain the
12 license in a reasonable period of time.)

13 19. While there is ultimately a centralized administration in the District, culminating
14 in the office of the Superintendent, Liaisons directly report to a different supervisor than do the
15 Consultants.

16 20. Although the Liaisons and Consultants may, on occasion, serve a same student or
17 family, each would do so independently. As stated by the Liaison, Eric Blickenstaff, he and his
18 Consultant have "fairly independent caseloads."

19 21. The potential grievance of a Liaison, assuming such did not involve a direct
20 conflict with a Consultant or any other licensed classification, would be capable of resolution
21 without regard to other employee classifications. In addition, Liaisons' salaries and other benefits
22 are capable of being adjusted without regard to other represented employees.

23 **DISCUSSION**

24 As indicated above, the issue to be determined in this case is whether it is appropriate to
25 add employees in the Family Support Liaison classification to the Association's bargaining unit,
26 subject to the results of a self-determination election. The District submits that the evidence and

GARRETT, HEMANN, ROBERTSON,
JENNINGS, COMSTOCK & TRETHERY P.C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

1 testimony contained in the record does not justify the inclusion of the Liaisons into the
2 Association's bargaining unit. The community of interest factors, the wages, hours, working
3 conditions, history of collective bargaining, and, certainly, the desires of the employees, do not
4 point to inclusion in the licensed professional bargaining unit. The Liaisons clearly have far more
5 of a community of interest with the classifications currently contained in the classified employee
6 group.

7 The working hours distinctions, the salary and fringe benefit distinctions, the differing
8 workyear calendars. and other differences between the Liaisons and the Consultants and other
9 licensed professional classifications are obvious in this record. However, what is also obvious is
10 that the Liaisons perform different tasks than the Consultants. It is that difference in job duties
11 that highlights the distinction between the Consultants (and other licensed professional
12 classifications) and the work of the Liaisons. That distinction warrants separate bargaining unit
13 status.

14 The distinction between the work of a Consultant and the work of a Liaison is analogous
15 to the distinction between the work of a licensed teacher and the work of a classified instructional
16 assistant. In fact, teachers and instructional assistants probably work far closer together than do
17 the Consultants and Liaisons employed by the District. Nevertheless, an instructional assistant
18 would certainly provide services that can only be characterized as "instructional" and it is also
19 clear that teachers, in the absence of an instructional assistant, would provide services that are
20 routine or clerical in nature. These facts, however, do not detract from the differences in these
21 two classifications that are recognized in the vast majority of teacher and classified bargaining
22 units in the State of Oregon as well as in the appropriate unit determinations by the Board. In
23 other words, just because a teacher might perform some clerical duties that would commonly be
24 performed by an instructional assistant, does not convert the teacher into a classified employee
25 nor, conversely, convert the instructional assistant into a professional, licensed teacher.

26 The same is true of such classifications as physical therapists and occupational therapists.

1 Both of these classifications are employed by the District and they are both represented in the
2 Association's bargaining unit. The District currently does not employ any assistants for the
3 physical therapists or the occupational therapists. However, please note that, at Multnomah
4 Education Service District, certified Occupational Therapy Assistants and licensed Physical
5 Therapy Assistants are both represented in the classified bargaining unit and not in the licensed
6 bargaining unit with the Physical Therapists and the Occupational Therapists. (Exhibit R-16,
7 p. 5.)

8 The testimony of the Association's witnesses, Phyllis Lind and Eric Blickenstaff, serves to
9 illustrate the distinction in the job duties between the licensed, professional Consultants and the
10 Liaisons. Straight case management is handled by the Liaison whereas clinical intervention
11 services are handled by the Consultant or other licensed professional social worker or
12 psychologist. As Ms. Lind indicated in her testimony, she would keep a particular client herself
13 or refer to some other licensed social worker when clinical services would still be needed.
14 Ms. Lind provided an example of when a student might be determined to be suicidal as a case she
15 would retain.

16 To be sure, where the Consultant is serving, as in Benton County, without the services of a
17 Liaison, that Consultant will perform the case management duties of a Liaison. However, such
18 does not convert the work of a Liaison to the status of a licensed professional social worker.
19 Indeed, while the Benton County Consultant may provide clerical intervention services, a Liaison
20 still would not be able to do so either by training or by license.

21 The other distinctions noted in the record between the Liaisons and the Consultants also
22 argue for, or point to, separate bargaining unit treatment. The Liaisons are supervised and
23 evaluated by a separate supervisor than the one who supervises and evaluates the work of
24 Consultants. The work of the two classifications is largely independent from each other. Indeed,
25 the work of a Liaison is completely independent of all of the other licensed, professional
26 classifications.

GARRETT, HEMANN, ROBERTSON,
JENNINGS, COMSTOCK & TRETHERY P.C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

1 The duties of the Liaisons are significantly different from the duties of a Consultant in that
2 a Consultant is qualified and licensed to perform professional, clinical services whereas a Liaison
3 is not so qualified or licensed. To be sure, there is some overlap or gray area between the two
4 classifications, but that overlap or gray area does not convert a paraprofessional classification into
5 a professional classification any more than the ability to give a medical shot by a licensed nursing
6 assistant converts that assistant into a physician or a registered nurse.

7 The history of bargaining also supports the separate bargaining unit status of the Liaisons
8 from the Consultants and other licensed professional classifications.

9 Finally, the evidence of record also demonstrates a very clear desire on the part of the
10 Liaisons to not be a part of the Association's bargaining unit. While Exhibit R-11 certainly
11 indicates a lack of desire to be represented by the union, it also may be read as evidencing a desire
12 to not be included in that bargaining unit. Certainly, the Association offered no counterpoint
13 regarding this issue during the hearing. Simply stated, all five of the Liaisons clearly indicate that
14 they do not feel it is appropriate for them to be in the Association's bargaining unit.

15 **CONCLUSION**

16 As a result of the foregoing and a careful review of the evidence and testimony of record,
17 it is clear that it is not appropriate to include the Liaisons into the bargaining unit represented by
18 the Association. The Association's bargaining unit is composed of licensed professional
19 employee classifications which the Association and District have reaffirmed in the renewal of the
20 1999 collective bargaining agreement after the 1997 ERB case involving the early
21 interventionists. The District and the Association have not modified their agreement to reflect the
22 inclusion of some paraprofessionals. Rather, the parties have reaffirmed in their recognition
23 clause that the inclusions in the bargaining unit must be limited to licensed professional
24 employees. With the change in the Department of Education's regulations with respect to early
25 interventionists, even that classification of employee now has licensure or certification from the
26 Oregon Department of Education.

GARRETT, HEMANN, ROBERTSON,
JENNINGS, COMSTOCK & TRETHERY P.C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

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In summary, the Liaisons simply do not share the appropriate community of interest and the other wages, hours, and conditions of employment with the classifications contained in the Association's bargaining unit. The Liaisons are not appropriately included into that bargaining unit. The issue of a self-determination election does not even need to be reached.

The District respectfully requests dismissal of the Petition filed herein.

DATED this 27th day of December, 2001.

Respectfully submitted,

GARRETT, HEMANN, ROBERTSON
JENNINGS, COMSTOCK & TRETHERY, P.C.

Bruce A. Zagar
(OSB No. 75397)
Of Attorneys for Linn-Benton-Lincoln Education Service
District

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CERTIFICATE OF SERVICE

I certify that I served the DISTRICT'S POST-HEARING BRIEF by mailing a true and correct copy to the following:

MONICA SMITH
Attorney at Law
Smith, Gamson, Diamond & Olney
1500 N.E. Irving, Suite 370
Portland, OR 97232-4207

Attorney for the Linn-Benton-Lincoln Education Association

DATED December 27th, 2001.

GARRETT, HEMANN, ROBERTSON
JENNINGS, COMSTOCK & TRETHERY, P.C.

Bruce A. Zagar
(OSB No. 75397)
Of Attorneys for Linn-Benton-Lincoln Education Service
District

GARRETT, HEMANN, ROBERTSON,
JENNINGS, COMSTOCK & TRETHERY P.C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

BEFORE THE EMPLOYMENT RELATIONS BOARD
OF THE STATE OF OREGON

LINN-BENTON-LINCOLN)	
EDUCATION ASSOCIATION,)	
)	Case No. UC-28-01
Petitioner,)	
)	
v.)	PETITIONER'S
)	OBJECTIONS TO
LINN-BENTON-LINCOLN)	RECOMMENDED ORDER
EDUCATION SERVICE DISTRICT,)	
)	
Respondent.)	

Pursuant to OAR 115-10-090, Petitioner Linn-Benton-Lincoln Education Association submits the following objections to the Recommended Order issued by Administrative Law Judge William Greer, dated February 6, 2002.

1. Finding of Fact 3: The Association objects to the characterization of the testimony of Bill McGovern. McGovern testified that the Oregon Department of Education provides authorization to Early Childhood Interventionists. However, the testimony failed to demonstrate that this authorization is a form of licensure.

2. Finding of Fact 4: This finding of fact includes two paragraphs about classified positions other than liaisons that have professional degrees and manage case loads. The Association has no objection to the accuracy of the findings, but questions their significance: The only issue in this case is whether the Association is an appropriate bargaining unit under OAR 115-25-005(4), not whether the liaison positions share any similarities with other classified employees. This information should not be included in the findings of fact.

3. Finding of Fact 6, Footnote 3 (page 4): The Association objects to the finding that Family Service Consultants are required to have a clinical social work license. Consultants may have any type of counseling license or be in the process of obtaining a license.

4. Finding of Fact 7: The Association objects to the characterization of the work performed by the Family Support Liaisons. They provide more than “friendly advice” to students and their families. They work independently to provide professional services to students and parents, such as parenting training, anger management training, goal setting, and service delivery.

5. Finding of Fact 8: The Association objects to the description of the relationship between the Family Support Liaisons and the Family Service Consultants. Both positions work as colleagues on a service delivery team, providing many overlapping services, attending many of the same meetings, and sharing clients as appropriate.

6. Finding of Fact 9: The Association objects to the finding that a letter written by the Family Support Liaisons, dated October 24, 2001, is evidence of the “desires of the employees” for community of interest purposes.

7. Additional Findings of Fact: Petitioner asks the Board to make the following additional findings of fact:
- a. From 1991 to 1998, Family Service Consultants performed all of the functions currently performed by Liaisons. While providing these services, the Consultants were members of the Association's bargaining unit. (Test. Lind).
 - b. Consultant Rita Vinal continues to provide all of the case management duties performed by the Liaisons in other areas. Vinal uses the Family Plan form used by Liaisons for documenting services provided. (Test. Edwards).
 - c. The ESD's funding sources for the Consultants' positions, grant funds, and a contract with the State of Oregon, do not require the Consultants to be licensed. (Test. Edwards).
8. Conclusion of Law 2: The Association objects to the conclusion that the Liaisons are not appropriately added to the bargaining unit.

The ALJ failed to correctly apply ORS 243.650(1) in light of recent ERB precedent. *See Linn-Benton-Lincoln Education Association v. Linn-Benton-Lincoln ESD*, 17 PECBR 288 (1997); *aff'd* 163 Or App 558, 989 P2d 25 (1999). The ALJ's analysis essentially requires an actual license to be "academically licensed" rather than requiring academic training and a direct professional service to students.

The Board should find that the Family Support Liaisons are academically degreed or licensed under ORS 243.650(1) and share a community of interest with the Association's bargaining unit.

DATED this ____ day of February, 2002

Respectfully Submitted,
SMITH, GAMSON, DIAMOND & OLNEY

Stacy J. Chamberlain, OSB #01229
Of Attorneys for Petitioner

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employees who are required to have an academic degree as a condition of employment generally share a community of interest with licensed employees, such as teachers, media specialists, nurses, or therapists. See Recommended Order (“Reco.”) at 7, citing *Mid-Valley Bargaining Council v. Greater Albany School Dist.*, 6 PECBR 4766 (1981); *Salem Federation of Classified Employees v. Salem School District and OSEA*, 7 PECBR 6187 (1983). The legislature provided a statutory overlay to the analysis when it amended ORS 243.650(1) in 1995. Ultimately the Board determined that the amended statutory definition of “appropriate bargaining unit” had preserved the academic/nonacademic distinction originally created in the *Greater Albany* case. See Reco. at p. 9.

Unfortunately, the ALJ strayed off course when he began to apply the Board’s historical analysis to the facts of this case. He began by framing two questions for his analysis, which are stated as follows:

First, does the ESD require the family support liaisons to have the same type of academic training as teachers and other “academically licensed” employees in the Association bargaining unit? Second, do family support liaisons perform the same type of professional work as the employees included in the Association bargaining unit?

Reco., p.9. These questions miss the mark to the extent that they require the Liaison position to be “the same” as licensed employees, either with respect to their academic training or to the work they perform. The questions lead to a literal application of the term “licensed,” which is precisely the interpretation that was rejected by this Board and by the court of appeals in *Linn-Benton-Lincoln Education Association v. Linn-Benton-*

Lincoln ESD, 17 PECBR 228, reconsidering 17 PECBR 140 (1997), aff'd 163 Or App 558, 989 P2d 23 (1999)(hereinafter *Linn-Benton I*).

The ALJ's literal application of the term "licensed" is apparent in the Recommended Order. In examining whether the Liaisons have the "same type" of training as other members of the Association bargaining unit, he reasons that because the Liaisons are not licensed, they must not have the same specialized training as employees who are licensed. He then concludes "In sum, family support liaisons are not licensed, and the Association bargaining unit members are licensed." Reco., p.10. This circular reasoning takes us back to the starting point: although Liaisons are not required to possess a license, are they "academically licensed" for purposes of ORS 243.650(1)?

The correct first question is the following: are the Liaisons academically trained? The answer is clearly yes: they are required, as a condition of employment, to possess a "bachelors degree in counseling, social work or other human service profession." (Ex. R-2). The Early Childhood Interventionists in *Linn-Benton I* had essentially an identical requirement: "applicants must possess a "[b]achelor [sic] degree or comparable advanced training in the area of special education or early childhood education or related field." *Id.*, 17 PECBR at 231. In *Linn-Benton I*, the degree requirement was sufficient for the Board to conclude that the training required for the Interventionist position was "academic," and that the position was academically licensed. Similarly in this case, the Liaisons' educational requirement is sufficient to conclude that their position is academic and that they are academically licensed.

The second question articulated by the ALJ simply repeats the error of the first question, especially because the analysis is so literal. Of course the Liaisons do not perform the same exact work as Consultants or other employees in the Association bargaining unit. If they did, they would hold one of those other positions, and they would be required to possess a license.

The correct second question is the following: is the classification of Liaison “of like character” to the occupations listed in ORS 243.560(1)? See *Linn-Benton I, supra*, 17 PECBR at 231. Stated otherwise, do their duties “complement those of the teachers in that they all are devoted to enhancing the educational development of students”? *Id.*, quoting *Greater Albany*. Does their position “involve a direct professional service to students,” such as the Interventionists performed? *Linn-Benton I, supra*, 163 Or App at 571.

Again, the answer is clearly yes: Liaisons carry their own caseload of students, providing professional services directly to the students and their families. Their work enhances the educational development of students by resolving family issues or by surmounting socio-economic obstacles that would otherwise interfere with a student’s ability to attend school ready to learn. Their duties were formerly performed by all of the Consultants, and are still performed by one of the Consultants who works in a district that has no Liaison.¹

As with the first question, it is nonsensical to require that Liaisons perform the same work as Consultants, or to require that they “continually exercise the discretion

¹ See Petitioner’s Post-hearing Brief at pp.10-15.

and professional judgment” that the ESD requires of Consultants. See Reco., p. 10.² If Liaisons exercised exactly the same discretion and professional judgment as Consultants, they would be required to possess a license and would probably be classified as Consultants. The Association does not dispute that two of the Consultants focus on clinical intervention and counseling, while the Liaisons focus on training and assistance other than counseling. However, the Association also notes that one of the Consultants has case management responsibilities just like the Liaisons have.

III. CONCLUSION

For all of the reasons indicated above, the Board should conclude that the Liaison position requires academic training and performs work of like character to other positions listed in ORS 243.650(1). The position is therefore “academically licensed” and appropriate for inclusion in the Association bargaining unit. An election should be ordered.

DATED this ____ day of July, 2004.

Respectfully submitted,

Monica A. Smith, OSB #82400
Of Attorneys for the Linn-Benton Lincoln
Education Association

² The record contains no evidence other than job descriptions for other positions in the Association bargaining unit, so it is difficult to compare the Liaison’s level of discretion and judgment to positions other than Consultant.

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LINN-BENTON-LINCOLN ESD

UC-28-01

Mr. Chairman and Members of the Board:

Naturally, the Linn-Benton-Lincoln Education Service District concurs in the ALJ's Proposed Order to dismiss the Petition herein. We believe that this Proposed Order is amply supported by the Findings of Fact and that it is the correct determination in the instant case.

To begin with, I believe we need to clarify a possible misconception which may affect the Board's review of this case. Because we are dealing with an Education Service District, there is the tendency of the Board, and even the Association, to think of this case in terms that are common to a regular school district. However, an ESD is not a school district. It is, as its name implies, an education service district. It does not operate like a public, K-12 school district, nor does it provide the same kinds of services as such a district. An ESD provides very specialized support services that range from the very professional, to the very technical, and to the administrative and clerical.

Analogies to positions which are common to K-12 school districts are dangerous since ESDs simply do not have comparable types of positions. For example, an ESD does not employ regular classroom teachers nor does it employ regular educational assistants to serve in classrooms in the K-12 system. The teachers that are employed by an ESD are highly specialized teachers, commonly in the area of

special education. An ESD also provides professional services in other professional areas such as occupational therapy, physical therapy, school psychologists, speech and language pathologists, and, of course, clinical social work..

The Findings of Fact that are contained in the Proposed Order clearly delineate the professional distinctions between the qualifications of and the services provided by family services consultants as distinguished from the educational requirements and services provided by the family support liaisons.

For example, in Finding of Fact 6, the consultants are determined to be included in the Association's licensed bargaining unit. The ALJ also determined that the consultants provide clinical services, diagnose mental conditions, provide therapeutic counseling services, and diagnose the emotions of young people. The consultants develop intervention plans and they provide counseling services. Not only must the consultants possess or be in the process of obtaining an academic license, they are also required to have a MSW in social work or the legal equivalent thereof. In other words, they must be social workers, regardless of the precise licensure that is required by the State of Oregon. These people also report to a different supervisory hierarchy and they are funded out of different funds.

By contrast, Finding of Fact 7 demonstrates that the liaisons perform case management duties which are significantly distinguished from the professional diagnostic and counseling services that are provided by the consultants. Indeed, liaisons would provide referrals to the consultants and other health care professionals. The liaisons do not diagnose mental conditions. While there may be some overlap of duties between the liaisons and the consultants, the liaisons

simply do not provide the professional level of services that are provided by the consultants.

The liaisons are required to possess a bachelor's degree and have other successful work experience, but they are not required to hold any professional license or any level of experience that otherwise qualifies them to provide professional diagnostic and counseling services.

Simply stated, the factual record is quite clear in the distinctions between the two classifications: the consultants are the professionals that are licensed or otherwise academically qualified to practice their profession in the State of Oregon and the liaisons are not so licensed or qualified. Indeed, they do not provide the professional level of services that the consultants do.

The Court of Appeals decision that is cited in the Proposed Order involving the same two parties but with respect to a different classification of employees determined that there were two interpretations of the term "academically licensed." The first interpretation requires academic training and licensure, whereas the second interpretation provides that the "persons described must be entitled to engage in a particular occupation or profession by reason of academic training." The Court held that the legislature's general purpose "was to require educators and others holding professional positions to bargain separately from those employees who perform other occupational tasks." The distinction is clear. It is between professionals who may be "qualified" to perform their profession as opposed to those who may provide other occupational services, irrespective of their educational background.

That distinction is clearly found in the facts of this case. While the ALJ's concluding statements in the Proposed Order seemingly rely on the technical of licensure for the consultants and the lack thereof for the liaisons, the factual underpinnings in this case demonstrate that it is far more than just the technicality of licensure; it is the fact that the consultants are recognized professionals, whereas the liaisons are not. The facts justify the Proposed Order of the ALJ. The facts also are conclusive in that the two classifications do not perform the same type of "professional" work. While there may be some overlap of duties, there is absolutely no overlap of professional duties. The liaisons do not have the professional qualifications or academic qualifications that allow them to provide the diagnostic services and counseling services that are provided by the consultants.

For these reasons, we believe that the Proposed Order of the ALJ is correct and it should be affirmed by this Board.