STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
CLASSIFIED PUBLIC EMPLOYEES ASSOCIATION / WEA / NEA	)	CASE 8633-E-90-1454
	)	
Involving certain employees of:	)	DECISION 3962-A - PECB
	)	
QUINCY SCHOOL DISTRICT	)	DECISION OF COMMISSION
	)	
	)	

Kathy O'Toole, Attorney at Law, appeared on behalf of the petitioner.

Tom L. Pickett, Superintendent, and Robert W. Winston, Jr., P.S., by Gregory L. Stevens, Attorney at Law, appeared on behalf of the employer.

Eric T. Nordlof, Attorney at Law, appeared on behalf of the incumbent intervenor, Public School Employees of Quincy.

This matter comes before the Commission on a timely petition for review filed by Public School Employees of Quincy, seeking to overturn a Direction of Elections issued by Executive Director Marvin L. Schurke.[1]

BACKGROUND

The Quincy School District (employer) provides education and related services to approximately 1600 students in kindergarten through high school. The employer has about 150 employees, and

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[1] Quincy School District, Decision 3962 (PECB, 1992). The Executive Director's decision called for both a unit determination election, to determine the propriety of the petitioned-for unit, and a representation election.

operates six schools: three elementary schools, one middle school, one high school, and one alternative school.[2]

Public School Employees of Quincy (PSE) is the exclusive bargaining representative of a "wall-to-wall" unit which includes approximately 64 "classified" employees of the Quincy School District.[3] The bargaining relationship between the employer and PSE dates back to at least 1971. A previous attempt to sever a unit of office-clerical employees from the "wall-to-wall" bargaining unit was rejected in Quincy School District, Decision 306 (PECB, 1977).[4]

On June 12, 1990, the Classified Public Employees Association / Washington Education Association / National Education Association (CPEA) filed a petition for investigation of a question concerning representation with the Commission. The CPEA's petition described the bargaining unit sought as:

> All Quincy School District Secretaries/Clerks excluding any Secretary whose duties imply a confidential relationship to the Superintendent or to the Board of Directors and all other employees of the employer.

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[2] The employer's certificated teachers and principals are organized for the purposes of collective bargaining pursuant to the Educational Employment Relations Act, Chapter 41.59 RCW, and are not affected by this case.

[3] The parties' collective bargaining agreement, which expired on August 31, 1990, excluded "all administrative office personnel" from the classified bargaining unit. In this proceeding, the "secretary to the superintendent" and "accounting assistant", both of whom work full-time in the administrative office, have been stipulated to be "confidential" employees.

[4] Decision 306 was issued by an "authorized agent" under procedures of Chapter 391-20 WAC. Those rules were replaced by Chapter 391-21 WAC in 1978 and by Chapter 391-25 WAC in 1980, both of which vest unit determination authority in the Executive Director.

The CPEA thus sought a "severance" of office-clerical employees from the existing bargaining unit represented by PSE.

PSE was granted intervention in the proceedings, based upon its status as the incumbent exclusive bargaining representative of the petitioned-for employees. A hearing was held on October 19, 1990, before Hearing Officer Walter M. Stuteville. The processing of this case was thereupon suspended for a time, while the Commission examined the validity of the authorization card form used by the CPEA in this and other cases.[5]

As originally petitioned-for, the unit sought by the CPEA would have included six employees working under the title of "secretary". Two of those work full-time and one works part-time in the employer's elementary schools; one works full-time at the junior high school; two secretaries work full-time in the high school.

During the hearing, reference was made to two "clerical aide" employees, each of whom splits her day between two locations. One "clerical-aide" works part-time in the alternative school and part-time at the high school. The other "clerical-aide" divides her time between the junior high school and the administrative office. The hearing in the instant case was reconvened on July 24, 1991, to take testimony concerning two office-clerical employees working in the superintendent's office. At that hearing, it was determined that a new "clerical-aide" position had been added to the employer's workforce. After additional testimony was taken, the parties filed a second set of post-hearing briefs.

In the Direction of Elections issued on January 21, 1992, the Executive Director held that the employer's full-time and regular part-time office-clerical employees, including those employees

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[5] That question was decided in Central Kitsap School District, Decision 3671-A (PECB, 1991).

working under the "clerical/aide" title, share a community of interest among themselves, and could constitute an appropriate bargaining unit if the desires of the employees so indicated. After the creation of a separate bargaining unit was validated by a unit determination election, the employees in that unit voted for representation by the CPEA. PSE filed objections under WAC 391-25-590(2). Following the receipt of briefs from the parties, the matter thereupon came before the Commission.

POSITION OF THE PARTIES

PSE takes issue with the Executive Director's finding that the employer's office-clerical employees share a community of interest which could be the basis for creation of a separate bargaining unit. PSE argues that any proposed severance of the office-clericals should be subjected to the standards applied by the Commission in Yelm School District, Decision 704-A (PECB 1980), and not subject to the principles outlined in Highline School District, Decision 3562 (PECB, 1990).

The CPEA agrees with the Executive Director's ruling and asks that it be affirmed.

The employer has not taken a position on the unit determination issue raised in this case.

DISCUSSION

Unit Determination Standards

RCW 41.56.060 sets forth the standards that this Commission is to follow in determining appropriate bargaining units:

> RCW 41.56.060 DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. ...

As we noted in City of Centralia, Decision 3495-A (PECB 1990), the purpose 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. The statute does not require determination of the "most" appropriate bargaining unit; it is only necessary that the petitioned-for unit be an appropriate unit. City of Winslow, Decision 3520-A (PECB, 1990).

Nothing in the statute, or in Commission precedent, precludes office-clerical employees from being included in the same bargaining unit with other employees of a public employer. At the same time, a long line of Commission precedents have recognized that office-clerical employees share a community of interest separate from that of other employees in a particular workforce, and have allowed the creation of separate bargaining units of office-clerical employees.[6] In so ruling, the Commission has followed precedent developed by the National Labor Relations Board (NLRB) in its administration of the National Labor Relations Act (NLRA).[7]

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[6] See, e.g., Longview School District, Decision 2551 (PECB, 1986); University Place School District, Decision 2584 (PECB, 1986); Snoqualmie Valley School District, Decision 529 (PECB, 1978).

[7] The federal precedents are cited in Highline School District, Decision 3562 (PECB, 1990).

PSE argues that reliance on NLRA precedent is flawed, because that precedent arose from operations in production plants; not from considerations unique to the operation of a school district. The Commission and the Washington courts frequently look to federal precedent, where consistent with Chapter 41.56 RCW,[8] and we find that reasonable in the present case. Regardless of its origins, the NLRA precedent with regard to office-clerical employees has been applied over the years in a myriad of employment settings. See, e.g., St. Luke's Episcopal Hosp., 222 NLRB 674 (1976). We do not find evidence in this record to support a conclusion that the duties and skills of office-clerical employees working in public schools are so distinct as to render the rationale of existing NLRA precedent inapplicable.

The Requisite Community of Interest Exists

A community of interest is the fundamental factor in bargaining unit determinations involving previously unrepresented employees, and also in units where an attempt is being made to "sever" a group of already-represented employees from a larger bargaining unit in which they have historically been included. Where a "severance" is sought, the unit determination depends initially upon a showing that the employees seeking severance enjoy a community of interest **among themselves.** The Executive Director found that was true in this case; PSE disagrees.

The NLRA precedents distinguish office-clerical employees, who are commonly held to have a separate community of interest, from plant clericals, who are commonly included in the bargaining units with production and maintenance employees. In analyzing whether a separate community of interest exists among the office-clerical employees in this case, the Executive Director applied a distinc-

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[8] Nucleonics Alliance, Local 1-369 v. WPPSS, 101 Wn.2d 24 (1984).

tion between "working in support of the administrative function" and "working in support of the educational program".[9] The distinction suggests an "administrative versus instructional" dichotomy which provides a convenient method of distinguishing between school district office-clerical employees and instructional aides, but does not as readily provide a distinction between office-clerical employees and the many other types of positions customarily combined in "wall-to-wall" units of school district classified employees, **e.g.**, custodians, cooks, bus drivers, and maintenance personnel. The dichotomy could perhaps be better labeled as one between an employer's administrative workforce and its operational workforce. Regardless of how one characterizes the distinction, however, the critical consideration remains that office-clerical employees can share a community of interest among themselves, because of the extent to which their duties support the employer's administrative function.

The office-clerical employees at issue in this case are not congregated in a central administration office, but they work primarily within the front offices of the school buildings to which they are assigned. They perform business office functions, and have what appears to be rather limited contact with other bargaining unit employees. We concur with the Executive Director that the employees seeking severance herein share a community of interest among themselves.

Rebuttable Presumption of Severability

When office-clerical employees share a community of interest among themselves, a long line of Commission precedents has permitted such employees to "sever" themselves from broader bargaining units in

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[9] This distinction was first drawn with respect to certificated employees in Tacoma School District, Decision 652 (EDUC, 1979), and then applied to office-clerical employees in Highline School District, supra, at page 8.

which they have been mixed with other employee types. Severance of office-clerical employees in the school district setting was first approved by the Commission as long ago as 1977.[10] More recently, that line of precedent was summarized as follows:

> The one type of employee which has been singularly successful in obtaining favorable rulings in "severance" cases is the "office-clerical" generic type. The notion ... that a separate unit of office-clerical employees is inherently appropriate stems from a body of private sector precedent that traces its roots over a period of more than 30 years.

Raymond School District, Decision 3202 (1989).

That long line of Commission precedent has never been criticized or overturned by any court.

PSE argues that the Commission should apply the severance standards embraced by the Commission in Yelm School District, Decision 704-A (PECB, 1980). In Yelm, the Commission applied "craft severance" principles enunciated by the NLRB in Mallinckrodt Chemical Works, 162 NLRB 387 (1986) to a unit of school bus drivers. The announced standards were not applied to a severance of office-clerical which occurred in the Yelm School District at the same time, because PSE stipulated to an election which resulted in the certification of a separate office-clerical bargaining unit. Yelm School District, Decision 623 (PECB, 1979). Following Yelm, Decision 704-A, Commission precedent continued to allow office-clerical employees to "sever" themselves from broader units. That precedent is, by now, so well established and consistent that we are not persuaded to adopt a different rule.

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[10] Franklin Pierce School District, Decision 78-D (PECB, 1977). Numerous subsequent cases are cited in Highline School District, supra, at pages 8-9.

Since 1980, a "unit determination election" procedure has been used in cases where severance could be appropriate. See, WAC 391-25-530(1).[11] The effectiveness of the collective bargaining process is highly dependent upon the coherence of employees in the bargaining unit. Where there are two or more appropriate unit configurations available, an election is held to determine the employees' desires on the unit issue.[12]

PSE feels that the Executive Director's decision in Highline School District, supra, grants office-clerical workers an "irrebuttable" presumption of severance. We find a presumption of severance is appropriate, but we emphasize that it is a **rebuttable** presumption. If the duties of office-clerical employees overlap to a significant extent with those of other classified employees, if there is substantial interchange between positions, or an employer's operations are shown to be highly integrated, then the presumed appropriateness of office-clerical severance might be rebutted. There may also be cases where office-clerical employees themselves vote against severance, and so implement the "desires of employees" unit determination criterion against the presumption.[13]

Presumption Not Rebutted in This Case

We have read the record in this case with the "rebuttable presumption" possibility in mind. The record reveals that other employees

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[11] The procedure was first applied in Mukilteo School District, Decision 1008 (PECB, 1980).

[12] The unit determination election process is derived from NLRA case law, i.e., Globe Machine & Stamping Co., 3 NLRB 294 (1937). The Globe procedure was approved by the Supreme Court of the United States in Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146 (1941).

[13] That was the result in Mukilteo, supra, where the employees failed to validate creation of a separate office-clerical bargaining unit. See, Mukilteo School District, Decision 1008-A (PECB, 1980).

in the existing bargaining unit sometimes perform "clerical" tasks, but does not demonstrate such an overlap of duties and responsibilities as to make severance inappropriate. Many jobs typically involve some limited recordkeeping. What distinguishes office-clericals is the extent to which their duties and responsibilities focus on such tasks, and the level of complexity at which the tasks are performed.

The record indicates that, in performing their duties, the building secretaries have little interaction with other classified positions. The primary exception is the limited period each day when an aide covers the telephone while the building secretary has lunch.

The record also reveals differences of training and skills. A high school diploma is required for the secretaries in this case, but not for other classified employees. The same is true for stenographic and computer skills. Financial accounting is a significant part of the job of the building secretaries; it is not for other classified employees.

The office-clerical employees at issue in this case certainly share many things in common with one or more of the other classified positions. For that reason, the Executive Director properly found that they could continue to have a community of interest with other employees in the existing bargaining unit. The record supports the conclusion, however, that office-clericals in this case also share a community of interest among themselves based upon dissimilar skills and qualifications from other positions in the rest of the classified unit.

The history of bargaining in an existing unit is entitled to consideration. As noted by the Executive Director in an earlier office-clerical severance case, "[r]espect for the 'history of bargaining' is a factor in all severance cases, **but is not the sole**

determinant."[14] Even when office-clerical employees have been part of a broader historical bargaining unit for a long time, Commission precedent holds that office-clerical employees can be given the opportunity to vote in a unit determination election.[15] Thus, the fact that the office-clericals have a long history of bargaining in the existing unit is not a sufficient basis for a categorical rejection of the proposed severance here; not where the record indicates that the office-clerical employees also have a separate community of interest among themselves.

Concerns About Undue Fragmentation

PSE argues that the presumption favoring office-clerical bargaining units results in the unprincipled fragmentation by CPEA of the classified workforce. Concerns about undue fragmentation generally arise when employees not directly involved in an organizational effort will be deprived of their statutory bargaining rights, by being left "stranded" or in a unit that is too small to bargain effectively.[16] Such concerns also arise where the establishment of an additional bargaining relationship will likely give rise to work jurisdiction conflicts, and bargaining obligations concerning shifts of "bargaining unit work" between bargaining units.[17] Thus, Commission decisions have required that fringe groups be incorpo-

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[14] Highline School District, supra, at page 12 (emphasis supplied).

[15] West Valley School District, Decision 2913-B (PECB 1988). Such elections do not necessarily result in a change of exclusive bargaining representative. In Highline School District, supra, office-clerical employees voted for creation of a separate bargaining unit, but retained the organization that represented the wall-to-wall unit.

[16] See, for example, City of Vancouver, Decision 3160 (PECB, 1989).

[17] See, for example, City of Seattle, Decision 781 (PECB, 1979) and South Kitsap School District, Decision 1541 (PECB, 1983).

rated into the bargaining units to which they logically relate, and have rejected unit configurations that Balkanize departments or occupational groups into units that can be explained only on the basis of "extent of organization".[18] As to office-clerical units, "fragmentation" concerns have most often been raised in the context of attempts to subdivide the office-clerical group itself.[19]

The Executive Director concluded in this case that the majority of the time of the "clerical aides" is spent in support of the employer's administrative functions, and he therefore grouped those positions with the other office-clerical employees.[20] With the addition of those positions, the petitioned-for bargaining unit will total at least eight employees. We conclude that a unit of that size can bargain effectively, and does not constitute undue fragmentation.

Conclusions

The severance of office-clerical employees from the rest of the classified workforce in this case is based upon dissimilar skills and qualifications that provide the office-clerical employees with a distinct community of interest. We are not persuaded to reverse many years of Commission precedent in this area. Given the choice of two appropriate bargaining unit configurations, the office-clerical employees have voted for severance. We affirm the result reached by the Executive Director in this case.

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[18] City of Centralia, Decision 3495-A (PECB, 1990).

[19] Highline School District, supra, at page 7 (citing cases).

[20] PSE did not appeal either paragraph 8 of the Findings of Fact or paragraph 5 of the Conclusions of Law in Decision 3962. The Commission sees no reason to direct a different result.

NOW, THEREFORE, it is

ORDERED

1. The objections to the Direction of Election issued on January 21, 1992 are OVERRULED.

2. The case is remanded to the Executive Director for issuance of an appropriate certification.

Entered at Olympia, Washington, the 26th day of January, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANET L. GAUNT, Chairperson

MARK C. ENDRESEN, Commissioner

DUSTIN C. McCREARY, Commissioner