

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
WASHINGTON FEDERATION OF TEACHERS)	CASE 15604-E-01-2593
)	
Involving certain employees of:)	DECISION 7361-A - PECB
)	
EDUCATIONAL SERVICE DISTRICT 113)	ORDER DETERMINING
)	ELIGIBILITY ISSUES
)	

John A. Scott, Labor Representative, for the union.

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for the employer.*

This case is before the Executive Director for rulings on certain eligibility issues reserved for determination following issuance of an interim certification. The one position remaining at issue is properly excluded from the petitioned-for bargaining unit.

BACKGROUND

Educational Service District 113 (employer) is operated under Title 28A RCW. It is headquartered in Olympia, Washington, but provides services in Mason and Grays Harbor counties as well as in Thurston County. Of particular interest in this proceeding, the employer operates a "head start / ECEAP" program at various locations.

On January 26, 2001, the Washington Federation of Teachers (union) filed a petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of a

bargaining unit limited to non-supervisory employees working in the head start / ECEAP program operated by the employer.

Responding to WAC 391-25-130 and a request from the agency, the employer provided a list of employees under cover of a letter dated February 15, 2001. The employer generally proposed exclusion of employees with job titles including terms such as "accounts payable", "payroll", "personnel - staff development", "facilities", "director", "assistant director", "fiscal", "food services", "technology", "secretary - admin", and "secretary - operations". However, the list provided by the employer included the name of Debi Fuller with a "secretary - GH Admin/Oper" title.

An investigation conference was conducted on February 28, 2001, at 10:00 a.m., and an investigation statement was issued on March 5, 2001.¹ No issues were framed at that time. An eligibility list attached to that investigation statement contained 173 names. The investigation statement set forth arrangements for determining the question concerning representation by an election conducted by mail ballot.

A "corrected" eligibility list was prepared under date of March 13, 2001, listing a total of 180 names and indicating "challenged" next to the names of six individuals.

A tally of ballots issued on March 29, 2001, discloses that two ballots were voided, two ballots were challenged, 110 votes were

¹ The time lapse between the investigation conference and the issuance of the investigation statement is explained by the occurrence of a major earthquake in and around Olympia, Washington, within an hour after the investigation conference. The agency office was then closed for the balance of that week, while the safety of the structure was verified and utilities were restored.

counted for the union, and 33 votes were counted for the "no representation" choice on the ballot. An interim certification was thus issued on April 10, 2001, designating the union as exclusive bargaining representative of the bargaining unit involved.

A hearing was held on the challenged ballots on June 22, 2001, before Hearing Officer Paul T. Schwendiman. At the outset of the hearing, the union withdrew its challenges as to five of the names listed as "challenged" on the eligibility list dated March 13, 2001, leaving only the eligibility of Debra (Debi) Fuller at issue. The testimony of two witnesses (including the challenged individual) was heard, and the parties made oral arguments on-the-record.

POSITIONS OF THE PARTIES

The employer urges that the bargaining unit configuration stipulated by the parties was limited to employees working in the head start / ECEAP program operated by the employer, and was to exclude employees working in the employer's administration. It contends that, although her work location is outside of the employer's main office, Fuller works in an administrative capacity that should have been excluded from the bargaining unit, and that her name was erroneously included on the list of employees initially provided by the employer.

The union urges that the exclusion of administrative employees should be confined to those working in the employer's service center in Olympia, and that the disputed individual working out in Grays Harbor County shares a greater community of interests with the bargaining unit employees than with the management personnel working in Olympia.

DISCUSSIONThe Determination of Appropriate Bargaining Units

The authority to determine appropriate bargaining units has been delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060 provides:

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.

The Commission makes unit determinations on a case-by-case basis. Among the four factors listed in the statute, no one factor is overriding or controlling. *Bremerton School District*, Decision 527 (PECB, 1979). Additionally, all four factors need not arise in each and every case.

The purpose of unit determination is to group together employees who have sufficient similarities (community of interests) to indicate that they will be able to bargain collectively with their employer. Particular concern is applied to avoid stranding individual employees by unit configurations that preclude their exercise of their statutory collective bargaining rights. *City of Blaine*, Decision 6619 (PECB, 1999).² The Commission also seeks to

² *City of Blaine, supra*, demonstrates the concern about stranding that deprives individuals of their statutory rights. In that case a proposed bargaining unit of uniformed and non-uniformed supervisors was granted certification notwithstanding WAC 391-35-310, to avoid stranding an employee.

avoid fragmentation of public employer workforces resulting in a proliferation of multiple bargaining structures and conflicting work jurisdiction claims. *City of Auburn*, Decision 4880-A (PECB, 1995); *Ben Franklin Transit*, Decision 2357-A (PECB, 1986).

There is no requirement that the Commission determine or certify the *most appropriate* bargaining unit configuration in any case. *City of Winslow*, Decision 3520-A (PECB, 1990). Employer-wide bargaining units can be found appropriate, as can "vertical" units encompassing all of the employees in some separate branch of an employer's table of organization or "horizontal" units encompassing all of the employees in one or more generic occupational types. See *City of Winslow, supra*. Differences between duties, hours of work, and method of computing compensation can be a basis for allocating positions among separate bargaining units within an employer's workforce, but do not necessarily compel separation of employees into different bargaining units on a classification-by-classification basis. Unit clarification proceedings under Chapter 391-35 WAC are then apt for dealing with subsequent changes of circumstances, including modification of unit descriptions to recognize the effects of evolution of government services, technological advances, and the arrival of new generations of employees who perform such services.

Application of Standards

The "Head Start" program is federally funded, while the "ECEAP" program is state funded. Both require administrative oversight, and this employer provides fiscal, personnel, and accounting services for programs that operate relatively independently.

With the stipulations entered into by the parties at the hearing in this matter, there were approximately 179 employees in the

bargaining unit at the time of the election. As to most of them, the initial list provided by the employer used titles such as "custodial", "bus driver", "aide", "teacher", "cook", "teacher assistant", or "food aide". Those titles connote employees having direct involvement in providing services to students, and can be described as an integrated operation essential to meeting the overall purposes of the Head Start and ECEAP programs.³

A small number of employees were identified on the employer's initial list with titles that are generally considered to be within the "office-clerical" generic occupational type. Those include six employees with "receptionist" titles, two with "secretary" titles, and the disputed employee with a "secretary - GH Admin/Oper" title. Office-clerical employees can be included in the same wall-to-wall unit with other employees of their employer, or can be separated into a bargaining unit limited to office-clerical employees under a long line of Commission and judicial precedents up to and including *Quincy School District*, Decision 3962-A (PECB, 1993), *aff'd* 77 Wn. App. 741 (1995). At the same time, the Commission has rejected subdivision of the office-clerical workforce of a school district into separate "central office" and "school" units. See *Tukwila School District*, Decision 7287-A (PECB, 2002).

³ See *Yelm School District*, Decision 704-A (PECB, 1980). One key difference from the situation in *Yelm* is that teachers can properly be included in this bargaining unit. An Educational Service District (ESD) is a municipal corporation of the state of Washington, and is a public employer under Chapter 41.56 RCW, but is not a school district within the meaning and coverage of the Educational Employment Relations Act, Chapter 41.59 RCW. Hence, teachers working for an ESD are covered by Chapter 41.56 RCW. See *Educational Service District 114*, Decision 4361-A (PECB, 1994). When covered by the same statute, teachers and support personnel working in the same program can be included in the same bargaining unit.

The question in this case is whether the "Secretary-GH Admin/Oper" has a community of interests with what amounts to a "vertical" unit in the Head Start / ECEAP program. The incumbent's name appears on the employer's organization chart above and outside of the boxes that contain the names of the employees stipulated to be within the bargaining unit. The incumbent works at an administrative office located in Aberdeen, Washington, rather than in any of the Head Start / ECEAP centers operated by employees stipulated to be within the bargaining unit. The incumbent's role is described as providing support for the employer's administrative functions, rather than for program functions. The incumbent reports to an assistant director who also works in the Aberdeen office. Under these circumstances, Fuller and the other administrative secretaries are aptly characterized as "office-clerical" while the positions titled "receptionist" and "secretary" within the Head Start / ECEAP program are aptly characterized as "plant clerical" positions having a community of interests with the employees who provide direct services to students.

The inclusion of Fuller's name on the employer's initial list of employees was explained in relation to Fuller's recent move from a "receptionist" position within the program and bargaining unit to her current position. That transfer occurred in the same month the petition was filed to initiate this proceeding; the transfer involved a 16.5% increase in Fuller's work year, from 218 days to 254 days. As part of the investigation conference process, two administrative secretary positions comparable to the position now held by Fuller were excluded from the bargaining unit by stipulation of the parties. The explanation provided by the employer constitutes good cause for it to withdraw from its earlier stipulation in this proceeding. *Compare Community College District 5, Decision 446 (CCOL, 1978).*

It appears that both Fuller and the other administrative secretaries remain in a "non-exempt" status they share with employees in the bargaining unit. Although she testified that she devotes a substantial portion of her work time to providing day-to-day support services for the Head Start / ECEAP centers in Grays Harbor County, Fuller acknowledged that the employer's focus for her position is on support for administrative functions. Although Fuller testified that she was aware of Head Start / ECEAP centers that operate more than 218 days per year, she did not claim any direct connection with those operations. Exclusion of Fuller from the bargaining unit involved in this proceeding leaves her sharing a community of interests with the other office-clerical employees of the employer, and a possibility of exercising her statutory collective bargaining rights together with those employees, so that the exclusion proposed by the employer does not constitute an inappropriate stranding of Fuller without access to bargaining rights.

FINDINGS OF FACT

1. Educational Service District 113 is organized and operated under Title 28A RCW, and is a public employer within the meaning and coverage of Chapter 41.56 RCW. The employer is headquartered in Olympia, Washington, but has administrative personnel based in other locations.
2. Washington Federation of Teachers, a bargaining representative within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of employees providing services to students through Head Start and ECEAP programs operated by the

employer, excluding supervisors and "all other employees who do not work for the Head Start / ECEAP program".

3. Prior to January of 2001, Debra (Debi) Fuller held a position within the bargaining unit sought by the union. In January of 2001, Fuller transferred to an administrative secretary position with an increase in her work year and with new responsibilities for providing support to an assistant director headquartered in Aberdeen, Washington.
4. When it responded in February of 2001 to a request for the list of employees required by WAC 391-25-130, the employer erroneously included the name of Fuller with an abbreviated title referring to her new title subsequent to the transfer described in paragraph 3 of these Findings of Fact.
5. When the parties entered into stipulations in an investigation conference held on February 28, 2001, they generally implemented the "all other employees who do not work for the Head Start / ECEAP program" exclusion proposed in the petition by excluding from the bargaining unit office-clerical employees who work in support of the administrative functions of the employer.
6. In her present position, Debi Fuller has a community of interests with other office-clerical employees working in support of the administrative functions of the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. In her present position, Debi Fuller is properly excluded, under RCW 41.56.060, from the bargaining unit which includes employees working in the Head Start / ECEAP program and which excludes all other employees of the employer who do not work for the Head Start / ECEAP program.

ORDER

1. The administrative secretary position held by Debi Fuller is excluded from the bargaining unit involved in this proceeding.
2. The interim certification issued in this matter shall stand as the certification, and the proceedings are closed.

ISSUED at Olympia, Washington, on the 28th day of February, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.