

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
TEAMSTERS LOCAL 252) CASE 16067-E-01-2665
)
Involving certain employees of:) DECISION 7832 - PECB
)
MOSSYROCK SCHOOL DISTRICT) ORDER OF DISMISSAL
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)
_____)

Davies, Roberts & Reid, LLP, by *David Ballew*, Attorney at Law, for the union.

Karr Tuttle Campbell, by *Lawrence B. Ransom*, Attorney at Law, for the employer.

On October 23, 2001, Teamsters Local 252 (union) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the Mossyrock School District (employer). An investigation conference was conducted on November 29, 2001, at which time the parties framed an issue as to the propriety of the separate unit of bus drivers sought by the union in this proceeding.¹ A hearing was held on January 24, 2002, before Hearing Officer Jack T. Cowan. The parties submitted briefs.

¹ On May 2, 2002, another union filed a petition seeking certification as exclusive bargaining representative of a bargaining unit limited to another group of classified employees of the Mossyrock School District. The processing of that case was held in abeyance pending the outcome of the above-captioned case.

The Executive Director concludes that a unit composed of school bus drivers is not an appropriate bargaining unit.

BACKGROUND

The employer operates common schools under Title 28A RCW, including an elementary school, a junior high school and a high school that are co-located on a single compound. The employer has a total of approximately 37 classified employees.

The employer provides transportation for some of its students. The school bus operation is housed in a garage across the street from the other school buildings. The petition filed by the union in this case proposed a bargaining unit limited to full-time and regular part-time bus drivers.

Eleven employees have regular assignments as bus drivers, and special trips are normally assigned on a seniority basis among those employees. The bus drivers report to work at the bus garage, as do the transportation supervisor, David Blankenship,² and the transportation dispatcher, Tony Fitzhugh.³

Apart from Blankenship and Fitzhugh serving as substitute bus drivers as needed, several other employees who have other regular assignments in this employer's workforce fill in as bus drivers on an as-needed basis:

² The parties stipulated, in the investigation conference, that the transportation supervisor is to be excluded from the proposed bargaining unit.

³ Fitzhugh also performs "groundskeeper" functions for the employer, working out of a separate work area within the building that houses the bus garage.

- Kelley Woods currently serves as a special education monitor on the special education bus, helping students with special needs. She reports to work at the bus barn. She has been a bus driver for five years, and she takes over the driver duties in the absence of the driver regularly assigned to the special education run. She can also serve as a driver for other emergency situations, or for special trips. She testified that she spends 90% of her time as a bus monitor and 10% of her time as a bus driver.
- Janice Browning has dual assignments, serving as a bus driver for the morning run and then serving as an aide in the learning assistance program.
- Dee Hancock has dual assignments, serving as a bus driver and then working as a custodian for one and one-half hours each day.
- Gary Mitchem has a regular assignment as a custodian, but also serves as a substitute bus driver.
- Gerald Eckland has a regular assignment performing maintenance functions,⁴ but also serves as a substitute bus driver.

All bus drivers must have a commercial driver's license, and must receive CPR training and first aid training.

The regular bus drivers earn about \$14.00 per hour. Apart from suggesting that the aides earn about \$10.00 per hour, the record in this proceeding does not establish the wages of the other job classifications in the employer's workforce.

⁴ In performing his maintenance functions, Eckland reports to work at the same building that houses the school bus operation, but works out of a work area separate and apart from the groundskeeper and bus personnel.

POSITIONS OF PARTIES

The union argues that the proposed unit limited to the employees with regular assignments as school bus drivers is appropriate, and that those employees should be permitted to constitute themselves a unit separate and apart from the other employees of the employer.

The employer maintains that a unit limited to the bus drivers is not appropriate. It contends that all of its classified employees share a community of interests, especially in light of the small size of its workforce and the multiple job functions assigned to the employees, so that a wall-to-wall bargaining unit of its classified employees (excluding supervisors and confidential employees) is the only appropriate unit.

DISCUSSION

Unit determination under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is a function designated by the legislature to the Commission.

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 the 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.

That statute is applicable to this proceeding involving classified employees of a school district.

Appropriate bargaining units of school district classified employees can be "wall-to-wall" in nature, encompassing all of the employees of the employer, but there is nothing in Chapter 41.56 RCW comparable to the requirement in RCW 41.59.080(1) that all non-supervisory certificated employees of a school district be included in a single bargaining unit.⁵ Accordingly, bargaining units structured along lines of the employer's table of organization ("vertical" units) and bargaining units structured along lines of generic occupational types ("horizontal" units) have also been found appropriate under Chapter 41.56 RCW.

The starting point for deciding any unit determination issue is the configuration proposed by the petitioning organization. The Commission is not limited to identifying and certifying the "most appropriate" or "only appropriate" bargaining unit, and an employer that opposes a proposed bargaining unit must actually demonstrate that the challenged configuration crosses over the line to constitute an "inappropriate" unit under the statute.

The History of Bargaining (or lack thereof)

The "history" component of the statutory unit determination criteria will not operate in every case, and is usually inapposite to a proposed bargaining unit of unrepresented employees. On the other hand, the "severance" criteria applied under *Yelm School District*, Decisions 704, 704-A (PECB, 1979) and subsequent cases

⁵ The Educational Employment Relations Act, Chapter 41.59 RCW, only applies to the certificated employees of school districts.

credit an actual history of bargaining as an impediment to breaking up established unit configurations.⁶

In this case, the employer correctly points out that another union filed a petition with the Commission in 1998, seeking certification as exclusive bargaining representative of a wall-to-wall bargaining unit then described as:

All full-time and regular part-time classified employees of the Mossyrock School District, excluding supervisors, confidential employees and all other employees.

The parties to that proceeding stipulated the propriety of that bargaining unit, but that is not helpful here. The majority of the valid ballots cast in the representation election conducted in that proceeding favored the "NO REPRESENTATION" choice on the ballot, and no exclusive bargaining representative was certified.⁷ Accordingly, no collective bargaining occurred in the wall-to-wall unit that was proposed in that proceeding, there is no history of bargaining for the employees involved in this proceeding, and the employees at issue here must be treated as unrepresented employees.

⁶ Efforts to sever transportation employees from existing "wall-to-wall" bargaining units were rejected in *Yelm School District, supra*, and *Lake Washington School District*, Decision 1170 (PECB, 1981). As summarized in *Lake Washington*, separate bargaining units will not be carved out of larger existing units where there has been a history of bargaining for the overall unit and the unit proposed for severance does not constitute a homogenous group of skilled craftsmen.

⁷ Notice is taken of the files and docket records of the Commission for Case 14251-E-98-02382. That proceeding was concluded by an order issued on March 12, 1999, as *Mossyrock School District*, Decision 6623 (PECB, 1999).

Extent of Organization

The "extent of organization" component of the statutory unit determination criteria compares the unit sought in a particular case with the whole of the employer's workforce. Apart from the precedents resisting "severance", concerns about excessive fragmentation of employer workforces have led to decisions rejecting Balkanized unit configurations in school districts:

- Upon discovery that an employer's office-clerical workforce had been artificially divided into two overlapping units represented by two different organizations, both existing units were found inappropriate in *South Kitsap School District*, Decision 1541 (PECB, 1983); and
- The presumption of propriety usually extended to separate units of office-clerical employees was found inapposite in *Ephrata School District*, Decision 4675-A (PECB, 1994), based upon evidence showing that a number of the office-clerical employees held dual assignments in other occupational types.

This reinforces that the unit configuration proposed by a petitioning union is merely the starting point for analysis, not a self-fulfilling prophesy or an automatic ending point.

In this case, the union seeks a unit of about 11 employees to be carved out of a workforce consisting of about 37 employees, and thus constituting slightly less than 30% of the employer's overall workforce. The proposed unit would not, on its face, strand any excluded employees in groups too small to exercise their statutory collective bargaining rights.

Taking into consideration the six other employees (excluding the transportation supervisor) who perform some bus driving duties, the

numbers change to 17 of 37, or nearly 46% of the employer's overall workforce. Again, the proposed unit does not, on its face, strand any employees in units too small to implement their statutory bargaining rights.

Duties, Skills and Working Conditions

Most classified employees in school districts can, as a general proposition, be categorized into one of five broad occupational/functional groups: Office-clericals, paraprofessionals (aides and instructional assistants), food service workers, custodial/maintenance workers, and bus drivers.⁸ Under WAC 391-35-350 and a long line of Commission precedents codified by that rule, individuals who "substitute" for scheduled employees on a recurring basis are deemed to be regular part-time employees, and are properly included in the same unit with full-time and other regular part-time employees within that occupational type.

In this case, the petitioned-for bargaining unit purports to be limited to one of the occupational types. When the facts concerning multiple assignments are taken into consideration, however, the overall group of employees performing bus driver duties would overlap with two or three of the other traditional occupational groups.

The status of Kelley Woods is troublesome. Her title and duties assisting students could suggest placement in the "aide" occupational type, but the record does not establish any close association between Woods and other employees in that category. Woods reports to work at the bus barn, and her entire work time is spent

⁸ More than the five traditional occupational units exist in some school districts, particularly in large school districts with complex workforces.

in the transportation operation. When serving as a bus driver on an as-needed basis, Woods is clearly in the bus driver occupational type.

The status of Tony Fitzhugh is particularly troublesome. When performing dispatcher functions at the bus garage, that employee could arguably fall into either the "bus" occupational type or into the office-clerical occupational type. When performing grounds-keeper functions, that employee would fall into the custodial/maintenance occupational type. When serving as a bus driver on an as-needed basis, Fitzhugh is clearly in the bus driver occupational type.

Conclusions on Community of Interests

The criteria established in RCW 41.56.060 are applied collectively to discern the existence of a community of interest among employees of a particular employer. *Blacks Law Dictionary*, Abridged Fifth Edition, 1983, defines "community of interest" as:

[R]elations of joint adventure, interest common to all parties. A mixture of identity of interest in venture whereas each and all are reciprocally concerned, and from which each and all derive material benefit and sustain a mutual responsibility.

Comparable to the situation that was found to exist in *Ephrata School District, supra*, the petitioned-for bus drivers in this case are found to be part of an integrated support operation essential to the primary educational function of this small school district. Given the historical overlap of functions within the employer's classified workforce, the proposed unit carving off an uncertain portion of that workforce is found to be inappropriate.

FINDINGS OF FACT

1. Mossyrock School District is operated under Title 28A RCW and is a public employer within the meaning and coverage of RCW 41.56.020.
2. Teamsters Union Local 252, a bargaining representative within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition with the Commission, seeking certification as exclusive bargaining representative of a bargaining unit limited to school bus drivers employed by the Mossyrock School District.
3. There is no history of collective bargaining involving the classified employees of the Mossyrock School District.
4. All classified employees of the Mossyrock School District have had similar working conditions and fringe benefits as unrepresented employees of the employer.
5. The transportation operation of the Mossyrock School District is conducted by a combination of scheduled employees and other employees of the employer who serve on an as-needed basis, so that it is part of an integrated support operation of the school district.
6. The bargaining unit configuration proposed by the petitioner in this proceeding would create an ongoing potential for work jurisdiction disputes, as well as a potential for creation of dual status positions if employees in other occupational categories exercise their bargaining rights in the future, due to the historical and ongoing practices of the employer concerning multiple assignments of its employees.

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. The petitioned-for bargaining unit limited to full-time and regular part-time bus drivers employed by the Mossyrock School District is not an appropriate unit for the purpose of collective bargaining under RCW 41.56.060, and no question of representation presently exists.

ORDER

The petition for investigation of a question concerning representation filed in the above-captioned matter is DISMISSED.

Issued at Olympia, Washington, on the 30th day of August, 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.