

¹ *Mossyrock School District*, Decision 7832 (PECB, 2002).

that bargaining unit. An investigation conference was conducted on November 29, 2001. The employer questioned the propriety of the proposed bargaining unit and asserted that an employer-wide (wall-to-wall) unit was the only appropriate configuration for its classified employees. A hearing was held on January 24, 2002, before Hearing Officer Jack T. Cowan.

On May 2, 2002, Public School Employees of Washington (PSE) filed a petition under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of a bargaining unit limited to approximately 15 para-educators employed by the Mossyrock School District. Case 16387-E-02-02712 was docketed, but the processing of that petition was held in abeyance pending the outcome of Case 16067-E-01-2665.

On August 30, 2002, the Executive Director concluded that the proposed unit limited to school bus drivers was not appropriate, largely because of evidence of dual assignments among classified employees of this employer, and dismissed the petition in Case 16067-E-01-2665. Local 252 appealed the order of dismissal on September 18, 2002, bringing that case before the Commission.

FACTUAL BACKGROUND

The list provided by the employer included the names of approximately 37 classified employees, plus the names of four individuals claimed to be excludable as supervisors or confidential employees.

For reasons described below, the bargaining unit proposed by Teamsters Local 252 could include more or less than the 11 employees estimated in the petition in Case 16067-E-01-2665:

First, among the employees who might properly be included in that unit, at least five have duties other than bus driving:

1. Janice Browning is a bus driver in the mornings and an aide in the learning assistance program in the afternoons;
2. Gary Mitchem works as a substitute driver and as a custodian.
3. Dee Hancock works as a bus driver, as an educational assistant, and as a custodian;
4. Kelly Woods is listed as a bus driver, but mainly assists and monitors students on the special education bus.
5. Dave Blankenship substitutes as a bus driver, but he also works in the maintenance department and performs some administrative duties in the transportation department.

The employee who currently evaluates the bus drivers similarly has other assignments:² Tony Fitzhugh is also a groundskeeper, and he performs the dispatcher function for the transportation operation.

Second, as to some of those same employees, questions also arise as to whether they would qualify for inclusion as regular part-time employees in a separate unit of bus drivers:³

² Blankenship has had a "transportation supervisor" title in the past, but no longer does performance evaluations of employees in the transportation department.

³ Under WAC 391-35-350, only school district employees who, during the previous academic year, have worked more than one-sixth of the days normally worked by full-time employees are considered to be regular part-time employees eligible for inclusion in a bargaining unit with full-time employees performing similar work.

1. Kelly Woods spends 90% of her work time assisting or monitoring students on the special education bus and could be included in a department-wide unit of transportation employees based on that activity, but the fact that a para-educator (rather than another bus driver) performs the monitor job when Woods is unavailable could also support categorizing that assignment outside of the transportation function. The 10% of work time Woods spends driving a bus may not be enough to qualify her as a regular part-time employee in the unit proposed in Case 16067-E-01-2665.
2. No testimony was given at hearing regarding the frequency with which Gary Mitchem actually drives a bus, so he cannot be presumed to be a regular part-time bus driver.
3. When asked about the frequency of Dave Blankenship substituting as a bus driver, the superintendent merely responded that he did so from time to time. Thus, Blankenship cannot be presumed to be a regular part-time bus driver.

Working from the same list, the unit sought by PSE in Case 16387-E-02-02712 could include as many as 19 employees.

POSITIONS OF THE PARTIES

Local 252 argues that the Executive Director misinterpreted the facts and misapplied the law. It maintains that a unit limited to employees with regular bus driving assignments is appropriate.

The employer argues that the Executive Director's decision should be upheld. The employer maintains that the only appropriate unit is a wall-to-wall unit composed of all of its employees.

DISCUSSION

The determination of appropriate bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060; *Port of Vancouver*, Decision 6979, (PECB, 2000). The propriety of a unit configuration proposed by a petitioning union is not presumed, and unit determination decisions are made on a case-by-case basis following a hearing. RCW 41.56.060. Where the propriety of a proposed unit configuration is contested, the union proposing that unit has the burden to prove that the petitioned-for unit is appropriate. See *Port of Vancouver, supra*. Where multiple questions arise concerning a bargaining unit, it has been the practice to resolve all related issues in consolidated proceedings. WAC 391-25-210; 391-35-110. Because we find there is insufficient evidence in the record to determine whether the unit sought by Local 252 is appropriate, we remand Case 16067-E-01-2665 for further proceedings. Because we are aware of the parallel proceeding in Case 16387-E-02-2712 which will inevitably turn on (or at least be affected by) the employer's claim that a wall-to-wall unit is the only appropriate configuration for its classified employees, we direct that the processing of Case 16387-E-02-2712 be activated, and that the two cases be consolidated for processing henceforth.

When deciding if a proposed unit is appropriate for the purpose of collective bargaining, the Commission considers (1) the duties, skills, and working conditions of the public employees; (2) the history of the collective bargaining by the public employees and their bargaining representatives; (3) the extent of organization among the public employees; and (4) the desire of the public employees. RCW 41.56.060. Those criteria are applied collectively to discern the existence of a community of interest among employees of a particular employer. *Ephrata School District*, Decision

Decision 4675-A (PECB, 1995) discusses many unit determination principles that are applicable to the two cases dealing with classified employees of this employer.

History of Bargaining -

Finding of Fact 4 states: "All classified employees of the Mossyrock School District have had similar working conditions and fringe benefits as unrepresented employees of the employer." Although the union assigned error to that finding of fact, it did not address the "history" component in its brief. Unchallenged findings of fact are treated as verities on appeal. *Renton Technical College*, Decision 7441-A (CCOL, 2002). A party assigning error has the burden of showing a challenged finding is in error and not supported by substantial evidence; otherwise the challenged finding is presumed correct. *Fisher Properties, Inc. v. Arden-Mayfair, Inc.* 115 Wn.2d 364 (1990) (citations omitted); *Renton Technical College, supra*. Thus, the finding is presumed correct.

The "history of bargaining" component of the statutory criteria is self explanatory and could not be determinative here. There is no history of bargaining for the Commission to consider here, because it is undisputed that the employer's classified employees are (and always have been) unrepresented.

Extent of Organization -

The "extent of organization" component compares the unit sought with the whole of the employer's workforce. "Wall-to-wall" units of school district classified employees are clearly appropriate. *Reardan-Edwall School District*, Decision 5549 (PECB, 1996); *Ephrata School District, supra*. Units limited to the school district classified employees within a particular occupational type have been found appropriate, but wall-to-wall units have been found

necessary (or have been preserved against severance) where all of the employees of the employer constitute an integrated support operation essential to the overall discharge by the district of its primary educational function, so that the employees are more appropriately dealt with as a single unit. *Ephrata School District, supra*; *Yelm School District*, Decision 704-A (PECB, 1980).

It is not enough for a union to say that the unit it proposes does not, on its face, strand any employees in a unit too small to implement their statutory bargaining rights. Where a union seeks to represent a unit that is less than employer-wide, it needs to provide evidence sufficient to support a conclusion that the employees it seeks to represent have a community of interest separate and apart from the other classified employees of the employer. See *Ephrata School District, supra*; *Ben Franklin Transit*, Decision 2357-A (PECB, 1986).

Duties, Skills, and Working Conditions -

The classified employees of school districts can, as a general rule, be categorized into five broad occupational/functional groups: Office-clerical, paraprofessional (instructional aides/assistants/para-educators), food service, custodial/maintenance, and transportation. Those categories have sometimes been the basis for identifying separate communities of interest within the overall classified workforce of particular school districts.

The nature of school transportation is such that bus driving is almost invariably a part-time occupation. *Reardan-Edwall School District, supra*. It is not surprising, therefore, to see bus drivers filling out their work time and incomes by working in other occupational fields of endeavor. *Reardan-Edwall School District, supra*. An employee who performs two or more separate roles for the

same employer is categorized as a "dual status" employee and would have rights and obligations in two or more different bargaining units. *Reardan-Edwall School District, supra*. Although such situations sometimes cannot be avoided, the Commission's decision in *Ephrata School District, supra*, indicates that they should be minimized if possible. *Reardan-Edwall School District, supra* (citing *Ephrata School District, supra*).

In *Reardan-Edwall School District, supra*, the burdens of dual status were limited to a bus driver who worked two part-time jobs (one within the unit found appropriate and the other outside of that unit), which was not found sufficient to constitute a basis for rejecting the unit configurations sought by the petitioning unions. In *Ephrata School District, supra*, the burdens of dual status would have affected several employees, so that an occupationally-based unit configuration was found inappropriate. The *Ephrata* decision also dealt with all of the employees of the employer constituting an integrated support operation.

In this case, many of this employer's classified employees work in multiple roles, and a number approaching 50 percent of the proposed unit of 11 bus drivers could become subject to the burdens of dual status. The record is unclear, however, as to details of some of the dual assignments, and some of those employees may lack sufficient work to be properly included in the proposed unit of bus drivers. Even if fewer than the five employees named above work in dual status assignments, there may be a proper basis for rejecting the unit configuration if employees work to support an integrated support operation. Again, however, the record is so unclear as to the existence of an integrated support operation that we do not necessarily agree with the Executive Director that the separate unit of bus drivers sought by Local 252 is an inappropriate

fragmentation. Moreover, we cannot prejudge the propriety of the separate unit sought by PSE.

Desires of Employees -

Where application of the other statutory criteria indicates that two or more bargaining unit configurations could be appropriate, the Commission conducts a unit determination election to assess the desires of the employees. *Ephrata School District, supra*. However, there is no reason to assess the desires of the employees where the petitioned-for unit is found to be inappropriate. See *Ephrata School District, supra*. How this element of the community of interest criteria is dealt with will depend on the propriety of either or both of the proposed units, as determined by the Executive Director following further hearing.

Conclusion -

By the time PSE filed its petition in Case 16387-E-02-02712, the opportunity for intervention in the hearing process in Case 16067-E-01-2665 had long-since passed. Because a creation of the separate unit of bus drivers proposed by Local 252 could have paved the way for processing of the petition filed by PSE on stipulations, it was reasonable to delay the processing of the later-filed petition for a time. Given the deficiencies of the record made by the parties in Case 16067-E-01-2665, consolidation of the proceedings upon remand will permit us to apply a more global perspective, taking into account all affected positions, evidence, and arguments.

NOW, THEREFORE, it is

ORDERED

The order of dismissal issued in the above-captioned matter is VACATED; the matter is REMANDED for further proceedings under Chapter 391-25 WAC; and the case is CONSOLIDATED for processing with Case 16387-E-02712.

Issued at Olympia, Washington, on the 20th day of December, 2002.

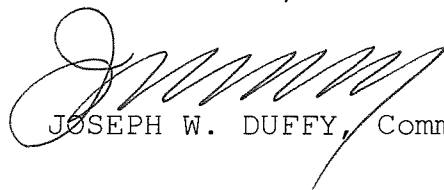
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