

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 286,)	
)	
Complainant,)	CASE 16129-U-01-4119
)	
vs.)	DECISION 8078 - PECB
)	
PUYALLUP SCHOOL DISTRICT,)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Richard Spencer, Business Representative, for the union.

Dionne and Rorick, by *Clifford Foster*, Attorney at Law, for the employer.

On December 5, 2001, International Union of Operating Engineers, Local 286 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Puyallup School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110, and a preliminary ruling issued on January 4, 2002, found a cause of action to exist on allegations summarized as:

Employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its skimming of work previously performed by the bus attendant position without providing an opportunity for bargaining.

A hearing was held on June 5, 2002, before Examiner Frederick J. Rosenberry. The parties filed post-hearing briefs.

On the basis of the evidence presented at the hearing, the Examiner rules that the union failed to meet the burden of proof necessary to establish that the employer committed unfair labor practices when

it implemented the complained-of personnel actions. The complaint is DISMISSED.

BACKGROUND

The Puyallup School District is located in Pierce County and offers traditional educational services for students in kindergarten through high school. Some students with disabilities or special learning needs participate in a special education program.

Eligible students in both regular and special education programs have access to an employer-operated bus transportation system. During the 2000-2001 school year, the employer operated 37 special education bus routes,¹ and employed 13 bus attendants who worked on some of those routes. The bus attendant positions were created at an undisclosed time in the past, in response to parent and bus driver requests. The bus attendants provide drivers with assistance in maintaining passenger order and safety on various special and regular education school buses.²

The union is the exclusive bargaining representative of both school bus drivers and school bus attendants employed by the employer. The parties' bargaining relationship was formalized by certification of the union, in *Puyallup School District*, Decision 3469 (PECB, 1990), as exclusive bargaining representative of a separate bargaining unit described as:

¹ Many special education students ride a conventional school bus, but certain students having a higher level of need are transported on smaller vehicles specially designed with additional safety features.

² Absent clear evidence, the Examiner infers that the drivers were responsible for loading students, securing handicapped apparatus, and supervision of students on the remaining special education bus routes.

All full-time and regular part-time bus aides employed by the Puyallup School District; excluding supervisors, dispatchers, guards, confidential employees, and all other employees of the employer.

Although a "Puyallup School Bus Drivers' Association" had previously been certified as exclusive bargaining representative of the employer's bus drivers, in *Puyallup School District*, Decision 777 (PECB, 1979), close examination of the Commission's docket records discloses that staff members of International Union of Operating Engineers (IUOE) locals were appearing on behalf of the organization.³ The merger of the two separately certified bargaining units is a recent development, based on the agreement of the parties.

The paraeducators (aides, instructional assistants, or paraprofessionals, however termed) employed by this employer have never been included in the bargaining relationship(s) between the parties to this case. A "Puyallup Paraprofessionals Association" was certified as exclusive bargaining representative of those employees in *Puyallup School District*, Decision 637 (PECB, 1979).

Onset of the Controversy

Early in 2001, the employer determined that it needed to reduce its operating costs by \$4.8 million. As part of the budget reduction process, the Transportation Department was directed to reduce its expenditures by approximately \$383,000, by means other than reducing basic transportation services. The employer determined to accomplish a portion of the reduction by curtailing the use of bus attendants.

³ Notice is taken of the Commission's docket records for Cases 3179-U-80-453, 3215-E-80-624, 3216-U-80-463, and 3275-U-81-468, all of which were filed between November of 1980 and January of 1981, and all of which suggest a connection between the Puyallup School Bus Drivers' Association and the IUOE.

On or about May 18, 2001, employer and union representatives met with the bus attendants to report that there would be significant layoffs at the end of the 2000-2001 school year, due to financial constraints. The employer offered the employees advice regarding other employment opportunities within its other operations, offered training, and offered some remuneration of expenses associated with becoming a bus driver.

In early June of 2001, the employer provided formal notice of its intent to terminate all of its bus attendants as a result of the financial constraints. That notice was provided in apparent conformity with the terms of the parties' collective bargaining agreement concerning a reduction-in-force.

Employer and union representatives met on June 18, 2001, when the employer laid out its financial situation in more detail. The employer described an internal reorganization, including a transfer of the responsibility for determining which special education students would have employees assigned to accompany them while they were being transported on a school bus. That function historically performed in the Transportation Department was transferred to the Special Services Department, and the employer asserted that Special Services could also improve the educational program offered to disabled students by having paraeducators accompany designated students and keep classroom protocols and discipline in effect while the student was being transported to and from school. The employer also stated that the Special Services Department would look to the individualized education programs (IEPs) crafted for each student, to determine which students would receive assistance from a bus attendant and which students would have a paraeducator accompany them.⁴ The employer asserted that its Special Services Department was more adept and better trained to determine which special education students needed the care. In order to accomplish

⁴ The IEP for each special education student includes whether the student has special transportation needs.

this, the employer transferred \$40,000 from its transportation budget to its special services budget.

At a meeting of the employer's board of directors held on June 25, 2001, parents and bus attendants voiced concerns about the change of procedure. In response to the comments, Superintendent Susan Gourley issued a letter addressed to all bus attendants on June 28, 2001, explaining the employer's proposed action. It stated:

Proposed Bus Attendant Reduction

During the development of the 2001-2002 budget, optional and subsidized programs were considered for possible budget reduction. In the process of reducing budget allocations, we also looked to see if the model for delivering services could be modified resulting in a stronger focus on students.

Transportation is a subsidized program and state funding does not include money for bus attendants. Since the position of bus attendant is not a state-funded function, it has prompted [the employer] to consider a model used by most other school districts. This model transfers the decision to assign a bus attendant or not from the Transportation Department to the Special Education staff. Under the current model Transportation Department staff determines bus attendant assignments where the majority of decision are based upon parent requests and input from bus drivers. The proposed model, that most other districts already use, is a decision process that involves a greater number of Special Education staff that are trained and qualified to determine the needs of each and every special education student. This model is within the Individualized Education Program (IEP) process. The new model shifts the decision process from Transportation to the IEP committees, where highly trained Special Education professionals and parents, possibly with a bus driver or other Transportation staff input, will determine the type of assistance and support a child needs on a bus.

The budget was reduced from thirteen to three bus attendants. The contract currently calls for a minimum assignment of four and one-half hours per day for bus attendants. After the budget reductions, the remaining allocation for additional adult support on buses was transferred to the Special Services Department budget. It is expected that this model will provide greater flexibility in meeting the needs of children on the buses by using the IEP decision making process. If collec-

tively the IEP committee determines adult assistance is necessary, the additional services will be provided. If fewer than four and one-half hours per day are required, the remaining allocation might be able to cover more services for students.

With the shifting of the decision making process from Transportation to Special Services, it is not possible to determine what, if any, bus attendants will be needed for next year. Therefore, in accordance with their union contract, we had no choice but to place all of the bus attendants on notice since they may or may not have a job next school year. This notification must be mailed by the second business day after the last day of school. There is likelihood that some of the bus attendants will be recalled to work next year, but how many is unknown at this time. The Special Services budget for the 2001-2002 year has some budget capacity for the purpose of providing supervision on buses for children that are determined to have that need.

It should be noted that in the new model, if a student has a need for close supervision on a bus, that need might best be met with the service of a paraeducator in lieu of a bus attendant. The decision as to which one will be based upon what is best for the child as determined by the student's Individualized Educational Program. This is what prompts the uncertainty as to how many bus attendants will be needed next year. The decision is going to be a child-based decision.

Our bus attendants have provided valued services. The decision to move to a more child-focused model is not a reflection of a lesser value for the work that has been done. That is why we have offered our bus attendants the opportunity to become bus drivers. We have told them that the District will pay for the training and obtaining their commercial driver's license, if they are so interested. Special Services has also indicated they are always in need for paraeducators. Therefore there may be opportunities there as well.

The bottom line is that the decision process is going to be focused upon the child with a greater audience to determine what is best. The safety and well being of our children are paramount. Additionally, the safety and concerns of other students and the drivers of our buses are also major factors in ensuring that the right decisions are made.

The collective bargaining agreement covering the bus attendants was to expire on August 31, 2001. Because no bus attendants were actively employed, a successor agreement was not negotiated.

The Disputed Assignments

In about August, just prior to the start of the 2001-2002 school year, the Special Services Department determined that four special education students who exhibited behavioral disabilities would best be served by assigning the paraeducators who worked with them in their respective classrooms to accompany them while they were being transported to and from their school. The rate of pay for the paraeducators was greater than the rate for attendants, and they were not under the direction of the bus drivers.

Around September 5, 2001, Executive Director of Special Services Ann Jones Almlie determined that an additional staff member should be assigned to accompany the bus driver assigned to transport three special education students to a day treatment program. On the belief that bus attendants were the appropriate classification of employee to provide general security supervision, the employer recalled the senior laid-off bus attendant (Carole Shure) to perform that work. Shure was supervised by the Transportation Department, and she received directions from the bus driver.⁵

Upon the re-evaluation of a special education student in November of 2001, his IEP no longer required paraeducator assistance and instead only required general supervision while riding the bus. Shure was also assigned to provide general security on that bus.

When other special education students were re-evaluated thereafter, it was determined that they did not require further paraeducator assistance while riding the bus. Happenstance of their transportation times permitted assigning Shure to provide all of the bus

⁵ After Shure was recalled, the employer and union exchanged concern that there was no collective bargaining agreement detailing bus attendant terms and conditions of employment.

attendant assistance that was required for those students. Accordingly, the employer did not recall any other bus attendants.

On December 3, 2001, the employer and union formally agreed to consolidate the bus attendant and bus driver bargaining units. They negotiated a single collective bargaining agreement covering both drivers and attendants. Shure's terms and conditions of employment are regulated by that agreement.

Notwithstanding Shure's recall, the union felt that the employer was using paraeducators to perform work traditionally performed by bus attendants. It initiated the instant unfair labor practice proceeding in an effort to recover the work.

POSITION OF THE PARTIES

According to the union, the employer unilaterally transferred work historically performed by bus attendants it represented to paraeducators, thus depriving the bus attendants of work opportunities. The union points out that paraeducators are in a different classification, and are represented in a different bargaining unit by a different labor organization. The union maintains that the work recently assigned to and performed by the paraeducators is substantially the same as that formerly performed by bus attendants in the past. The union asks that the "skimmed" work should be returned to the bus attendants immediately, and that the adversely affected bus attendants should be made whole for all losses resulting from the employer's unlawful personnel action.

The employer denies that it unlawfully "skimmed" bus attendant work. According to the employer, it changed the nature of the work to be performed, and therefore assigned paraeducators who have qualitatively different types of duties than the general safety and

supervision duties historically provided by bus attendants. The employer contends the disputed work is best performed by para-educators, who are specially trained to meet the requirements called for by the IEPs of special education students.

DISCUSSION

Applicable Legal Standards

The bargaining relationship between these parties is regulated by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. A public employer commits an unfair labor practice if it refuses to engage in collective bargaining with the exclusive bargaining representative of its employees. RCW 41.56.140(4). The term "collective bargaining" is defined in RCW 41.56.030(4) as:

[T]he performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions

Where an employer proposes to make any change affecting mandatory subjects of collective bargaining, the statutory bargaining obligation includes giving notice to the union and providing an opportunity for bargaining before making the decision, and then bargaining in good faith if requested to do so.

The Commission has long held that transfers of bargaining unit work to employees outside of the bargaining unit is a mandatory subject of bargaining. See *South Kitsap School District*, Decision 472 (PECB, 1978); *City of Kennewick*, Decision 482-B (PECB, 1980); *King County Fire Protection District 36*, Decision 5352 (PECB, 1995). It

makes no difference whether the work is transferred to employees of another employer (termed "contracting out") or transferred to other employees of the same employer outside of the bargaining unit (termed "skimming"). See also *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964).

Bargaining unit work is the body of work historically performed by bargaining unit employees. Once an employer assigns bargaining unit employees to perform a category of work, that work attaches to the unit and becomes bargaining unit work. *City of Spokane*, Decision 6232 (PECB, 1998). At a minimum, transfers of bargaining unit work affect the work hours and/or work opportunities of bargaining unit employees. See *Federal Way School District*, Decision 232-A (EDUC, 1997); *Newport School District*, Decision 2153 (PECB, 1985); and *Seattle School District*, Decision 5733-B (PECB, 1998). Where an employer transfers bargaining unit work to non-unit employees without fulfilling its bargaining obligation, an unfair labor practice violation will be found.

Attempts by some employers to describe their personnel actions as "staffing" decisions have not circumvented the "skimming" precedents in the past:

An employer does not have to negotiate a decision to reduce or curtail part of its operation. *Wenatchee School District*, Decision 3240 (PECB, 1989). An employer does, however, have a duty to bargain with the exclusive bargaining representative of its employees concerning a decision to transfer work to employees outside the bargaining unit (skimming of unit work), as in *South Kitsap School District*, Decision 472 (PECB, 1978) and *City of Mercer Island*, Decision 1026-A (PECB, 1981), or to contract for work to be performed by employees of different employers (contracting out), as in *City of Vancouver*, Decision 808 (PECB, 1980).

City of Tacoma, Decision 5634 (PECB, 1996). The Commission has used a two-part preliminary analysis to determine whether an

employer has skimmed bargaining unit work, first inquiring: "Is the work bargaining unit work?" and then following up with: "If so, is the employer obligated to bargain before transferring the work outside of the bargaining unit?" *Spokane Fire Protection District 9*, Decision 3482-A (PECB, 1901) (citing *Clover Park School District*, Decision 2560-B (PECB, 1989)).

The Burden of Proof -

As the complainant party challenging the employer's personnel actions, the union bears the burden of proof in this case. WAC 391-45-270. If the union fails to establish that the disputed work was historically performed by bargaining unit employees, it cannot sustain its burden of proof.

Application of Standards

In this case, the outcome will depend on the answer to the question: "Are the paraeducators assigned to accompany students during school bus transportation performing work that was historically performed by the bus attendants?" Looked at from a different perspective, the same or a closely related question is: "Is the work of the paraeducators assigned to accompany students during school bus transportation fundamentally different from the bus attendant position in terms of the nature of the duties, skills, or working conditions?"

Duties of the Bus Attendants -

The job description for the bus attendant classification states, in relevant part:

The job of "Bus Attendant" is done for the purpose/s of *assisting special education students* while they are being transported to and from school; *assisting the bus driver*, as necessary, during transport; and providing assistance with student *loading and unloading* from buses.

Essential Job Functions:

- Assists bus driver for the purpose of ensuring the safe *loading, unloading,* and transporting of special education students (e.g. use of lifts, tie downs, restraints, backing and potential road hazards, etc.).
- Assists special education student for the purpose of *providing health care and other special needs* during transport, safe loading and unloading from buses including both emergency situations and normal transport.
- Cleans expelled body fluids for the purpose of meeting health and sanitary regulations.
- *Manages* all medical, physical and behavioral *situations for the purpose of ensuring the safety and well-being* of student or other persons riding the bus.
- Supervises special education students for the purpose of *enforcing rules and regulations* to ensure the minimization of distractions and the maintenance of safety.

Other Job Functions:

- Assists other personnel as may be required for the purpose of supporting them in the completion of their work activities.

Job Requirements - Qualifications:

- Experience Required: None
- Skill, Knowledge and/or Abilities Required:
Skills to provide for special health care needs of student; communicate effectively with students, parent, care giver; use English in verbal and written form.

Knowledge of vehicle operation; equipment on the bus; and special health care requirements.

Abilities to understand and address students with special needs, understand and carry out oral and written instructions, lift or aid handicapped students on or off the bus. Significant physical abilities include climbing/balancing, pushing/pulling, stooping/crouching, reaching/handling, talking/hearing conversations, near/far visual acuity/depth perceptions/accommodations/field of vision

Education Required: High School diploma or equivalent.

Licenses, Certifications, Bonding, and/or Testing Required: Criminal Justice Fingerprint Clearance.

Other: First Aid card and CPR card required. Must be able to pass physical examination at hire and every two years thereafter.

(emphasis added). The bus attendants were part of the employer's transportation operation, which has its focus on getting students picked up and delivered in a safe, timely and efficient manner. Typical of employees in that operation, the bus attendants were assigned to bus routes and their responsibilities coincided with the transportation function.

Duties of the Paraeducators -

The formal title is "Special Education Assistant - Self-contained." The job description for the class states, in relevant part:

JOB SUMMARY

The person in this position *works with the special education teacher* to provide assistance with instruction in a self contained classroom of all special education students. *Responsibilities include instructional and clerical assignments as assigned by the teacher.*

DUTIES AND RESPONSIBILITIES

This list of essential functions is not exhaustive and may be supplemented as necessary.

1. *Lead small groups of students in instructions; read to student and listen to students reading; ask questions to stimulate comprehension.*
2. *Work one on one with students who need help with their studies to include spelling, language arts, reading, math, science, and social studies. This includes assisting them with reading and completing assignments.*
3. *Correct and grade papers including writing comments, score tests, and maintain grading records.*
4. *Under the direction of the supervising teacher, assist with preparation of classroom materials, such as photocopying, typing, filing, data entry, and laminating.*
5. *Supervise students when teacher is called out of the classroom, maintaining a productive learning environment and keeping students on task and quiet.*
6. *Other related duties as assigned.*

REPORTING RELATIONSHIPS

Reports to Supervising Teacher

MINIMUM QUALIFICATIONS

Education and Experience

High School graduate or equivalent. Experience working with school-aged students or special needs individuals

preferred. *College or vocational training in child development, special education, social or psychological science or related field preferred.*

Knowledge, Skills and Abilities

Good verbal and written communication skills

Knowledge of assigned subject areas

Ability to accurately perform junior high level mathematics

Ability to follow a specified work schedule

Ability to recognize and respond to individual student' needs

Ability to respect confidentiality of student information

Knowledge of first aid and ability to administer first aid when needed. Possess, or have the willingness to obtain, a current first aid certification

Ability to used [sic] general office machines, such as a typewriter

Ability to learn the operation of a microcomputer and educational software

Ability to establish and maintain effective working relationship with staff.

Licenses/Special Requirement

None

(emphasis added). Paraeducators are actively involved in creating the IEPs for the particular students to whom they are assigned, and have an integral role in implementing those IEPs.⁶ Thus, the paraeducator assigned to ride with a student on a bus is also assigned to that student's self-contained classroom, is familiar with the educational and behavioral needs of that student, and has an ongoing role in the education of that student.⁷ Consistent with the orientation of the paraeducator's assignment to the student (rather than to the bus route), if a special education student is absent, the paraeducator assigned to that student does not report to or ride the bus.

⁶ Bus attendants have never been involved with the IEP process for any student(s).

⁷ A self-contained classroom has a reduced student to staff ratio, determined by the needs of the students assigned to it. The students are tutored by the same teacher and paraeducator(s) throughout the day.

The "historical work" inquiry turns on whether paraeducators are now performing work that was historically performed by bus attendants within the bargaining unit. Although the union contends that the employer resurrected work previously performed by the bus attendants when it began assigning paraeducators to accompany certain students on the bus, that argument is not persuasive. The Examiner credits the employer's evidence that the few paraeducators now assigned to accompany particular students on the bus perform fundamentally different duties (even when aboard a bus with a student) than were performed by the bus attendants. Conversely, the bus attendants took their directions from the bus drivers (and not from the classroom teachers) as to the particular needs of the students riding on the bus,⁸ and were never responsible for carrying out the IEP process or to work as an extension of the classroom teacher.⁹

The "fundamental differences" inquiry turns on examination of the actual duties, skills, and working conditions of the classifications being compared. In this case, the analysis yields a conclusion that paraeducator positions are fundamentally different from bus attendant positions. Accordingly, the Examiner holds that the paraeducators are fundamentally different from the bus attendants in terms of duties, skills and working conditions.

First, the paraeducators and bus attendants have different minimum qualifications: Applicants with college or vocational

⁸ At times, bus attendants would engage in informal discussions with parents regarding the student's performance or medical issues observed while riding the bus. Despite engaging in these informal discussions, bus attendants were never invited to participate in the IEP process, never documented student behavior per the employer's request, nor implemented strategies and techniques as part of a student's IEP.

⁹ In fact, the bus attendants were not even directed to provide updates on student behavior to the classroom teachers.

training in child development, special education, social sciences or psychological sciences are preferred by the employer. Applicants are also required to have past experience working with school-aged children or special needs individuals. Paraeducators must receive training to meet state recommended core competencies; once a paraeducator is hired, he or she receives specialized training in delivering specific instructional techniques to special education students in furtherance of satisfying the necessary competencies. In contrast, although the bus attendants are required to have a high school diploma or the equivalent, they have no requirements regarding past work experience.

Second, having paraeducators accompany particular students during transport provides a continuity of the education program, enforcing an expectancy that the students will maintain the same standard of behavior on the bus as is expected of them in the classroom, and paraeducators are specially trained in maintaining such consistent standards by the students. In contrast, the bus attendants merely need to have a knowledge of vehicle operations and equipment, so that they can "understand and address students with special needs, understand and carry out oral and written instructions, and lift or aid handicapped students on or off the bus." Consistent with their only being required to have generalized training in safety and precautionary transportation techniques (such as CPR and first aid), the bus attendants were not placed on a bus to attend to the educational needs of specific students.

The recall of Shure was appropriate when the employer discovered a need for a bus attendant during the 2001-2002 school year. Shure had the greatest seniority among the bus attendants, and she was thus recalled in apparent conformity with the parties' collective bargaining agreement. It would have been an unfair labor practice for the employer to ignore those recall rights, or to use the layoff of the bus attendants as the springboard to assign historical bus attendant work to additional paraeducators. Consistent

with practices prior to the layoff, the employer assigned Shure to certain bus routes upon her return to work from the layoff and her role is to ensure the safety of all students riding the bus and to provide assistance to the bus drivers. Even after her return to work following her recall from layoff, Shure was not called upon to perform the same duties as the paraeducators assigned to accompany particular special education students.

Conclusions

The union has not met its burden to prove that the paraeducators assigned to accompany particular students are performing work that was historically performed by the bus attendant position. On the basis of the evidence presented at the hearing, the Examiner holds that the employer did not engage in unlawful "skimming" or unlawfully fail or refuse to submit the disputed personnel action to collective bargaining.

FINDINGS OF FACT

1. The Puyallup School District is a "public employer" within the meaning of RCW 41.56.030(1).
2. International Union of Operating Engineers, Local 286, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of bus attendants employed by the Puyallup School District.
3. The historical duties of the bus attendants in the employer's Transportation Department involve assisting the bus driver by ensuring the safe loading, unloading, and transporting of special education students and supervising all students on the bus in order to minimize distractions and maintain safety on

the bus. The bus attendants received only generalized training in safety and precautionary transportation techniques, such as CPR and first aid.

4. The historical duties of the paraeducator classification involve assisting teachers in implementing the goals and objectives set forth in an individual educational program (IEP) for each special education student. The preferred qualifications for paraeducators substantially exceed those for bus attendants, and include formal training. Once a paraeducator is hired by the employer, he or she receives specialized training in delivery of specific instructional techniques to students in furtherance of their IEPs. The paraeducators are represented in a bargaining unit separate and apart from the bargaining unit represented by the complainant in this proceeding.
5. Early in 2001, the employer determined to reduce its expenses by \$4.8 million in order to balance its budget. As part of that process, the Transportation Department was directed to cut its overall expenditures by \$383,000.
6. On or about May 18, 2001, the employer notified the union that at least one half of the bus attendants would be laid off in order to meet its budgetary constraints.
7. In early June of 2001, in apparent conformity with the parties' collective bargaining agreement, the employer gave notice of a layoff of all the bus attendants.
8. In June 18, 2001, the employer and union held a meeting to discuss the layoffs. Thereafter, the employer issued a letter to all of the bus attendants, encouraging them to consider applying for bus driver and paraeducator positions.

9. Beginning with the 2001-2002 school year, the employer's Special Services Department assigned paraeducators to accompany certain special education students while they were on a school bus. The assignments were made under the IEPs for the particular students, and the paraeducators assigned were the same individuals who worked with those students in their classrooms. The assignments were made with a purpose of continuing the classroom experience of the particular students while traveling on the bus, and the paraeducators so assigned were not expected to help the bus drivers with the other students.
10. In November of 2001, upon a determination that one of the special education students who had been accompanied by a paraeducator since September of 2001 no longer needed that level of service, the employer recalled a bus attendant from layoff and assigned her to assist on that bus.
11. Thereafter, as the needs of certain other special education students were reevaluated, the employer assigned the recalled bus attendant to assist on the respective bus routes. Because of timing and absence of overlapping schedules, the one bus attendant was able to cover all of the bus runs involved. The bus attendant, Carol Shure, was supervised by the transportation department and followed directions from the bus driver.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. The union has failed to establish, by a preponderance of the evidence, that the paraeducators assigned to accompany

particular students in conformity with IEPs during and after September 2001 performed work that calls for the same duties, skills, and working conditions as those historically performed by employees in the bus attendant position classification, so that no duty to bargain existed under RCW 41.56.030(4) with respect to a transfer of bargaining unit work.

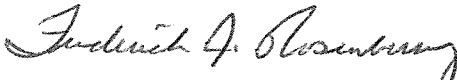
3. By assigning paraeducators to the new task of accompanying certain special education students in conformity with and furtherance of their IEPs, as described in paragraph 9 of the foregoing findings of fact, the employer has not unilaterally skimmed bargaining unit work and has not failed or refused to bargain with the union as the exclusive bargaining representative of bus attendants, so that the employer has not committed an unfair labor practice under RCW 41.56.140(4) or (1).

ORDER

The complaint charging unfair labor practices filed in the above captioned matter is DISMISSED on its merits.

Issued at Olympia, Washington, on this 27th day of May, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



FREDERICK J. ROSENBERRY, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.