

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition Of:)	
CLOVER PARK ASSOCIATION OF)	
MID-MANAGEMENT)	CASE NUMBER 886-E-77-172
Involving Certain Personnel Of:)	DECISION NO. 376-EDUC
CLOVER PARK SCHOOL DISTRICT NO. 400)	<u>DIRECTION OF ELECTION</u>

APPEARANCES:

JEROME F. MC CARTHY, Attorney at Law, for the Petitioner.

ROBERT L. CHISHOLM, Superintendent, stated the position of the Employer by letter.

SYMONE B. SCALES, Attorney at Law, appeared for Intervenor Clover Park Education Association.

The Clover Park Association of Mid-Management filed a petition with the Commission on April 28, 1977 seeking the creation of a bargaining unit of certificated "supervisors" employed by Clover Park School District No. 400. The Clover Park Education Association, WEA, NEA, had been recognized as majority representative under the provisions of repealed RCW 28A.72 in a unit which included positions affected by the petition, and that organization intervened in these proceedings. A pre-hearing conference was held on June 14, 1977 and a formal hearing was held on June 23 and 24, 1977 before Rex L. Lacy, Hearing Officer. The Employer did not take an active part in the hearing but filed a letter setting forth its position on the matters in dispute. The petitioner and the intervenor filed post-hearing briefs.

POSITIONS IN DISPUTE

The petitioner and the intervenor stipulated at the hearing that the Assistant to Pupil Services Administrator (Ted Olsen) was a supervisor as defined in RCW 41.59.020(4)(d). The intervenor conceded in its brief that three other individuals: Assistant Administrator for Personnel (Kenneth Husfloen), Director of Elementary and Compensatory Education (Harry Sannerud), and Health Services Coordinator (Shirley Baker) are supervisors within the meaning of the Act. The positions remaining for determination are:

Director of Athletics and Recreation (Gerald Austin)
Supervisor of Art (James Blanchard)
Supervisor of Testing and Program Evaluation (Harold Cross)
Coordinator of State Child Find Program (Richard Hopkins)
Court Liaison Officer (Harry Lang)
Director of Library Services (Marian Leyrer)
Coordinator of Title I (Judy Margrath)
Director of Secondary Education and Community Schools (Roy McLeod)
Elementary Specialist (Barbara Roach)
Director of Music (Fred Schlicting)
Audio-Visual Coordinator (Edward Trimble)
Supervisor of Publication/Educational Television (John Watson)

In addition, the record discloses the existence of approximately three positions on which a dispute may exist but for which no record has been made in these proceedings. Those potential supervisors are employed in the vocational-technical institute operated by the Clover Park School District, which is the subject of separate severance proceedings before the Commission.

POSITIONS OF THE PARTIES

The Petitioner contends that it is an "employee organization" within the meaning of RCW 41.59; that the individuals affected by the petition are "supervisors" as defined in RCW 41.59; and that the affected individuals desire to be represented in a separate unit of supervisors by a bargaining representative of their own choosing.

The Employer contends that there is a history of separate treatment of certain directors, supervisors and coordinators who spend a major portion of their time in roles related to the administration of district programs. The District favors exclusion of the persons affected by the petition from the non-supervisory certificated employee unit.

The Intervenor contends that the Petitioner is employer-dominated and is not a valid "employee organization" as defined by RCW 41.59; that the affected individuals are not supervisors meeting the requirements of RCW 41.59.020(4)(d); and that severance of the affected employees from the non-supervisory certificated employee unit would constitute unnecessary fragmentation.

STATUTORY AUTHORITY

These proceedings are conducted under WAC 391-30-100, et. seq. The unit determination issue is controlled by RCW 41.59.080, which states in part:

"41.59.080 Determination of Bargaining unit - Standards. The Commission upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070(3), and after hearing upon reasonable notice, shall determine 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 educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including non-supervisory educational employees shall not be considered appropriate unless it includes all such non-supervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

"* * *

(5) A unit that includes supervisors. . . and non-supervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit. . ."

The term "supervisor" is defined in the following terms:

"41.59.020 Definitions. As used in this chapter:

"* * *

(4) The terms "employee" and "educational employee" means any certificated employee of a school district except:

"* * *

(d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

* * *"

DISCUSSION

The Employer and the Intervenor were parties to a 1975-77 collective bargaining agreement which was in effect on the effective date of RCW 41.59. All of those in dispute here presently hold certificates from the Superintendent

of Public Instruction, and their positions have been regarded as "certificated", although it is unclear as to whether some of these positions could be held by non-certificated personnel. Pursuant to RCW 41.59.910, the 1975-77 collective bargaining agreement controlled the wages, hours and conditions of employment of the District's mid-management personnel, and they continued to be included in the District-wide certificated employee bargaining unit created under the prior law, until that agreement expired on June 30, 1977. The salaries of mid-management personnel were established according to a salary schedule which was separate and apart from the salary schedule applicable to classroom teachers and other rank and file certificated employees.

The "domination" unfair labor practice allegations advanced by the Intervenor in these proceedings are the subject of separate proceedings, docketed as Case No. 1109-U-77-144, on which a separate decision is issued today.

The disputed positions are dealt with individually in the discussion which follows, but a general response is made here to the Intervenor's assertion that more than the "authority to recommend effectively" is required in order to qualify for classification as a supervisor. The Employer is a governmental entity established and regulated by statute. Ultimate authority with respect to many matters is statutorily reserved to the elected Board of School Directors. This necessarily limits the independent authority of the Superintendent and other employed officials of the District. For example: The Employer's hiring procedures call for formal action by the Board upon recommendation of the Superintendent. Advertising for applicants, screening of applications and scheduling of interviews is done by the District's Personnel Office. Occupants of positions in dispute are consulted for input and/or recommendations after the screening process is completed. Any such recommendation is subject to rejection at a higher level within the management, but the testimony indicates that such recommendations are generally effective. Discipline, discharge, suspension and evaluation of certificated employees are the subjects of specific statutes which affect the distribution of authority within the management structure. The authority to recommend action takes on greater significance in the public sector than is common in the private sector. Both Section 2(11) of the NLRA and RCW 41.59.-020(4)(d) clearly reference the authority to recommend action as an alternative to the direct exercise of the traditional indicia of supervision. The difference is merely one of emphasis, and the Intervenor's arguments are rejected both on the language of the statute and on the practicalities of the public sector setting.

DIRECTOR OF ATHLETICS AND RECREATION

As the incumbent of this position, Gerald Austin does no teaching and has no regular contact with students. This position appears on the employer's

organization chart as having a direct reporting relationship to the Administrator for Instruction, with branch-line reporting relationships to the elementary and secondary program directors.

Austin heads the District's interscholastic athletics program, and has authority with respect to certificated staff members working as coaches. This authority is exercised in conjunction with the building principals, who act as the first level of supervision. The building principals submit their budget requests to Austin, who prepares the District-wide athletics budget. The Intervenor's characterization of this position as a "general program coordinator" is not satisfactory, and the position is clearly distinguishable from the athletic director in Kelso School District, Decision No. 303 (EDUC, 1977).

In addition to his duties concerning interscholastic athletics, Austin heads an athletics and recreation program operated by the District during after-school and summer hours. A large number of part-time employees are employed in that program. Although certification is not required, the record indicates that a number of the District's certificated employees are hired for positions in this program. Austin makes the recommendations to the Personnel Office on who is to be hired and retained. He also assigns duties, establishes rates of pay and oversees the performance of assignments by employees working in this program.

SUPERVISOR OF ART

James Blanchard teaches two hours daily and is provided preparation time in connection with his teaching responsibilities. As the coordinator of the District's art program, he is extended the same privileges as other coordinators with respect to recommendations on hiring, transfer, assignment and discipline of the art teachers. However, those teachers are all under the supervision of building principals and Blanchard, himself, is under the supervision of his building principal with respect to his teaching duties. He is involved in the budgetary process and makes recommendations on the allocation of funds among buildings, but it is found that Blanchard's coordinator functions are exercised primarily in a ministerial capacity and in support of the educational program.

SUPERVISOR OF TESTING AND PROGRAM EVALUATION

Harold Cross directly oversees the work of one data technician. Cross is responsible for the implementation of the District's Instructional Materials Policy; he evaluates building instructional programs and testing procedures. He provides budgetary information, and he compiles statistics for administrators. His work is primarily involved with evaluating the effectiveness

of the District's educational program. He is not in frequent contact with the certificated staff, but his work product would indicate the need for direct supervisory contacts with the certificated staff. His activities must be distinguished from the type of "support" provided by coordinators such as the Supervisor of Art, supra, and are found to be primarily in support of the administrative function of the school district.

COORDINATOR OF STATE CHILD-FIND PROGRAM

The employer has undertaken two programs known as "Child Find" and "SEMAT" which are housed in the Clover Park School District but provide services State-wide. The "Child Find" program is designed to assist school districts in identifying students for enrollment under special education qualifications. The SEMAT program deals with special education materials and training. Frequent law and rule changes in these areas require fairly constant coordination, and maintenance of current knowledge of special education requirements is one of the principal responsibilities of the Coordinator, Richard Hopkins. He interprets special education requirements for certificated teachers in the employer's school system as well as for other school districts. Two non-certificated employees work in these programs, one being responsible for maintenance of financial records on the programs and the other acting as an assistant to Hopkins. The source of funding or the state-wide scope of these programs is not particularly relevant in unit determination or in the supervisory determination required here. Hopkins has exercised some recommendation authority, but it is clear that the preponderance of his work is directed in support of the educational process.

COURT LIAISON OFFICER

Harry Lang does not have teaching responsibilities, but his responsibilities are student-oriented. Lang processes student grievances and handles "due process hearings" involving students. He also coordinates activities under the employer's student rights and responsibilities regulations. Lang processes transfers of students from one school to another based upon parental, student, school building or district request or based on ethnic considerations. Lang maintains student records on suspensions, expulsions and drop-outs. He does not exercise substantial authority with respect to other employees, and his activities are found to be primarily in support of the educational program.

DIRECTOR OF LIBRARY SERVICES

Marian Leyrer has overall responsibilities for the District's library program. Five non-certificated employees work under her direct supervision; she directs their daily activities; and she is responsible for their job performance. The professional librarians employed by the District in its

twenty-six school building libraries report their individual requests for materials, publications and audio-visual software to Leyrer, who takes the separate budgets and develops the District library budget.

Librarians who work with students and books in support of the educational process are commonly included in bargaining units with non-supervisory professional employees. However, the evidence here establishes that neither Leyer nor her immediate subordinates are working in libraries. Instead, they devote their energies to the library administration function. Leyer has also been involved in the interviewing of faculty librarians for the District's schools, has made recommendations on the hiring of librarians, makes assignments and transfers, and may be consulted by building principals for recommendations on the discipline or discharge of certificated librarians.

COORDINATOR OF TITLE I

"Title I" is a federal funding program for schools having sufficient enrollments of students from low-income families. The basis for federal funding is a head count of qualified students. The availability of federal funding is accompanied by federally imposed reporting and accounting requirements.

Judy Margrath holds the title of Coordinator of Title I. Her responsibilities require a working knowledge of federal requirements concerning Title I funding. Her work involves the accounting and recordkeeping concerning expenditures under Title I. Teachers in the Title I program are designated as such, but are not selected because of program requirements for special expertise. Margrath's contacts with Title I teachers primarily involve the funding of the program. She performs a routine ministerial function and is not a supervisor.

DIRECTOR OF SECONDARY EDUCATION AND COMMUNITY SCHOOLS

Roy McLeod does no classroom teaching. His position appears on the District's organization charts directly below the Administrator for Instruction, who is one of four administrators reporting directly to the Superintendent. McLeod has responsibility for the alternative schools program and the summer school program, as well as a consultive relationship to the vocational-technical institute. His position ranks equivalent in the organization to the "Director of Elementary and Compensatory Education" position conceded by the Intervenor in its brief. No reference to McLeod's position is found in the Intervenor's brief.

Principals are excluded, as a class, from the definition of "employee" under the Act. McLeod functions as the intermediary between the building principals at the secondary level and the Administrator for Instruction.

His supervisory responsibilities are exercised in an indirect manner through those principals, but he is clearly within the management structure and working in support of the administration of the educational program.

ELEMENTARY SPECIALIST

Barbara Roach has neither classified nor non-classified subordinates. She acts as a resource person to teachers and principals in the District's elementary schools, providing assistance with curriculum problems, pupil evaluation, new teacher orientation, and implementation of new materials. Roach shares secretarial services with other "mid-management" personnel performing in support and resource roles. Her function is in support of the educational program and is not a position of authority over other employees.

DIRECTOR OF MUSIC

Fred Schlicting heads the District's music program. He does no teaching, but is involved in all interviews of prospective music teachers. He is recognized within the District for his expertise in the field of music, and recommendations made by Schlicting on hiring have been followed. The District's "itinerant" music teachers are assigned to one of the District's building principals for purposes of formal evaluation. However, those building principals (as well as those not charged with evaluation of a music teacher) confer with Schlicting regarding budget, program, equipment and teacher evaluation. Schlicting schedules, assigns and oversees the work of all of the itinerant music teachers. Schlicting's position is comparable to that of the Music Director in Kelso School District, Decision No. 303-EDUC, who was determined to be a supervisor.

AUDIO-VISUAL COORDINATOR

As the incumbent of this position, Edward Trimble acts as a resource person for the District's certificated staff. He is responsible for the inventory of audio-visual hardware, its maintenance and recordkeeping. He provides instruction on the usage of audio-visual materials. He has no authority over certificated staff members and exercises authority with respect to other employees only when they are under his direction for the performance of a particular audio-visual program.

SUPERVISOR OF PUBLICATION/EDUCATIONAL TELEVISION

The District operates a television broadcasting station under license from the Federal Communications Commission. John Watson is responsible for television station programming, television contracts, FCC compliance and

the budget of the television operation. He has recommended employment of both classified and certificated employees employed in the television operation, and has made effective recommendations on discharge. The work force in the television operation fluctuates, due to programming requirements, from approximately 20 employees to as many as 40 employees. Watson's duties and responsibilities are comparable to those of a manager of a private industry television station, and are clearly supervisory.

FINDINGS OF FACT

1. Clover Park School District No. 400 is an employer within the meaning of RCW 41.59.
2. Clover Park Association of Mid-Management filed a timely petition with the Public Employment Relations Commission seeking creation of a bargaining unit of supervisors and certification as the exclusive representative of employees in such a unit.
3. Clover Park Education Association is an employee organization recognized as the exclusive bargaining representative of non-supervisory educational employees of Clover Park School District No. 400; and has been granted intervention in proceedings on the basis that some or all of the positions claimed as supervisory in these proceedings were formerly included in the bargaining unit represented by the Clover Park Education Association.
4. The parties are in agreement that the Assistant to Pupil Services Administrator, the Assistant Administrator for Personnel, the Director of Elementary and Compensatory Education and the Health Services Coordinator are supervisors within the meaning of RCW 41.59.020(4)(d).
5. The hiring procedures of Clover Park School District No. 400 provide for a series of recommendations up through the line of authority to the Superintendent of Schools, who makes the ultimate recommendation to the Board of School Directors. The Director of Athletics and Recreation, the Supervisor of Testing and Program Evaluation, the Director of Library Services, the Director of Secondary Education and Community Schools, the Director of Music, and the Supervisor of Publication/Educational Television can and have made effective recommendations affecting the employment of employees.
6. Assignment, transfer, layoff and recall of non-supervisory educational employees are subjects of contractual agreement between the Clover Park School District No. 400 and the Clover Park Education Association, and are beyond the direct authority of any of the individuals in question; but the

Director of Athletics and Recreation, the Supervisor of Testing and Program Evaluation, the Director of Library Services, the Director of Secondary Education and Community Schools, the Director of Music and the Supervisor of Publication/Educational Television are authorized to make effective recommendations on these matters within the confines of those contractual provisions.

7. Evaluation, discipline, suspension and discharge of employees of Clover Park School District No. 400 are matters controlled by statutes and/or collective bargaining agreements, and are beyond the direct authority of any of the individuals in question; but the Director of Athletics and Recreation, the Supervisor of Testing and Program Evaluation, the Director of Library Services, the Director of Secondary Education and Community Schools, the Director of Music and the Supervisor of Publication/Educational Television are authorized to make recommendations on adverse actions against employees, within the confines of those contractual agreements and/or statutes.

8. The Supervisor of Art, the Coordinator of State Child Find Program, the Court Liaison Officer, the Coordinator of Title I, the Elementary Specialist, and the Audio-Visual Coordinator are recognized for special expertise or knowledge in their respective areas; and they primarily perform support and ministerial functions in support of the educational program of Clover Park School District No. 400.

9. The record is insufficient for a determination as to whether three positions in the Clover Park Vocational-Technical Institute are supervisory within the meaning of the Act.

CONCLUSIONS OF LAW

1. The following classifications are supervisors within the meaning of RCW 41.59.020(4)(d):

- a. Director of Athletics and Recreation (Gerald Austin);
- b. Supervisor of Testing and Program Evaluation (Harold Cross);
- c. Director of Library Services (Marian Leyrer);
- d. Director of Secondary Education and Community Schools (Roy McLeod);
- e. Director of Music (Fred Schlicting);
- f. Supervisor of Publication/Educational Television (John Watson);
- g. Assistant to Pupil Services Administrator (Ted Olson);
- h. Assistant Administrator for Personnel (Kenneth Husfloen);
- i. Director of Elementary and Compensatory Education (Harry Sannerud);
- j. Health Services Coordinator (Shirley Baker).

2. The following classifications are non-supervisory educational employees within the meaning of RCW 41.59.020(8):

- a. Supervisor of Art (James Blanchard);
- b. Coordinator of State Child Find Program (Richard Hopkins);
- c. Court Liason Officer (Harry Lang);
- d. Coordinator of Title I (Judy Margrath);
- e. Elementary Specialist (Barbara Roach); and
- f. Audio-visual Coordinator (Edward Trimble).

3. A question has arisen concerning the creation of a bargaining unit consisting of supervisors employed by Clover Park School District No. 400. The supervisors identified in Conclusion of Law paragraph 1 will be eligible to vote on that question. In the absence of a sufficient record to make a determination on their status, the individuals referenced in Findings of Fact paragraph 9 must be permitted to vote on that question by challenged ballot, subject to a later determination of their status.

4. In the event that a majority of the supervisors employed by Clover Park School District No. 400 indicate by vote that they desire to create a bargaining unit under the provisions of RCW 41.59.080, a question concerning representation will exist among such employees.

NOW THEREFORE, it is

DIRECTED

1. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all supervisors employed by Clover Park School District No. 400, excluding the Superintendent of Schools, administrative officers of the District, confidential employees, non-supervisory educational employees and non-certificated employees, to determine whether a majority of the supervisors eligible to vote in such election desire to be included in a bargaining unit of supervisors and to become employees within the meaning of the Educational Employment Relations Act. Persons employed by the District in its Vocational-Technical Institute who are alleged to be supervisors shall be eligible to vote by challenged ballot in such election.

2. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission in the voting group described in paragraph 1 of this direction of election to determine whether a majority of the employees voting desire to be represented by Clover Park Association of Mid-Management, or by the Clover Park Education Association, or by no

representative. The conduct of this representation election is conditioned upon the outcome of the unit determination election directed in paragraph 1 of this order and, in the event that a majority of those eligible fail to vote in favor of the creation of a unit of supervisors, the ballots cast in this representation election shall be impounded.

DATED at Olympia, Washington this 22nd day of February, 1978

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", written over a horizontal line.

MARVIN L. SCHURKE, Executive Director