

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
WELLPINIT INDEPENDENT TEACHERS)	CASE NO. 3665-E-81-700
Involving certain employees of:)	DECISION NO. 1427 - EDUC
WELLPINIT SCHOOL DISTRICT NO. 49)	ORDER DETERMINING CHALLENGED BALLOT

Winston and Cashatt, by Patricia C. Williams, Attorney at Law, appeared on behalf of the Employer.

Kay Higgins, Spokesperson, appeared on behalf of the Wellpinit Independent Teachers.

Faith Hanna, Staff Attorney, Washington Education Association, appeared on behalf of the intervenor, Wellpinit Education Association, WEA.

Wellpinit Independent Teachers filed a petition with the Public Employment Relations Commission on September 11, 1981, seeking certification as the exclusive bargaining representative of "all certificated employees employed by the Wellpinit School Board when on contract, on leave, or to be employed by the Board excluding the superintendent, principals, and vice-principals of the district". Wellpinit Education Association intervened as the incumbent exclusive bargaining representative of the petitioned-for bargaining unit. On October 23, 1981, a consent election agreement was entered into by the parties setting November 9, 1981 as the representation election date. The incumbent, Wellpinit Education Association, disagreed with the inclusion of Ron Brown as an eligible voter, maintaining that he was a vice-principal and therefore not eligible to be included in the bargaining unit. A supplemental agreement was executed indicating:

"Wellpinit Education Association holds that Mr. Ron Brown is a vice-principal and should be excluded from the list of eligible voters."

At the representation election held on November 9, 1981, Brown's ballot was challenged by the Election Officer. The tally of ballots indicates 9 ballots cast in favor of the petitioner, 10 ballots cast in favor of the intervenor and no ballots cast for no representation. Since the challenged ballot could affect the results of the election, a hearing on the challenged ballot was held on November 24, 1981. Post-hearing briefs were filed on February 1, 1982.

POSITIONS OF THE PARTIES:

The petitioner contends that Ron Brown was given the title of vice-principal in the District on two occasions (1976-77 and 1981-82), but that he had no authority to handle discipline problems other than his own, and did not participate in the hiring, firing or evaluation of any district personnel. Further, it contends that he fulfills the same full-time teaching duties as other certificated teachers in the District and receives no special treatment, so that his ballot should be counted.

The employer holds that Ron Brown has a full-time teaching schedule, teaching core curriculum in a self-contained classroom; that he has one preparation period per day, as do other classroom teachers; that his hours are the same as other classroom teachers; and that he has no privileges of an administrator. His ballot should be counted.

The intervenor maintains that Ron Brown should be excluded from the bargaining unit because of his "vice-principal" or "assistant principal" designation and assignments, because of his status as a confidential employee (RCW 41.59.020(4)(c)), and because of his status as a supervisory employee (RCW 41.59.020(4)(d)), so that his ballot should not be counted.

DISCUSSION:

During the 1980-81 school year, Brown was designated as an elementary "vice-principal". Although he apparently retained the title, the record reveals that during the 1981-82 school year, he has not performed any of the functions of an assistant principal. The record reveals that he has a full-time teaching schedule and has one preparation period per day, as do other classroom teachers.

Brown was listed on an organization chart as assistant principal, but the record indicates that the district's Board did not adopt that chart. Instead, it questioned the organization chart and asked its new superintendent, with the District since July, 1981, to review it. The superintendent, discovered during a review of personnel files that Brown did not have an administrator's certificate. Without such a certificate it is unlawful, pursuant to RCW 28A.70.130 and WAC 180-80-303, for an individual to act as assistant principal. Brown's job title was then changed. He did not perform any of the duties of assistant principal or vice-principal during the 1981-82 school year. Brown now has no "special privileges" of an administrator such as a full set of keys. He, as other classroom teachers, is not assigned to playground duty during lunch hour, but occasionally supervises students during lunch hour.

RCW 41.59.020(4)(c) describes a confidential employee as:

- "(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and,
- (ii) Any person who assists and acts in a confidential capacity to such person."

RCW 41.59.020(4)(d) defines a supervisor as:

"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."

The superintendent of the district testified that Brown has not participated in the formation of labor relations policy, nor has he had any access to labor relations information. There was no evidence that Brown has engaged in discussions of bargaining proposals with management representatives or played any role in the effectuation of labor relations policy. Testimony also demonstrated that Brown does not perform any of the supervisory acts described in RCW 41.59.020(4)(d). He does not provide input into evaluations of staff nor make any recommendations regarding assignment, hiring, promotion, transfer or dismissal of any certificated personnel.

FINDINGS OF FACT

1. Wellpinit School District No. 49 is a school district of the State of Washington, organized pursuant to Title 28A RCW, and an employer within the meaning of RCW 41.59.
2. Wellpinit Independent Teachers, an employee organization within the meaning of RCW 41.59, filed a timely and properly supported petition for investigation of a question concerning representation of non-supervisory certificated employees of Wellpinit School District No. 49.

3. Wellpinit Education Association/WEA, an employee organization within the meaning of RCW 41.59, was granted intervention in the proceedings based on its status as incumbent exclusive bargaining representative of non-supervisory certificated employees of Wellpinit School District No. 49.

4. The parties to this proceeding entered into an election agreement pursuant to WAC 391-25-210 and a supplemental agreement pursuant to WAC 391-25-270, reserving for determination a dispute concerning the eligibility of Ron Brown to vote as an employee within the non-supervisory certificated employee bargaining unit. A representation election was held under the direction of the Public Employment Relations Commission on November 9, 1981, at which time the ballot of Ron Brown was challenged, and the tally of ballots issued indicated 9 ballots cast in favor of Wellpinit Independent Teachers, 10 ballots cast in favor of Wellpinit Education Association/WEA, and 0 ballots cast for no representation.

5. Ron Brown does not now have and never has had credentials qualifying him to serve as a "principal" under Title 28A RCW and the rules and regulations adopted by the Superintendent of Public Instruction and/or the State Board of Education. Any previous assignment or designation of Brown as a "vice-principal" or as "assistant principal" was terminated by the current superintendent of the district upon review of Brown's credentials. Brown does not have authority to act in the interest of the employer, or to make effective recommendations on the hiring, assignment, promotion, transfer, layoff, recall, suspension, discipline or discharge of employees. Brown carries a normal teaching load with preparation time similar to that afforded to other certificated employees of the district.

6. Ron Brown does not participate in the formulation of, and is not privy to, confidential information concerning the labor relations policies of the employer.

CONCLUSIONS OF LAW

1. Contrary local assignments and titles notwithstanding, Ron Brown is not a "principal" within the meaning of RCW 41.59.020(4)(e) and RCW 41.59.080.
2. Ron Brown is a non-supervisory educational employee of the district who is an eligible voter in the representation election in the captioned matter.

ORDER

The challenge to the eligibility of Ron Brown is denied. An amended tally of ballots is attached.

DATED at Olympia, Washington this 8th day of April, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMENDED
TALLY SHEET

NAME OF EMPLOYER

Wellpinit School Dist. #49

CASE NUMBER

3665-E-81-700

PART 1 - CROSS-CHECK OF RECORDS

The undersigned agent of the Public Employment Relations Commission certifies that he/she has conducted a cross-check of records in the above case, and that the results were as follows:

Number of Employees in Bargaining Unit..... _____

Number of Employee Records Examined..... _____

Number of Employee Records Counted as Valid Evidence of Representation... _____

PART 2 - SECRET BALLOT ELECTION

The undersigned agent of the Public Employment Relations Commission certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated below, were as follows:

- 1. Approximate number of eligible voters..... 20
- 2. Void Ballots..... 0
- 3. Votes Cast For: WELLPINIT INDEPENDENT TEACHERS ... 10
- 4. Votes Cast For: WELLPINIT EDUCATION ASSOCIATION/WEA ... 10
- 5. Votes Cast For: _____ ... -
- 6. Votes Cast For: NO REPRESENTATION..... 0
- 7. Valid Ballots Counted.(total of 3, 4, 5, and 6)..... 20
- 8. Challenged Ballots..... 0
- 9. Valid Ballots Counted plus Challenged Ballots (total of 7 and 8)..... 20
- 10. Number of Valid Ballots Needed to Determine Election..... 11

Challenges are sufficient in number to affect the results of the election.
 are not

The results of the election appear to be inconclusive.
 conclusive favoring choice on line _____

DATE ISSUED

April 8, 1982

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By

Maura J. Schuck

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For _____

For _____

For _____

For _____