

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
TUMWATER UNITED PUBLIC SCHOOL	)	CASE NO. 3488-E-81-674
EMPLOYEES, an affiliate of	)	
Public School Employees of	)	DECISION NO. 1414 - PECB
Washington	)	
Involving certain employees of:	)	
TUMWATER SCHOOL DISTRICT NO. 33	)	
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In the matter of the petition of:	)	
CLASSIFIED PUBLIC EMPLOYEES	)	CASE NO. 3512-E-81-683
ASSOCIATION/WEA/NEA	)	
Involving certain employees of:	)	DECISION NO. 1388 - PECB
TUMWATER SCHOOL DISTRICT NO. 33	)	DIRECTION OF ELECTIONS
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Edward A. Hemphill, Attorney at Law, appeared on behalf of Public School Employees of Washington.

Symone Scales, Attorney at Law, appeared on behalf of Classified Public Employees Association/WEA/NEA.

Mary Brown, Representative, appeared on behalf of intervenor Washington State Council of County and City Employees, AFSCME, AFL-CIO.

Craig W. Hanson, Attorney at Law, appeared on behalf of the employer.

On June 16, 1981, Tumwater United Public School Employees (PSE) filed a petition with the Public Employment Relations Commission (PERC) for investigation of a question concerning representation in a proposed unit of school bus drivers, food service, custodial, maintenance, and grounds employees of Tumwater School District No. 33 (district). PSE currently represents the employer's bus drivers and food service workers in two separate units. On June 29, 1981, Classified Public Employees Association (CPEA) filed a petition with PERC for investigation of a question concerning representation in a unit of custodial, maintenance and grounds employees of the district. The Washington State Council of County and City Employees, AFSCME, AFL-CIO (WSCCCE), was granted intervention in the matters based on its status as incumbent representative of the custodial, maintenance and grounds employees. Hearing on the consolidated matters was held on September 23, 1981, before Martha M. Nicoloff, Hearing Officer. The parties filed final post-hearing briefs on November 10, 1981.

BACKGROUND:

Tumwater School District employs approximately 200 certificated employees and 150 classified employees to serve approximately 4,000 students who attend six schools. The district bargains with two units under Chapter 41.59 RCW: one of non-supervisory certificated personnel and one of principals. In addition to the three bargaining units of classified employees which are involved in the instant matters, there are two other classified employee bargaining units: one of building secretaries and related clerical, and one of office-clerical employees. The district's teacher aides are unrepresented.

The Custodial-Maintenance Unit

WSCCCE has represented the bargaining unit described as: "all employees...in the Custodian and Maintenance and Transportation Center, excluding the maintenance supervisor, transportation supervisor and bus drivers" for approximately six to ten years.<sup>1/</sup> At the time of hearing, the district employed approximately twenty-seven custodial, maintenance and grounds employees and three bus mechanics in that unit. These employees work eight hours a day, five days a week, twelve months a year, on various shifts. Maintenance employees and bus mechanics report for their regularly assigned shifts at the custodial/maintenance/transportation center, while custodians report directly to the school building to which they are assigned. The mechanics are in regular contact with bus drivers regarding necessary vehicle maintenance or repairs, but have no regular contact with students. Custodial-maintenance employees interact with certificated personnel at their schools and with other custodians, but have no regular duties or interaction with students. Custodial employees are responsible for cleaning their assigned buildings (mopping and vacuuming floors and carpets, general classroom cleanup, filling paper dispensers, etc.). They may assist teaching personnel in moving furniture. When school is not in session, custodians may strip and wax floors, shampoo carpets, and wash windows. Maintenance personnel perform building maintenance duties, such as painting, replacing floor tiles, and repair of heating and electrical fixtures. The bus mechanics perform general maintenance and repair of the school buses, and are responsible for keeping their work area clean.

Employees in this unit are supervised by a supervisor of maintenance and transportation, Chuck Loete, and his assistant, Bud Beardsley, who in turn report to Assistant Superintendent Norman Wisner. Custodians are evaluated by the head custodian and principal or vice principal of the school at which

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<sup>1/</sup> The record does not indicate a date certain at which WSCCCE and the district began their relationship in this unit. The district's witness testified there had been a relationship for at least his "six plus" years with the employer. A custodian testified that there had been contracts for "eight-nine years - maybe more."

they work. The record does not reflect where authority resides for evaluation of mechanics and maintenance personnel. The most recent contract for this unit, for the period September 1, 1979 through August 31, 1981, provided for paid vacations, eleven paid holidays, and various paid and unpaid leaves of absence. Sick leave is accrued at the rate of one day per month. Employees may enroll in one of three medical insurance programs and a dental insurance plan. Salaries are listed on both an hourly and monthly basis. The 1979-80 salary schedule lists three step rates for each classification; two steps are listed on the 1980-81 schedule. Seniority is accrued from the date of employment with the district, and is applied in promotions and transfers within the bargaining unit, provided employees possess the qualifications for the position for which they apply. Vacancies within the unit are posted for bidding in the various schools and in the maintenance and transportation shop. Unit employees may also apply for any position in the district for which they qualify.

#### The Bus Driver Unit

PSE was voluntarily recognized by the district in October, 1975, as the representative of the 28 employees in the unit of school bus drivers. The drivers are supervised by Loete and Beardsley, although Beardsley is their direct supervisor on a day to day basis.

Drivers report for their assigned shifts at the maintenance and transportation center, where the vehicles are housed. Their regular duties include a preliminary check of their vehicles for safety before each run, fueling and cleaning the vehicles. If safety or vehicular maintenance problems are discovered, the drivers report those problems to a bus mechanic. Both drivers and mechanics possess special certification to be authorized to drive a school bus.<sup>2/</sup> While transporting students, drivers are responsible for their safety, which may include maintaining discipline on the bus. Drivers normally work five days per week, but work a varied number of hours depending upon the length of their particular bus run. A driver's work day is usually broken into two or more work segments. Drivers regularly work only when students are attending school.

The drivers' latest contract, for the period September 1, 1978 through August 31, 1981, provided for seven paid holidays and various paid and unpaid leaves of absence. Sick leave is accrued based on a formula of 2.77 minutes of leave accrued per regular hour worked. Employees may enroll in the same district-approved medical and dental insurance plans which are available to

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<sup>2/</sup> Although the district maintains a roster of regular substitute bus drivers, mechanics may be called upon to drive if a substitute is not available.

custodial-maintenance employees. Employee eligibility for and district contribution to the insurance plans is determined on the basis of hours worked; e.g., an employee working less than four hours per day is not eligible for insurance benefits, while an employee working an eight hour day is eligible for 100% benefit payment from the district. Salaries are listed on an hourly basis, with different rates for driving, standby, and call out. There are no salary steps.<sup>3/</sup> Seniority is established as of date of hire with the district, but is lost if an employee changes job classification within the bargaining unit.<sup>4/</sup> Their regular bus run assignments are based on seniority. Open positions are publicized within the bargaining unit.

#### The Food Service Unit

The district voluntarily recognized PSE as the representative of the food service employees in November, 1979, and executed a collective bargaining agreement for those employees for the term of September 1, 1980 through August 31, 1981.

The nine food service employees report directly to the schools to which they are assigned. They are responsible for preparation of the daily lunch meals, keeping an inventory of their stock, and general clean-up of their work area. The district has contracted with Interstate United Corporation to operate its food service program, and the food service employees are directly supervised by an Interstate United employee. The district administrator who oversees the program is Assistant Superintendent Bruce Randall. Food service employees are evaluated by the contractor's representative and the principal of the school at which they work. Their only apparent regular contact with students and other employees is in the course of the daily mealtimes.

Food service employees usually work five days per week, seven hours per day, on the days that students attend school. They are eligible for sick leave, accrued at the rate of one day per calendar month worked, and for various other paid and unpaid leaves of absence. They are eligible to enroll in district-approved medical and dental insurance plans, and the district contributes to the premium payments for these employees on a full-time equivalent (FTE) basis. Salaries are listed on an hourly basis, with three step rates for each classification. Seniority is accrued from date of hire with the district, and governs for layoffs only. Open jobs are publicized within the bargaining unit.

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<sup>3/</sup> The contract addendum for 1980-81 provides for different rates for probationary and regular drivers, although these are not listed as steps as such.

<sup>4/</sup> However, "bus driver" is currently the only classification in the bargaining unit.

POSITIONS OF THE PARTIES:

PSE claims that an analysis of statutory and severance-case criteria would indicate its proposed combined driver-food service-custodial/maintenance unit is appropriate. It argues that none of the units contain skilled craft workers, that no distinct community of interest exists in the present units, that there is intermingling of work conditions and interchange between units, that the separate histories of bargaining are simply an accident of being organized at different times, and that the employees clearly desire the combined unit. They cite several PERC decisions in support of these arguments. Further, they cite a decision of the California PERB, Livermore Valley Unified School District, Case No. SF-R-28X, Cal PERB Decision No. 165 (1981), in which a blue-collar operations support unit such as PSE's petitioned-for unit was found to be presumptively appropriate, and claim there is no reason that such a finding is not equally applicable to the instant matters. PSE argues that even if the Commission does not find its proposed unit to be the only appropriate unit, it is clearly an appropriate unit and, as such, employees should be permitted to indicate their desires through a unit determination election. PSE appears to change positions somewhat in its reply brief, where it argues that the greater burden placed on unions seeking a change of unit structure in severance matters should not be placed on PSE, in that the instant matters involve unit formation.

The employer argues that the three existing bargaining units are appropriate and have led to stable labor relations in the district. The district claims that the employees involved have distinct duties, skills, and working conditions which would preclude combining them into one unit. It argues that this case is appropriately reviewed under the standards of Mallinckrodt Chemical Works, 162 NLRB 387 (1966), adopted by the Commission in Yelm School District, Decision No. 704-A (PECB, 1980). Applying those standards, the district sees the three units as functionally distinct departments. Further, it argues that because food service and transportation funding have been removed by the State Legislature from basic education funding, the three units in question do not constitute an integrated support operation as was the case with the unit in Yelm, supra.

WSCCCE argues that the separate and distinct duties, skills, and working conditions of the custodial-maintenance unit, the limited interaction between units, and the separate bargaining history in the custodial-maintenance unit all point toward continuing the separate bargaining unit for those employees.

CPEA argues that there is a distinct community of interest clearly distinguishing the custodial-maintenance unit which would preclude its consolidation with the other two bargaining units. CPEA cites several NLRB decisions in which separate units of transportation, housekeeping, and food service workers have been found to be appropriate.

PERTINENT STATUTORY PROVISIONS:

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 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. The commission shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election specifically therefor.

DISCUSSION:

Without a doubt, the simplest bargaining unit structure for the employees of any employer would be "all of the employees" of that employer, making appropriate exclusions for groups (e.g. "confidential", "supervisor", "guard") excluded from the coverage of the applicable collective bargaining law or statutorily accorded special unit status. In Washington, the existence of two separate statutory structures: RCW 41.59 for "certificated" employees, and RCW 41.56 for "classified" employees, precludes the possibility of a single bargaining unit consisting of all of the employees of a school district. Situations are found among the decisions of the Public Employment Relations Commission which have involved appropriate bargaining units consisting of "all classified employees" of a school district. See: Oak Harbor School District, Decision 1319 (PECB, 1981); West Valley School District, Decision 1129 (PECB, 1981). Separate units of office clerical employees have been severed from district-wide classified employees in Franklin Pierce School District, Decision 78-D (PECB, 1977) and Snoqualmie Valley School District, Decision 529 (PECB, 1978), resulting in district-wide operations and maintenance units which, by reason of their inclusion of teacher aides, are a little broader than the so-called "blue collar" unit sought by PSE in the instant situation. A unit consisting of all classified employees except office clerical employees was sustained, and a petition to sever bus drivers was dismissed, in Yelm School District, Decision 704-A (PECB, 1980), where the Commission found that the employees in the existing unit constituted "an integrated support operation essential to the overall discharge by the district of its primary educational function...more appropriately dealt with as a unit." The bargaining unit sustained against a severance attempt in Bremerton School District, Decision 527 (PECB, 1978) appears to have been generally similar in scope to the unit sought here by PSE, while the unit sustained against a severance attempt in Lake Washington School District, Decision 1170 (PECB, 1981) was, by reason of its exclusion of food service employees, not as broad as the unit sought by PSE here.

The employer's arguments promoting source of funding as a basis for bargaining unit determinations must fail in the face of the language of the statute, in the face of the numerous Commission decisions finding broadly based classified employee units to be appropriate in school districts and in the face of the facts of this case. In particular, this record indicates that employees funded from "transportation" funding sources are, and would continue to be, mixed with employees funded from "basic education" funding sources in the historical custodial-maintenance unit, while bus drivers funded from "transportation" funds and subsidized from "basic education" funds have been represented in a separate bargaining unit. The facts in Tumwater are not substantially different from the facts and circumstances existing in other Washington school districts. The employees in the custodial, maintenance, food service and school transportation functions involved in the bargaining unit proposed by PSE are engaged in support operations to the educational programs of the school district which would have no functional existence outside of that context. Although there are differences of detail, Commission precedent clearly would allow a finding that the employees in the bargaining unit proposed by PSE have sufficiently similar duties, skills and working conditions to permit their inclusion in a single bargaining unit.

PSE merely seeks to re-group employees already organized. Extent of organization was likely a factor in the separate organization and recognition of the fragmented bargaining units which presently exist, but neither of the bargaining unit structures under consideration in this decision would alter or be determined by the extent of organization among the employees of the school district. The right of employees to organize would not be frustrated by the size of the bargaining unit proposed by PSE under these circumstances.

The employees of the Tumwater School District have a history of bargaining through a fragmented bargaining unit structure. Is it a necessary corollary to that fact that a fragmented bargaining unit structure can never be consolidated? To answer that question in the affirmative would undermine the expressed policy of the Commission favoring broad support units in school districts, would elevate the history of bargaining criteria above all others, and would render meaningless the "modifying, or combining the bargaining unit" language of RCW 41.56.060. The custodial-maintenance bargaining unit is an appropriate bargaining unit under the criteria set forth in RCW 41.56.060. Its history of bargaining is entitled to meaningful consideration. On the other hand, the history of bargaining in the custodial-maintenance bargaining unit does not, in view of the other RCW 41.56.060 criteria as interpreted and applied in prior Commission decisions, constitute a basis for a ruling that the so-called "all blue collar" unit sought by PSE is an inappropriate bargaining unit.

Where other unit determination criteria are neutral or in balance, so that two or more potential bargaining unit structures are equally appropriate, the desires of the employees themselves may be expressed through a unit determination election. See: Mukilteo School District, Decision 1008 (PECB, 1980) and WAC 391-25-530(1). The duties, skills and working conditions indicate that either the three separate units now in existence or the combined unit could be appropriate. The extent of organization is neutral in this case. None of the employees in the three separate bargaining units have ever been afforded an opportunity to express their desires on the change of unit structure. A unit determination election procedure in which all of the employees in the bargaining unit proposed by PSE would vote as one voting group would subjugate the desires of the employees in the custodial-maintenance bargaining unit, as well as those in the other separate units, to the desires of the employees in the broader group, and would make meaningless the separate histories of bargaining. Accordingly, unit determination elections are directed in three voting groups, reflecting the historical bargaining units. If the employees in each of the three voting groups vote for consolidation of the bargaining units into one unit, a representation election will be conducted in that consolidated unit. Both WSCCCE and CPEA have shown sufficient interest to be on the ballot in such a representation election. If the employees in any of the three voting groups vote against consolidation of the bargaining units into one unit, the combined unit will be deemed inappropriate and a representation election will be conducted in the custodial-maintenance bargaining unit based on the CPEA petition. Both WSCCCE and PSE have shown sufficient interest to be on the ballot in such a representation election.

#### FINDINGS OF FACT

1. Tumwater School District No. 33 (district) is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, AFSCME, AFL-CIO (WSCCCE), a bargaining representative within the meaning of RCW 41.56.030(3), is the incumbent representative of a bargaining unit of custodial, maintenance, grounds and bus mechanic employees of the district. Employees in that bargaining unit repair and maintain the employer's buildings and vehicles. They work similar hours, are eligible for the same fringe benefits, and share a common line of supervision. A history of bargaining exists under which these employees have been represented by WSCCCE in the same bargaining unit for six to ten years.
3. Tumwater United Public School Employees, an affiliate of Public School Employees of Washington (PSE), a bargaining representative within the meaning of RCW 41.56.030(3), is the incumbent representative of a bargaining unit consisting of school bus drivers employed by the district, excluding the



transportation supervisor. Employees in the bargaining unit perform transport functions as well as cleaning their work area. They report through the same supervisory hierarchy as custodial-maintenance employees, and share many of the same fringe benefits. They generally work fewer hours and months of the year than custodial-maintenance employees. A history of bargaining exists wherein these employees have been represented by PSE in the same bargaining unit for six years. No dispute exists regarding the propriety of that bargaining unit.

4. PSE is also the incumbent representative of a bargaining unit consisting of all regularly scheduled food service employees of the district. Employees in the bargaining unit perform food service functions and maintain their work areas. They have many fringe benefits in common with custodial-maintenance and transportation employees. They work generally fewer hours than custodial-maintenance employees and more than bus drivers. Their supervisory hierarchy is separate from those groups. A history of bargaining exists under which these employees have been represented by PSE in the same bargaining unit for two years. No dispute exists regarding the propriety of that bargaining unit.

5. PSE filed a timely petition with a sufficient showing of interest seeking certification as the exclusive bargaining representative of a unit of transportation, food service, custodial, maintenance, mechanic and grounds employees of the district, excluding supervisors.

6. Classified Public Employees Association WEA/NEA, a bargaining representative within the meaning of RCW 41.56.030(3), filed a timely petition with a sufficient showing of interest seeking certification as the exclusive bargaining representative of the custodial, maintenance, mechanic and grounds employees of the district, excluding supervisors.

7. Employees in the bargaining units described in paragraphs 2, 3, 4, 5 and 6 of these findings of fact are all engaged in support operations to the educational programs of the district, and are the only employees of the district whose duties are primarily "blue-collar" in nature.

8. The extent of organization among employees of the district would not be altered by either of the petitioned-for bargaining unit structures.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of this matter under RCW 41.56.

2. A consolidated bargaining unit consisting of all full-time and regular part-time transportation, food service, custodial, maintenance, mechanic and grounds employees of the district, excluding supervisors, clerical employees

and confidential employees, could be an appropriate unit for the purposes of collective bargaining, pursuant to RCW 41.56.060, if the desires of employees so indicate.

3. A bargaining unit composed of all full-time and regular part-time custodial, maintenance, mechanic and grounds employees of the district, excluding supervisors, clerical employees and confidential employees, could be a unit appropriate for the purposes of collective bargaining, pursuant to RCW 41.56.060, if the desires of the employees so indicate.

4. A question concerning representation will exist in the bargaining unit described in paragraph 2 of these conclusions of law if the employees in each of the existing bargaining units vote in favor of creation of the consolidated unit in an election to determine the desires of the employees.

5. A question concerning representation will exist in the bargaining unit described in paragraph 3 of these conclusions of law if the employees in any of the existing bargaining units fail to vote in favor of the consolidated bargaining unit described in paragraph 2 of these conclusions of law.

#### DIRECTION OF ELECTIONS

1. A unit determination election by secret ballot shall be held under the direction of the Public Employment Relations Commission in each of the following voting groups:

Voting Group No. 1:

All full-time and regular part-time custodial, maintenance, mechanic and grounds employees of Tumwater School District No. 33, excluding supervisors, clerical employees and confidential employees.

Voting Group No. 2:

All full-time and regular part-time school bus drivers of Tumwater School District No. 33, excluding supervisors, clerical employees and confidential employees.

Voting Group No. 3:

All full-time and regular part-time food service employees of Tumwater School District No. 33, excluding supervisors, clerical employees and confidential employees.

to determine whether a majority of the employees eligible to vote in each separate voting group desire to constitute themselves one consolidated bargaining unit consisting of all transportation, food service, custodial, maintenance, mechanic and grounds employees.

2. A representation election by secret ballot shall be held under the direction of the Public Employment Relations Commission, conditioned on the outcome of the unit determination election directed above, as follows:
  - A. In the event that a majority of those eligible to vote in each of the voting groups described in paragraph 1 vote in favor of creation of the consolidated bargaining unit, an election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all full-time and regular part-time transportation, food service, custodial, maintenance, mechanic and grounds employees of the district, excluding supervisors, clerical employees and confidential employees, to determine whether a majority of those employees desire to be represented for the purposes of collective bargaining by Tumwater United Public School Employees, an affiliate of Public School Employees of Washington; by Classified Public Employees Association, WEA/NEA; by Washington State Council of County and City Employees, AFSCME, AFL-CIO; or by no representative.
  - B. In the event that a majority of those eligible to vote in any of the voting groups described in paragraph 1 fail to vote in favor of creation of the consolidated bargaining unit, an election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all full-time and regular part-time custodial, maintenance, mechanic and grounds employees of the district, excluding supervisors, clerical employees and confidential employees, to determine whether a majority of those employees desire to be represented for the purposes of collective bargaining by Tumwater United Public School Employees, an affiliate of Public School Employees of Washington; by Classified Public Employees Association, WEA/NEA; by Washington State Council of County and City Employees, AFSCME, AFL-CIO; or by no representative.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director