STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
CLASSIFIED PUBLIC EMPLOYEES ASSOCIATION	)	CASE 8656-E-90-1459
	)	
Involving certain employees of:	)	DECISION 3841 - PECB
	)	
NORTH MASON SCHOOL DISTRICT	)	ORDER OF DISMISSAL
	)	
	)	

Harriet Strasberg, Attorney at Law, appeared on behalf of the petitioner.

Jerry Gates, Labor Relations Specialist, appeared on behalf of the employer.

Eric T. Nordlof, General Counsel, appeared on behalf of intervenor Public School Employees of North Mason.

On June 21, 1990, Classified Public Employees Association (CPEA), an affiliate of the Washington Education Association, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The petitioner seeks certification as exclusive bargaining representative of custodians employed by the North Mason School District. Public School Employees of North Mason, an affiliate of Public School Employees of Washington (PSE), was granted intervention in the proceedings on the basis of its claimed status as the incumbent exclusive bargaining representative of the petitioned-for employees. A pre-hearing conference was held on August 27, 1990, at Olympia, Washington, at which time the parties stipulated several matters and framed issues for hearing. A statement of results of the pre-hearing conference has been made a part of the entire record in this matter. A hearing was held at Belfair, Washington, on October 19, 1990, before Hearing Officer Rex L. Lacy. Post-hearing briefs were filed by the parties to complete the record.

The processing of the above-captioned case was suspended for a time, pending the outcome of an issue raised in another case filed by the CPEA.[1] On May 25, 1991, after expiration of the period for appeal of the Commission's decision in the related case, the Executive Director notified the parties that the processing of the above-captioned case would be resumed.

BACKGROUND

The North Mason School District operates educational programs for approximately 1780 students in kindergarten through high school. The employer operates two elementary schools, one middle school, and one high school, in addition to its administrative building and a bus facility. Daily operations are supervised by Superintendent Marie Pickel, under policy direction of an elected five-member school board.

---

[1] On October 5, 1990, the CPEA filed a representation petition seeking to replace PSE as the exclusive bargaining representative of certain employees of the Central Kitsap School District. Case 8814-E-90-1475. An issue was raised in that case concerning the legitimacy of the individual authorization cards filed by the CPEA as its showing of interest under WAC 391-25-110.

On December 21, 1990, the Executive Director issued an Order of Dismissal in the Central Kitsap case, concluding that the CPEA's use of the Commission's name in its authorization cards could be understood by employees to mean that the card had some approval of the Commission. Central Kitsap School District, Decision 3761 (PECB, 1990). The petition in the above-captioned case was supported by authorization cards taking the same form as used by the CPEA in the Central Kitsap case, and the Executive Director ordered that this and other cases involving the use of that card form be suspended.

The CPEA sought Commission review of the order of dismissal issued in the Central Kitsap case. On April 24, 1991, the Commission affirmed the Executive Director's ruling regarding the impropriety of using the Commission's name on authorization cards in representation cases, but applied the ruling only prospectively. Central Kitsap School District, 3761-A (PECB, 1991).

On June 11, 1974, a certification was issued by the Washington State Department of Labor and Industries,[2] designating Public School Employees of Washington as the exclusive bargaining representative of a wall-to-wall bargaining unit of all the employer's classified employees, excluding transportation employees. Employees performing "custodian" functions were included in that bargaining unit.

Commencing in 1975, the employer and PSE entered into a series of collective bargaining agreements involving classified employees of the North Mason School District. The language appearing as the recognition clause of the initial contract, in Article I, Section 1.5, has not been altered or amended throughout the history of bargaining history between the employer and PSE. The job title "custodian-maintenance" has been designated as a bargaining unit position since the first contract between PSE and the employer.

In early 1982, the employer's board of directors instructed Superintendent Pickel to explore the possibility of contracting out custodial and bus transportation services to one or more private suppliers of such services. After Pickel responded, the board directed her to seek bids from private employers to provide custodial services at the employer's facilities.[3] In October, 1982, the school district received a bid from American Building Maintenance (ABM) to provide custodial services for the employer's facilities.

---

[2] The Department of Labor and Industries administered Chapter 41.56 RCW from its original enactment in 1967 until the transfer of jurisdiction to the Public Employment Relations Commission on January 1, 1976, pursuant to Chapter 41.58 RCW.

[3] The employer accepted a bid for transportation services in October of 1982. Its ongoing status as an "employer" of school bus drivers was at issue before the Commission in North Mason School District, Decision 2428-A (PECB, 1986), wherein the Executive Director's direction of an election under Chapter 41.56 RCW was affirmed.

PSE initially objected to the contracting out of bargaining unit work. Thereafter, having successfully obtained employment for the affected employees with ABM, PSE withdrew its objections on the contracting issue in late October, 1982, thus clearing the way for the employer to accept ABM's bid to provide custodial services.

From October of 1982 until August of 1989, PSE continued to represent North Mason School District employees in the "maintenance" classification, and to negotiate their wages, hours and working conditions. PSE did not negotiate on behalf of ABM's custodians during that time frame.[4]

In August of 1989, the North Mason School District terminated its contract with ABM for custodian services. Upon ending its association with ABM, the public employer hired 10 custodians, none of whom had worked for ABM. Those employees work under the supervision of Beverly Jolley, who is also the supervisor of the maintenance workforce that had remained with the school district throughout the time that ABM provided custodian services. The newly-hired custodians perform the customary tasks associated with responsibility for the overall cleanliness of the employer's facilities. They mop, wax, buff, and polish floors; dust and clean desks and other furniture; clean windows; and perform related work. The maintenance employees make minor repairs, maintain equipment, and perform other routine tasks associated with the operation of the facilities. The duties of both classifications have remained the same since the bargaining unit was formed in 1975.

The employer and PSE were parties to a collective bargaining agreement signed on September 25, 1987 and covering the period from

---

[4] In 1982, ABM employees were represented by Service Employees International Union, Local 120. That union negotiated the wages, hours, and working conditions for the ABM employees performing custodial functions at the North Mason School District.

September 1, 1987 through August 31, 1990. A letter of agreement signed by those parties on May 25, 1989 specified wages and benefits for 1989-90, and made specific reference to a "custodian" classification. The employer assigned the newly-hired custodians to the PSE unit in August of 1989, and no individual or other organization challenged that action. The newly-hired employees thereafter received wages and all other negotiated benefits of the collective bargaining agreement in effect at that time.

On June 21, 1990, the CPEA filed this petition, seeking to sever employees holding the job title "custodian" from the bargaining unit of classified employees represented by PSE. Custodian employees testified at the hearing in this matter that one of the reasons they chose to seek severance from the existing bargaining unit was their dissatisfaction with the wage settlement negotiated on their behalf by PSE.

POSITIONS OF THE PARTIES

CPEA contends that the petitioned-for bargaining unit of custodians is "an appropriate unit" for the purposes of collective bargaining under Chapter 41.56 RCW, that PSE's history of bargaining for the custodians has been interrupted, that the custodian employees at issue were improperly accreted to the PSE bargaining unit without being allowed to choose their bargaining representative, and that the Commission should conduct a unit determination election among the custodians, as well as a representation election to determine which organization would be the exclusive bargaining representative or the employees at issue in this matter.

The employer took no position on the propriety of the proposed severance of its custodians from the existing bargaining unit of classified employees.

PSE contends that it properly represents the disputed custodians as part of the employer-wide bargaining unit, that the re-inclusion of the custodians in the historical bargaining unit did not create "an amalgam of units", that the petitioned-for bargaining unit does not meet the Commissions' established severance criteria, and that the petition should be dismissed.

DISCUSSION

The Accretion Issue

Employees ordinarily are permitted a voice in their choice of exclusive bargaining representative. RCW 41.56.040; RCW 41.56.060. Accretions are an exception to the norm, and will be ordered only where changed circumstances lead to the presence of positions which logically belong only in an existing bargaining unit, so that those positions can neither stand on their own as a separate bargaining unit or be logically accreted to any other existing bargaining unit. See, Ben Franklin Transit, Decision 2357-A (PECB, 1986). Since accretion is accomplished without giving the affected employees an opportunity to vote on their representation, the party proposing an accretion has the burden to show that the conditions for an accretion are present. Kitsap Transit Authority, Decision 3104 (PECB, 1989).

The employees at issue in this proceeding were not allowed to vote on their choice of bargaining representative in 1989. The CPEA now contends that the custodians were improperly accreted to the existing bargaining unit, and that their history of bargaining with PSE is limited to the period since 1989. Accordingly, close analysis of the history is necessary here.

Department of Labor and Industries records clearly indicate that custodians were part of the group of classified employees who

participated in the representation proceedings in 1974. It is also clear that custodians were included in the bargaining unit represented by PSE up to 1982. As such, a lengthy history of bargaining was established for that classification as part of the existing bargaining unit represented by PSE.

The history of bargaining concerning custodians was interrupted, but not forfeited, during the period of time custodian services were provided by ABM. PSE resisted contracting out of the work to a private firm, and was never faced with a proposal calling for "skimming" of unit work to non-unit employees of the school district.[5] A waiver of bargaining rights must be knowingly made. There is nothing in this record which indicates that PSE ever relinquished its representation rights for school district employees performing custodian functions.

The uncontested reassignment of the custodian classification to the existing bargaining unit evidences the employer's understanding that PSE had an ongoing claim to that work and to any school district employees who perform that work. Had the employer resisted restoration of the custodian classification to the PSE bargaining unit in 1989, the question before the Commission in a unit clarification case at that time would have been whether an accretion was appropriate. The history would clearly have weighed in favor of accretion in 1989. While ten positions were newly-created at that time, they were not in a newly-created classification. Further, PSE continued to represent school district employees in the closely-related "maintenance" classification.

Contrary to the arguments advanced by CPEA here, there was nothing inherently wrong with the employer's voluntary re-inclusion of the custodians in the existing bargaining unit represented by PSE.

---

[5] The lead case on "skimming" of bargaining unit work is South Kitsap School District, Decision 472 (PECB, 1978).

Thus, the starting point for analysis in this case is that the petitioned-for custodians have been, and continue to be, part of a larger bargaining unit of classified employees.

Criteria for Unit Determination

Together with setting forth the standards that the Commission is to follow in determining appropriate bargaining units, RCW 41.56.060 requires a case-by-case approach to such matters:

> **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. ... [emphasis supplied]

None of these factors predominates to the exclusion of others. City of Centralia, Decision 2940 (PECB, 1988). The criteria have varying weight and application, however, depending on the factual settings of particular cases.

The purpose of the unit determination exercise is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. City of Pasco, Decision 2636-B (PECB, 1987). The statute does not confine the Commission to certifying only "the most appropriate unit" in each case. It is only necessary that the petitioned-for bargaining unit be an appropriate one. Thus, the fact that there may be other groupings of employees which would

also be appropriate, or even more appropriate, does not require rejecting a proposed unit that is appropriate.

All of the employees of an employer inherently share some community of interest in dealing with their common employer. Thus, when sought by a petitioning union, employer-wide bargaining units have been viewed as appropriate. City of Winslow, Decision 3520-A (PECB, 1990); Wahkiakum County, Decision 1876 (PECB, 1984).[6]

Units smaller than employer-wide may also be appropriate, especially in larger workforces. The employees in a separate department or division may share a community of interest separate and apart from other employees of the employer, based on their commonality of function, duties, skills, and supervision. Consequently, departmental (vertical) units have sometimes been found appropriate when sought by a petitioning union. City of Centralia, Decision 3495-A, 3496-A (PECB, 1990); City of Prosser, Decision 3283 (PECB, 1989).

Employees of a separate occupational type may also share a community of interest, based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, occupational (horizontal) units have also been found appropriate, on occasion, when sought by a petitioning union. City of Tacoma, Decision 204 (PECB, 1977).[7]

The "history of bargaining" aspect of the statutory unit determination criteria is implemented by the close scrutiny given to petitions which would divide (sever) an existing bargaining unit into two or more bargaining units. In Yelm School District, Decision 704-A (PECB, 1980), the Commission reviewed its own

---

[6] Town of Granite Falls, Decision 2617 (PECB, 1987), also involved all of the employees of the employer.

[7] The decision in that case endorsed a city-wide clerical unit, and rejected a separate clerical unit within one department.

precedent and National Labor Relations Board precedent on "severance", and it quoted extensively from Mallinckrodt Chemical Works, 162 NLRB 387 (1966), with approval, as follows:

> [W]e shall ... broaden our inquiry to permit evaluation of all considerations relevant to an informed decision in this area. The following areas of inquiry are illustrative of those we deem relevant:
>
> 1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists. [footnote omitted]
>
> 2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
>
> 3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
>
> 4. The history and pattern of collective bargaining in the industry involved.
>
> 5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
>
> 6. The qualifications of the union seeking to "carve out" a separate unit, including that

> union's experience in representing employees like those involved in the severance action. [footnote omitted]
>
> In view of the nature of the issue posed by a petition for severance, the foregoing should not be taken as a hard and fast definition or an inclusive or exclusive listing of the various considerations involved in making unit determinations in this area. No doubt other factors worthy of consideration will appear in the course of litigation.16/ We emphasize the foregoing to demonstrate our intention to free ourselves from the restrictive effect of rigid and inflexible rules in making our unit determinations. Our determinations will be made only after a weighing of all relevant factors on a case-by-case basis, and we will apply the same principles and standards to all industries. [footnote omitted]
>
> ---
>
> 16/ We are in a period of industrial progress and change which so profoundly affect the product, process, operational technology, and organization of industry that a concomitant upheaval is reflected in the types and standards of skills, the working arrangements, job requirements, and community of interests of employees. Through modern technological development, a merging and overlapping of old crafts is taking place and new crafts are emerging. Highly skilled workers are, in some situations, required to devote those skills wholly to the production process itself, so that old departmental lines no longer reflect a homogeneous grouping of employees.

Mallinckrodt Chemical Works, 162 NLRB 387, 397-398. [emphasis supplied].

Efforts to "sever" existing bargaining units of school district classified employees into two or more bargaining units have been before the Commission in a number of cases.

In Yelm School District, supra, the Commission rejected a proposed severance of school bus drivers from a bargaining unit that

included all of the employer's classified employees other than office-clericals. Severance was rejected with regard to an existing bargaining unit that was described as:

> ... an integrated support operation essential to the overall discharge by the district of its primary educational function, and therefore ... more appropriately dealt with as a unit.

Proposed severances of school bus drivers were also rejected in West Valley School District, Decision 1129 (PECB, 1981), and Lake Washington School District, Decision 1170 (PECB, 1981), where 12-year bargaining histories existed and the incumbent exclusive bargaining representatives continued to exist and expressed interest in continuing to represent the bus drivers as contemplated by Chapter 41.56 RCW.

As in Okanogan County, Decision 2800 (PECB, 1988) and Grays Harbor County, Decision 3067 (PECB, 1988), a party will not prevail on a "severance" by merely arguing, as does the petitioner here, that there are differences of view between the various groups of employees within an existing unit.

Application of "Severance" Criteria

The CPEA argues that the petitioned-for "custodian" employees fit the definition of a "craft", because they perform different duties, have different hours of work, and have different supervision from other classified employees. The CPEA's claim that the affected employees fall into the category of a "craft" eligible for severance under Mallinckrodt, supra, must be rejected in this case, however, in light of the established precedents and the long history of inclusion of the "custodian" classification in the existing employer-wide bargaining unit.

The term "craft" is defined in Roberts' Dictionary of Industrial Relations, Third Edition, 1986, as follows:

> A trade or employment or occupation which requires skills, manual ability, an understanding of the principles of the trade and a fixed training period.

Black's Law Dictionary, Fourth Edition, 1951, uses a slightly different definition:

> A trade or occupation of the sort requiring skill and training, particularly manual skill combined with a knowledge of the principles of the art; also the body of persons pursuing such a calling; a guild.

Entry into a "craft" generally requires formalized training over a long period of time (e.g., apprenticeship classes in some trades lasting as much as seven years).

From the record made here, it appears that a newly hired custodian can achieve the maximum status of that classification solely through a relatively short on-the-job training period. There is no specific, formal education process needed to qualify as a custodian. Thus, the record does not sustain a conclusion that these employees meet either of the "craft" definitions set forth above.

It is possible to describe the existing bargaining unit as an "integrated support operation" in the sense used in Yelm. Although the existing bargaining unit does not include employees performing transportation functions, there is indication that such work has been contracted out in a manner that would require a separate bargaining relationship. On the other hand, the existing unit in the North Mason School District includes office-clericals which were excluded from the unit in Yelm, and therefore includes all of the employer's "inside" classified employees.

The existing bargaining unit represented by PSE has existed for many years. For reasons indicated above, the actions to first contract out and then re-incorporate the custodian work did not terminate that history or support a conclusion that the existing unit is merely an amalgam of separately-created units.[8]

It follows that obedience to "severance" precedent is indicated in this case. The petitioned-for bargaining unit would not be an appropriate unit. No unit determination election can be conducted to determine the "desires of employees" if one of the choices to be presented would be an inappropriate unit. Clark County, Decision 290-A (PECB, 1977). The petition must be dismissed.

FINDINGS OF FACT

1. North Mason School District, a "public employer" within the meaning of RCW 41.56.030(1), provides educational services to residents of Mason County, Washington.

2. Public School Employee of North Mason, an affiliate of Public School Employees of Washington, a "bargaining representative" within the meaning of RCW 41.56.030(3).

3. Since 1975, PSE has been the exclusive bargaining representative of a bargaining unit of classified employees of the North Mason School District. The employer and PSE have been parties to a series of collective bargaining agreements, the latest of which is effective from September 1, 1990 through August 31, 1993. The bargaining unit represented by PSE is described in

---

[8] Under Pierce County, Decision 1039 (PECB, 1980), the application of "severance" criteria may be rejected if the "unit" being claimed is merely a collection of bits and pieces that happen to be represented by the same labor organization.

Article I, Section 1.5 of the current collective bargaining agreement and all prior agreements, as follows:

> The bargaining unit to which this Agreement is applicable shall consist of all classified employees in the following general job classifications: Secretarial/Clerical, Custodian/ Maintenance, Food Service, Aides and Bookkeeper-Accountant; except the Director of Business and Operations, Director of Food Services, Director of Maintenance/Operations and Transportation, Maintenance Supervisor, Custodial Supervisor, Personnel Coordinator, and the Secretary to the Superintendent.

From its inception, that bargaining unit included employees performing "custodian" functions. The current contract provides that the bargaining unit placement of custodians will be determined by the Commission.

4. For a period of time between 1982 and 1989, the employer contracted with American Building Maintenance (ABM) to provide custodian services for the employer's facilities. PSE resisted the contracting out of bargaining unit work in 1982, and withdrew its objections only after existing bargaining unit employees were assured continued employment with the private firm. The employer did not contract out maintenance services, and PSE has continuously represented the employees who perform maintenance functions. PSE never relinquished representation rights for school district employees performing custodian functions.

5. In September, 1989, the employer terminated its contract with ABM for custodian services. The employer thereafter hired 10 employees to perform custodian work at the employer's facilities. The newly-hired employees were assigned to the existing custodian-maintenance classification within the bargaining unit represented by PSE.

6. The employer and PSE provided coverage, wages and benefits for the custodian employees under their collective bargaining agreement that was effective from September 1, 1988 through August 31, 1990. A contract extension signed by those parties in May of 1989 had specifically covered the custodian classification, and provided for wages, hours and working conditions for that classification.

7. On June 21, 1990, Classified Public Employees Association, a "bargaining representative" within the meaning of RCW 41.56-.030(3), filed a representation petition seeking to sever the "custodian" classification from the existing bargaining unit represented by PSE.

8. The petitioned-for custodians are responsible for the overall cleanliness of the employer's facilities, and perform tasks routinely associated with that general job classification. The "custodian" employees have common supervision with the employer's "maintenance" employees, and enjoy the same vacations, leaves, insurance, and general contractual provisions as all other classified employees receive.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.

2. In light of the substantial history of bargaining under which the "custodian" classification has been included in the existing bargaining unit at all times since 1975 when the employer had its own employees performing custodian functions, and in light of the ongoing work jurisdiction claim of the incumbent exclusive bargaining representative while such work

was contracted out, the severance of the petitioned-for bargaining unit of custodians is not appropriate under RCW 41.56.060.

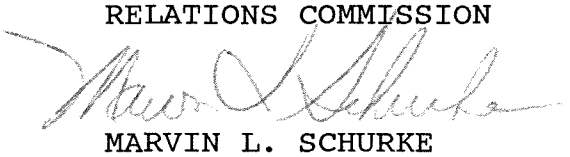
3. No question concerning representation currently exists in a unit appropriate for the purposes of collective bargaining, within the meaning of RCW 41.56.060.

ORDER

The petition for investigation of a question concerning representation filed in the above-entitled matter is hereby DISMISSED.

Issued at Olympia, Washington, the 9th day of August, 1991.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARVIN L. SCHURKE
Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to 391-25-390(2).