

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
TEAMSTERS UNION, LOCAL 763)	CASE 9201-E-91-1526
Involving certain employees of:)	DECISION 4001 - PECB
RIVERVIEW SCHOOL DISTRICT 407)	ORDER OF DISMISSAL
)	
)	

Davis, Roberts and Reid, Bruce E. Heller, Attorney at Law, appeared on behalf of the petitioner.

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

Caroline Lacey, Attorney at Law, appeared on behalf of the incumbent intervenor, Public School Employees of Washington.

On June 10, 1991, Teamsters Union, Local 763 filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The petitioner seeks certification as the exclusive bargaining representative of the bus drivers employed by the Riverview School District. Public School Employees of Riverview, an affiliate of Public School Employees of Washington (PSE), was granted intervention in the proceedings, based on its status as the incumbent exclusive collective bargaining representative of the petitioned-for employees. A pre-hearing conference was held on August 6, 1991, at Kirkland, Washington, at which time the parties stipulated several matters and framed issues for hearing. A statement of results of the pre-hearing conference was made a part of the record in this matter. A hearing was held at Kirkland, Washington, on August 21, 1991, before Hearing Officer Frederick J. Rosenberry. Post-hearing briefs were submitted by the parties to complete the record.

BACKGROUND

Riverview School District 407 provides educational services for approximately 2,200 students in kindergarten through 12th grade.¹ The administration office is located at Carnation, Washington. The facilities include three elementary schools, a middle school, a high school and a maintenance/transportation shop. The operations are under the policy direction of an elected board of directors. The superintendent of schools is the chief administrative officer. Next in the chain of command are "director" positions for business services, transportation, and maintenance. The employer has approximately 125 certificated employees.²

The Existing Bargaining Unit

Approximately 126 classified employees provide support services for the employer's operations. On September 29, 1980, PSE received certification as the exclusive bargaining representative of a bargaining unit described as:

... all classified public school employees in the transportation, food service, secretarial-clerical, custodial-maintenance, and aide general job classifications, excluding all other employees.

Lower Snoqualmie Valley School District, Decision 986 (1980, PECB).

PSE thereupon replaced the Washington State Council of County and City Employees (WSCCCE) as exclusive bargaining representative of

¹ The Riverview School District was formerly known as the "Lower Snoqualmie Valley School District".

² The employer's non-supervisory certificated employees are represented by the Riverview Education Association/WEA, for the purposes of collective bargaining under Chapter 41.59 RCW.

that bargaining unit. It is unclear as to when, and under what circumstances, the WSCCCE commenced its representation of the classified employees, although it is inferred that the relationship predated 1976.³

The employer and PSE have entered into a series of collective bargaining agreements since 1980. Most recently, they were parties to a contract effective for the period from September 1, 1989 to August 31, 1991. That contract described the bargaining unit as:

Section 1.4. The bargaining unit to which this Agreement is applicable shall consist of all regular classified employees in the following general job classification:

- A. Custodial/Maintenance
- B. Food Service
- C. Secretarial
- D. Clerical/Educational Assistants
- E. Transportation
- F. Maintenance/Grounds

All of the employer's classified employees are assigned to at least one of the listed classifications, so PSE effectively represents a "wall-to-wall" classified employee bargaining unit.

Custodial - Grounds - Maintenance Employees -

Twelve employees are responsible for the upkeep of the employer's buildings, and their adjacent grounds and athletic fields. Those employees report to Director of Maintenance James O'Maley, whose office is at the maintenance and transportation complex. Most of the custodians are employed full-time on a year-around basis. They are assigned to day and evening work shifts, and may travel to more than one work site during a work shift. The maintenance/grounds

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Notice is taken of the docket records of the Commission for Case 669-C-76-27, filed November 29, 1976. That unit clarification proceeding was commenced by the employer, seeking to exclude a claimed "confidential" position from an existing bargaining unit represented by the WSCCCE.

employees also work full-time, the year around. They are responsible for the maintenance and/or repair of building fixtures; electrical, heating and plumbing systems; and glass, asbestos, and other building components. Maintenance/groundsman workers employed in classifications II and III are required to have a fourth grade boiler license.⁴

Food Service Employees -

Twelve food service workers prepare and distribute meals and perform incidental duties related thereto, such as ordering supplies, cleaning-up, cashiering, and record maintenance. Meals are prepared at kitchens located in the middle/high school complex and at one elementary school, and are then delivered to all of the schools for consumption. Meals are provided only during the 180 day student year. The work shifts of food service workers vary from one and one-half to eight hours per day, with all of the work being performed between 5:30 a.m. and 4:00 p.m. Food service workers are required to maintain food handlers permits and first aid certification.⁵

Office-clerical Employees -

Approximately 25 employees provide office-clerical support for the employer's administrative functions. Their work shifts vary from four to eight hours per day. Their work years vary from 180 days per year to year-around.

Educational Assistants -

Approximately 55 educational assistants perform a variety of duties such as providing individual student assistance; assisting with regular and special programs for students regarding communication

⁴ The record does not contain details concerning those licenses.

⁵ The record does not contain details concerning those permits or certifications.

disorders, extended day activities, and utilization of a learning resource center; and reading. Most of the educational assistants work only the 180 days per year of student attendance. Their work shifts vary from two to eight hours per day. Two or three educational assistants, who are assigned to an early childhood education and assistance program, work split shifts.

Transportation Employees -

The Transportation Department workforce includes 19 regular bus drivers, two mechanics and a secretary-dispatcher. The bus drivers transport students on 14 morning routes, 9 mid-day routes, and 13 afternoon routes. Additionally, there are six special education routes that may travel outside of the geographic boundaries of the Riverview School District. Transportation Department employees report to Director of Transportation Lee Boland, whose office is at the maintenance and transportation facility. The buses are serviced and stored at that facility when not in use.

School bus drivers are required to hold a valid driver's license with the appropriate special equipment and passenger endorsements issued by the state Department of Licensing, as well as a school bus driver's certification issued by the Office of the Superintendent of Public Instruction.⁶ Bus drivers are also required to pass periodic physical examinations, and to undergo first aid and other job-related training.

The daily work hours of the school bus drivers vary, with some drivers working seven and one-half hours, while others work fewer hours. The bus drivers are commonly scheduled to work split

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In accordance with Chapter 28A.160 RCW, the state Board of Education promulgates rules regarding school bus transportation in Chapter 180-20 WAC.

shifts.⁷ Bus drivers are occasionally offered the opportunity to work additional hours, to transport students for extracurricular events. Most bus drivers work only the 180 days per year of student attendance.⁸

In the event that a substitute bus driver is needed, the employer normally calls upon a pool of employees regularly assigned to other classifications. The two mechanics, a food service worker, and a custodian all maintain bus driver licenses.

General Employment Practices -

The qualifications of applicants for job openings are screened, and interviews are conducted, by a committee made up of the head of the department that has the available position, a lead person in that department, and a building principal. Hiring recommendations are referred to the superintendent, and ultimately acted upon by the board of directors. There have been some transfers of employees between classifications within the existing bargaining unit.⁹

Many of the employees in the existing bargaining unit have their salaries averaged and paid over a 12-month period, even though they work only 9 or 10 months during the fiscal year. The bus drivers and food service workers have not been included in that program, however.

⁷ For example, during the 1990-91 school year, at least one driver's daily work schedule was split into three segments: 6:20 a.m. to 9:25 a.m.; 11:30 a.m. to 1 p.m.; and 2:05 p.m. to 4:30 p.m. That schedule included two inspection/warm up periods of 15 minutes each, each day.

⁸ An undisclosed number of bus drivers are employed to transport special education students during the summer.

⁹ Examples are: A food service worker transferred to a position as an education assistant, the transportation secretary/dispatcher is a former driver, and several secretaries are former educational assistants.

Collective Bargaining Procedures -

Historically, PSE has conducted meetings with the members of the bargaining unit to draft bargaining proposals. The proposals are then examined, and priorities are established, at a general meeting of the entire PSE membership. Initial proposals are thus not automatically made a part of the formal proposal that is submitted to the employer, but rather a consensus is developed among the PSE membership to determine which issues will be submitted.

PSE normally uses a negotiating team composed of the elected local president, a representative from each of the general classifications within the bargaining unit, and a PSE field representative. In the past, sub-committees have been organized from the ranks of the membership, to look more closely at issues raised by specific interest groups. Such special meetings have been held for the bus drivers, food service employees, and the educational assistants.

PSE submits the terms tentatively agreed upon between the union and the employer to a secret-ballot vote by the bargaining unit membership, for acceptance or rejection.

The contracts between PSE and the employer have included some terms uniformly applicable to all bargaining unit members, but have also contained certain exceptions applicable to specific segments of the bargaining unit. Included among those exceptions are a waiver of bidding requirements for certain shift extensions for clerical employees and educational assistants, and a provision that food service employees may be required to use their personal vehicle to transport materials. The 1989-91 contract contained a special section applicable to bus drivers, addressing matters such as seniority for route assignments, a limitation on consecutive hours of driving, a waiver of overtime pay for work in excess of eight hours per day, a provision for daily vehicle servicing and meeting time, a provision for distributing extra driving assignments, and a standby wage for non-driving time on trips.

Conflicts Within the Existing Bargaining Unit -

The record reflects that the bus drivers have raised with PSE a number of special interests unique to their classification, including a desire to have work time spent on extra trips counted for purposes of benefits eligibility, elimination of the reduced rate of pay for "standby" time,¹⁰ a minimum amount of compensation for a call-in, a salary premium for special education bus drivers, additional bus warm-up/inspection time, overtime calculated on a daily basis; and work rules and compensation standards for overnight trips. Although some bus drivers believe that the collective bargaining agreement inadequately addresses driver-related issues, the record indicates that PSE did raise several driver-related issues in the negotiations held with the employer for new collective bargaining agreements in 1989 and 1991.

The Petition in the Instant Case

Teamsters Local 763 filed the petition in the instant case within the contract bar "window" of the 1989-91 contract, but it did not seek to raise a question concerning representation in the entire bargaining unit covered by that contract. Rather, Local 763 seeks a "severance" of a separate bargaining unit of bus drivers.

POSITIONS OF THE PARTIES

Local 763 contends that the bus drivers should be permitted to sever from the existing "wall-to-wall" bargaining unit, because they have a separate community of interest from the other members of the unit. The petitioner further maintains that the incumbent

¹⁰ For the period from September 1, 1990 to August 31, 1991, the collective bargaining agreement called for a standby rate of \$8.46 per hour. The regular rate for a driver varied from \$9.46 to \$10.32 per hour, depending on the employee's length of service.

exclusive bargaining representative has inadequately represented bus driver interests, and has allowed the interests of other bargaining unit classifications to prevail over those of the drivers. Local 763 acknowledges that past attempts by bus drivers to sever from larger bargaining units have been rejected by the Commission. It maintains, however, that such earlier decisions should be disregarded and that the issue should be reconsidered. According to the petitioner, denial of the severance petition would be contrary to the express purpose of the Public Employees' Collective Bargaining Act to grant employees the right "to join labor organizations of their own choosing".

The employer took no position regarding the matter.

PSE maintains that the existing "wall-to-wall" bargaining unit is inherently appropriate, and that all of the employees share a community of interest in dealing with their common employer concerning their wages, hours and working conditions. According to PSE, the bus drivers lack a sufficient independent community of interest to support their separation from the existing bargaining unit. PSE points out that school bus drivers in a number of school districts have sought to sever from larger bargaining units, but have been unsuccessful in meeting the standards for severance. It contends that the circumstances of the case at hand are no different, and that the bargaining unit should be left intact.

DISCUSSION

Applicable Legal Standards

The Legislature has delegated authority to the Public Employment Relations Commission to determine the composition of collective bargaining units:

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 general purpose of unit determination proceedings is to group together those employees who have a community of interest into an organizational structure that will promote orderly collective bargaining. City of Pasco, Decision 2636-B (1987); Port of Seattle, Decision 3937 (PECB, 1991). In the case of a desire to "modify" the composition of an existing bargaining unit, the burden is on the petitioner to establish grounds for overcoming the history of bargaining that has developed in the existing unit, and the reasonability of its proposed severance. Mabton School District, Decision 2419 (PECB, 1986).

The Commission has looked to the criteria set forth by the National Labor Relations Board (NLRB) in Mallinckrodt Chemical Works, 162 NLRB 387 (1966), as a standard for the determination of "severance" cases. Those criteria were examined by the Commission in Yelm School District, Decision 704-A (PECB, 1980), and were paraphrased in Centralia School District, Decision 2599 (PECB, 1987), as follows:

1. Is the proposed unit a group of skilled journeymen craftsmen or employees constituting a functionally distinct department?
2. What is the history of collective bargaining with the employer?

3. Have the employees maintained an established separate identity?
4. What is the history and pattern of collective bargaining in the industry involved?
5. What is the degree of integration of the proposed unit in the employer's overall operation?
6. What are the qualifications of the union seeking to sever the proposed unit?

In Yelm, supra, an inclusive bargaining unit of school district classified employees represented by PSE was preserved against an effort by another organization to split off a separate unit of bus drivers. The Commission noted that the existing bargaining unit constituted "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". The same principles were applied in Lake Washington School District, Decision 1170 (PECB, 1981), where an inclusive bargaining unit of school district classified employees represented by Local 763 was preserved as against an effort by PSE to split off a separate unit of bus drivers. In Centralia, supra, a petition seeking severance of vehicle maintenance employees from an existing transportation/food service bargaining unit was dismissed, on the basis that they were a part of an integrated workforce supporting the educational process.

Autonomous school bus driver bargaining units have been found to be appropriate, outside of the "severance" context. See, Cusick School District, Decision 2946 (PECB, 1989).¹¹ Conversely, where a unit of school bus drivers already existed, a "residual" unit of other classified employees was found appropriate without disrupting

¹¹ In Cusick School District, a Teamsters local petitioned for a bargaining unit of unrepresented school bus drivers and mechanics that had once been represented by, and had been abandoned by, PSE.

the existing bus driver unit. See, Quillayute School District, Decision 2809 (PECB, 1989).¹² Even during the initial period following a voluntary merger of a historically autonomous school bus driver bargaining unit with a broader unit of classified employees, it was concluded that the bus driver unit could still stand alone. See, Pasco School District, Decision 3217 (PECB, 1989).¹³ All of those situations are distinguished, however, from the instant case, by the long history of bargaining in which the bus drivers have been included in the wall-to-wall unit at the Riverview School District.

Application of the Standards

Duties, Skills and Working Conditions -

School bus drivers serve in a position of trust and assume significant responsibility for safely transporting children to and from school. Their duties do not fall within the boundaries of what has been traditionally viewed as that of a skilled journeyman craftsman, however. Lake Washington School District, *supra*; Yelm School District, *supra*. Rather, like other school district classified employees, school bus drivers perform repetitive work in accordance with a plethora of external rules and regulations.

Many bus driver terms and conditions of employment, including retirement benefits, vacations, holidays, leaves, and insurance benefits, are the same as those extended to the other classified employees in the existing bargaining unit. Like other classified employees of school districts throughout the state, the petitioned-

¹² PSE already represented the bus drivers in that case, and it filed a petition seeking to represent the district's aides, bus mechanics, custodians, food service, maintenance, and office/clerical employees.

¹³ In Pasco School District, a local of the International Union of Operating Engineers sought to raise a question concerning representation at the first opportunity to do so following a merger of units by the employer and PSE.

for bus drivers are substantially affected by the decisions and actions of the state Legislature.

The work day and work year for bus drivers, like the other members of the bargaining unit, is determined by the length of the student day and the duration of the school year.

Although bus driver duties are unique to that classification, the custodian, food service worker, aide, and office-clerical groups each have duties that are unique to their classification, but are nevertheless part of an integrated system that functions in support of the educational process. The bus operations have no life or purpose of their own, and exist only as one link in a coordinated educational process that transports students to school, provides for their nutrition, maintains the educational facilities, and assists in the education of students.

History of Bargaining -

While the record does not reflect the circumstances under which the wall-to-wall bargaining unit was originally organized, it is clear that it has existed for at least the past 15 years. The change of representation which occurred in 1980 did not disturb the wall-to-wall nature of the bargaining unit.

Both PSE and the Teamsters have long histories of representing school district employees in the state of Washington. The docket records of the Commission reflect that neither organization is a stranger to proceedings before the Commission, and that both have considerable experience in the field, so that neither can be said to have pre-emptive qualifications to represent the petitioned-for bargaining unit.

Extent of Organization -

The existing "wall-to-wall" bargaining unit is made up of five occupational segments. Neither a severance of the petitioned-for

employees nor the retention of the existing bargaining unit would change the overall extent of organization among the employer's workforce.

Although Local 763 argues that legitimate interests of the bus drivers have been disregarded by other members of the existing bargaining unit, close examination of the numbers discloses that there are more bus drivers than there are food service workers, custodians, or maintenance/grounds workers.¹⁴ Carrying the theory advanced by Local 763 to its logical extremes would lead to the creation of a multiplicity of small, special interest bargaining units, with an accompanying potential for chaotic and unstable collective bargaining relationships.

Desires of the Employees -

The Commission has endorsed the use of secret-ballot unit determination elections, where it is appropriate to implement the "desires of employees" aspect of the statutory unit determination criteria. Such a situation exists, however, only where the application of the other unit determination criteria of the statute results in a conclusion that any of two or more bargaining unit structures could be found appropriate. See, e.g., Mukilteo School District, Decision 1008 (PECB, 1980).

The petitioner divulged the extent of its "showing of interest" in this case, and has asserted it as an expression of the desires of the employees. WAC 391-25-210 precludes the disclosure of the

¹⁴ Distribution of the bargaining unit, as a percent of the total, is as follows:

Maintenance/Grounds	2	=	2%
Custodial/Maintenance	10	=	8%
Food Service	12	=	10%
Transportation	20	=	16%
Secretarial	25	=	20%
Educational Assistants	55	=	<u>44%</u>
TOTAL		=	100%

"showing of interest" by the agency, so the information offered by Local 763 is neither acknowledged nor confirmed by this decision.¹⁵ Reliance on such information is rejected on sound principles of labor policy:

It is highly undesirable that employees should be placed on the witness stand, under oath, and compelled to testify concerning their bargaining unit preferences. Their preferences in regard to bargaining unit will too often be tied to or identifiable with their preferences as to choice of bargaining representative.

City of Seattle, Decision 1229-A (PECB, 1982).

Unhappiness by a group of employees over the collective bargaining accomplishments of their incumbent exclusive bargaining representative does not warrant a "severance" from a bargaining unit in which they have historically been included.

The proponents of severance must go beyond showing that there are differences of view among the employees in an existing bargaining unit. Okanogan County, Decision 2800 (PECB, 1988); Grays Harbor County, Decision 3067 (PECB, 1988).

City of Mount Vernon, Decision 3762, (PECB, 1991).

¹⁵ WAC 391-25-210 states, in relevant part:

The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

The only statement that can be made by the agency in this case is that the petitioner met the requirement of WAC 391-25-110 by providing a showing of interest indicating that it has the support of not less than 30 percent of the employees in the proposed bargaining unit.

Simply because a union is not successful in achieving all of its bargaining demands does not mean that it has failed to be responsive to its membership.

Conclusions -

The petitioner has failed to demonstrate that there are unique circumstances at the Riverview School District that warrant a departure from established criteria and precedent. The petitioned-for transportation employees are, and will continue to be, part of an integrated support operation essential to the overall discharge by the employer of its primary educational function.

FINDINGS OF FACT

1. Riverview School District 407 is a school district of the state of Washington, organized pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Riverview, affiliated with Public School Employees of Washington (PSE), is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Since certification by the Commission in 1980, PSE has been the exclusive bargaining representative of a bargaining unit comprised of all classified employees of Riverview School District 407. The proceedings leading to the certification of PSE as exclusive bargaining representative of classified employees of the Riverview School District did not alter the bargaining unit from that which had existed, for an undisclosed period of time beginning prior to 1976 and continuing to the certification issued by the Commission in 1980, while the employer recognized the Washington State Council of County and City Employees (WSCCCE) as the exclusive bargaining representative of its classified employees.

4. The employer and PSE have entered into a series of collective bargaining agreements since 1980, the latest of which was from September 1, 1989 to August 31, 1991. School bus drivers and other employees in the employer's Transportation Department have participated in the negotiation of such agreements, and special provisions have been included in those contracts concerning the wages, hours and working conditions of the Transportation Department employees.
5. PSE continues to be a viable organization and has a continuing interest in representing the school bus driver employees of the Riverview School District.
6. On June 10, 1991, Teamsters Union Local 763, a "bargaining representative" within the meaning of RCW 41.56.030(3), filed a timely and sufficiently supported petition with the Commission, seeking to raise a question concerning representation involving only the school bus driver employees of the Riverview School District.
7. While school bus drivers have some distinct duties, skills and working conditions, they are not skilled journeyman craftsmen. Many of the wages, hours and working conditions of the petitioned-for employees are similar to, or are controlled by the same influences as, those of other classified employees within the existing bargaining unit.
8. A history of bargaining has existed for more than 15 years, in which all of the classified employees of the Riverview School District have been included in a single bargaining unit.
9. The employees in the existing bargaining unit constitute an integrated support operation essential to the discharge by the employer of its primary education function.

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. The existing bargaining unit consisting of all classified employees of the Riverview School District continues to be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.
3. Severance of the petitioned-for bargaining unit of bus drivers would not be appropriate under RCW 41.56.060, and no question concerning representation currently exists.

ORDER

The petition of Teamsters Local 763 for investigation of a question concerning representation is DISMISSED.

Dated at Olympia, Washington, this 26th day of February, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN SCHURKE, Executive Director

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