Tukwila School District, Decision 7287 (PECB, 2001)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 23	)	CASE 15134-E-00-02527
	)	
Involving certain employees of:	)	DECISION 7287 - PECB
	)	
TUKWILA SCHOOL DISTRICT	)	ORDER OF DISMISSAL
	)	
	)	

Marcia Peterson, Business Representative, represented OPEIU Local 23.

Dionne and Rorick, by Michael Rorick, Attorney at Law, represented the employer.

Emmal Skalbania and Vinnedge, by Sidney D. Vinnedge, Attorney at Law, represented the intervenor, Tukwila Classified Association.

On April 11, 2000, Office and Professional Employees Union (OPEIU), Local 23, filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the Tukwila School District (employer). In an investigation conference conducted by telephone conference call, on June 7, 2000, the parties framed issues concerning the propriety of the proposed bargaining unit and the list of employees to be included in such a unit. A hearing was held on August 22 and 23, 2000, before Hearing Officer Walter M. Stuteville. The Tukwila Classified Association (TCA) intervened at the hearing. Briefs were filed.

Based upon the evidence presented, and the arguments advanced by the parties, the Executive Director rules that the bargaining unit

proposed by the OPEIU is not an appropriate unit for the purposes of collective bargaining. The petition is dismissed.

BACKGROUND

The employer operates one high school, one middle school and three elementary schools.[1] The employer's "central office" is adjacent to the high school and middle school campus.

The employer has collective bargaining relationships with organizations representing several existing bargaining units:

- A unit of about 155 certificated employees is represented by the Tukwila Teachers Association under the Educational Employment Relations Act, Chapter 41.59 RCW;
- A bargaining unit of employees who conduct extra-curricular activities is also represented by the Tukwila Teachers Association, but is under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.
- A bargaining unit of about 45 classified employees performing bus driver, food service, custodian, maintenance, and delivery functions is represented by Service Employees International Union (SEIU), Local 6, under Chapter 41.56 RCW; and
- A bargaining unit of about 80 classified employees performing office-clerical, paraeducator, health assistant, family support, and technology functions is represented by the TCA under Chapter 41.56 RCW.

The petition filed by the OPEIU indicated it seeks to represent 21 historically-unrepresented employees who work in or out of the

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[1] Washington Education Directory, 1998-1999.

employer's central office. The job titles involved in this proceeding are:

Registered Nurse
Family Liaison
Security Officer
Parent Liaison
Volunteer Coordinator
PAC Manager
Stay in School Coordinator
Maintenance Worker
Operation Assistant
Budget/Accounting Specialist
Payroll Officer
Payroll Specialist
Account Specialist AP/Inv
Administrative Asst ESHS
Administrative Asst Admin
Receptionist

The employer provided a list containing 22 names, but it argued that several of those should be excluded as confidential employees. The only confidential exclusion agreed upon by all parties is the executive assistant to the superintendent, Jan Lunde.

The employer's human resources director, Nina Melencio, testified that many of the positions involved in this proceeding were considered to be "confidential" under agreements made by the employer and the SEIU between 1985 and 1998, while the SEIU represented the bargaining unit now represented by the TCA. Melencio acknowledged, however, that reporting relationships and responsibilities of classified employees and administrators in the central office have changed over the years,[2] that the SEIU has

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[2] For example: Melencio's own position as coordinator of the employer's collective bargaining affairs (including research and development of proposals) has only existed for the last four years. Her responsibilities were previously performed by the superintendent and the superintendent's executive assistant.

disclaimed that unit, and that the number of exempted employees has increased from the exclusions agreed upon by the SEIU.

POSITIONS OF THE PARTIES

The OPEIU did not file a brief. From the petition and its statements at the hearing, it is understood to claim the proposed unit is appropriate because several of the employees involved testified that they asked the organizations already representing the employer's classified employees for representation, and were refused. It thus contends the employees involved should be allowed to organize the proposed unit, and would otherwise be prevented from exercising their statutory collective bargaining rights.

The employer asserts that creation of the proposed unit would fragment its workforce in a manner detrimental to working relationships. It also contends that creation of the proposed unit would bring about "work jurisdiction" disputes, and would effectively preclude the employees from exercising their statutory bargaining rights. With the exception of the maintenance lead and positions that it continues to claim are "confidential", the employer argues that the employees involved should be accreted to the bargaining unit represented by the TCA.

The TCA argues that all of the petitioned-for employees other than the maintenance lead should logically be a part of the existing bargaining unit it represents. It contends the historical exclusion of those positions was inappropriate, and that none of the persons involved have a sufficient labor nexus to be excluded as "confidential" employees. The TCA also argues that, with the growth of the employer's operation, most of the original central office positions have become more specialized, so that their

responsibilities now closely resemble positions assigned to the school buildings. The TCA also asserts that the creation of the proposed unit would create a fragmentation of the workforce and a potential for "skimming" disputes between the proposed unit and the unit it now represents.

DISCUSSION

The Unit Determination Process and Standards

The determination of appropriate bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060 specifies:

> 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 purpose of the unit determination process is to group together employees who will have a "community of interests" in dealing with their employer. The process is not limited to defining the "most appropriate" unit configuration.

In addition to bargaining units which encompass all of the employees of the employer (a "wall-to-wall" unit), numerous Commission decisions have found appropriate bargaining units limited to the employees in some branch of the employer's table of organization (a "vertical" unit), or limited to all of the employees in some generic occupational grouping (a "horizontal"

unit). Units limited to employees working at a particular plant or location may be common in the private sector, but the employees of local government public employers commonly work within limited geographical areas.

Unit determination is not a subject of bargaining in the usual mandatory/permissive/illegal sense. While parties can agree on unit matters, the Commission is not bound by parties' agreements on such matters. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The Commission certainly cannot be bound with regard to employees whose existence is unknown to the agency.

Commission and National Labor Relations Board (NLRB) decisions evidence concern about long-term interests. The Commission's decision in a "severance" case speaks volumes about the evils of unnecessary fragmentation of employer workforces:

> *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966) contains the definitive statement of existing NLRB policy on the adjudication of severance disputes. The Board there observed:
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> > . . . [We shall] 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.
> >
> > 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.

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 We emphasize the foregoing to demonstrate our intention to free ourselves from the restrictive effect of rigid and inflexible rules in mak-

> ing 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.
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> *Mallinckrodt Chemical Works*, 162 NLRB 387, 397-398.
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> This Commission subscribes to the . . . view expressed by the NLRB in *Mallinckrodt* ...
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> The Commission specifically notes:
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> . . .
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> 4. "All of the employees of the employer" (after separation of certificated employees as required by statute RCW 41.59) constitute *an integrated support operation essential to the overall discharge by the district of its primary educational function, and therefore are more appropriately dealt with as a unit.*
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> . . .

Yelm School District, Decision 704-A (PECB, 1980) (footnotes omitted, emphasis added)

The potential for work jurisdiction disputes is a constant concern in the unit determination process.[3] Although the OPEIU has not proposed a "severance" in the traditional sense, either a bargaining unit configuration with uncertain borders or a configuration creating an ongoing potential for overlapping units is clearly to be avoided.

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[3] Under *South Kitsap School District*, Decision 472 (PECB, 1978) and numerous subsequent decisions, status as an exclusive bargaining representative gives a union the right to protect the work jurisdiction of the unit it represents. Thus, an employer has a duty to give notice, and to bargain (if requested), prior to transferring work historically performed by bargaining unit employees to either its own employees outside of the bargaining unit ("skimming") or to employees of another employer ("contracting out").

The general rule under *Richland*, *supra*, is that employees excluded from a bargaining unit by agreement of the parties or by certification will not be accreted to that unit absent a relevant change of circumstances. That general rule was applied in *City of Vancouver*, Decision 3160 (PECB, 1989), to reject accretion of historically-unrepresented employees into one or more existing units.[4] Exceptions occur, however, if the agreed-upon or certified bargaining unit is inappropriate without the added positions. Thus:

- A petition was dismissed in *City of Seattle*, Decision 781 (PECB, 1979), upon a conclusion that the unit proposed there could not stand alone. That employer and various unions had erroneously excluded the affected employees from existing bargaining units on the basis of their having limited status under a civil service system.

- An agreed exclusion of employees which fragmented a body of work was deemed null and void in *Skagit County*, Decision 3828 (PECB, 1991), and the historically-unrepresented employees were accreted into the existing bargaining unit.

- Two bargaining units with overlapping borders were both found inappropriate in *South Kitsap School District*, Decision 1541 (PECB, 1983), notwithstanding a relatively recent certification of one of those units by the Commission, so that the duty to bargain no longer existed in either unit and there was no contract bar in either unit.

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[4] The *Vancouver* decision also evidences application of the parallel concern that employees should not be stranded in units too small for them to exercise their statutory bargaining rights: The unit proposed in *Vancouver* was found to be inappropriate unless it was enlarged to include unrepresented employees that would otherwise have been stranded. This reduced or avoided the possibility of having yet another controversy of the same type in the future.

Application of Standards

Duties, Skills and Working Conditions -

This component of the statutory criteria operates in every case. In order to determine whether the unit proposed by the OPEIU can stand alone, it is necessary to compare the petitioned-for positions with one another, as well as with other positions in the employer's workforce.

The "maintenance worker - lead" has unique responsibilities, which differ from those of the other employees sought by the OPEIU. The employer's job posting for the position includes:

> 1. Provides lead direction to maintenance workers; schedules, prioritizes and oversees maintenance projects; troubleshoots and resolves problems.
> 2. *Diagnoses and maintains electrical systems*. Replaces light fixtures; installed outlets; replaces switches and receptacles.
> 3. *Diagnoses and maintains plumbing problems* including plugged toilets, sinks and fountains. Installs and replaces faucets and fixtures as needed.
> 4. Diagnoses and maintains electrical systems. Replaces light fixtures; installed outlets; replaces switches and receptacles.
> 5. *Performs general carpentry* including installing doors, shelves, and windows. Installs and/or repairs fences; cleans graffiti from buildings.
> 6. *Maintains grounds* around school facilities including pruning and removing trees; mows, fertilizes and irrigates fields and grounds.
> 7. *Maintains machinery and equipment*; troubleshoots, cleans and repairs and delivers to appropriate site. . . .
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> (emphasis added)

At the same time, this position shares many duties, skills and working conditions with the employees represented by the SEIU.

The accounting and payroll positions share responsibilities of the office-clerical type. One of the job descriptions includes:

> 1. *Processes, reviews and verifies accuracy of documents;* identifies deviations and recommends corrective action.
> 2. *Performs data entry* of accounting data; establishes, maintains, updates and verifies files, records, logs and computerized tables.
> 3. *Balances and reconciles data;* performs calculations; tracks and assures adherence to dates and time frames.
> 4. *Prepares accounting reports.*
> 5. Performs speciality functions such as *accounts payable, warrant processing, inventory maintenance and input, district records archiving and storing,* and other assignments as assigned by supervisor.
> 6. Provides back-up and peak-load assistance for other areas of accounting and payroll.
> 7. Performs related duties of a similar scope and nature as required.
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> (emphasis added)

The job description for the payroll officer differs as to details,[5] but still evidences work within the office-clerical generic

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[5] The payroll officer's job description includes:

> - Coordinates . . . participation in the state retirement system, including . . . transmittals, reconciling outstanding balances . . . .
>
> - Processes a variety of benefit-related data, such as pooling of benefits, tracking or awarding pay or hours for vacations, sick leave, and sick leave buy-backs.
>
> - Carries out a variety of payroll office functions, such as recordkeeping . . . issuing IRS form W-2s, and balancing bank statements.

occupational type. The employer and TCA provided testimony indicating the only difference between these employees and those performing accounting functions (e.g., Associated Student Body funds) in the employer's schools is the location where they work.

The budget specialist supports the business manager, under a job description which includes:

1. *Researches, compiles, analyzes, summarizes and maintains fiscal information* used in compiling various budgets throughout the district.
2. Provides instruction to principals and program directors/supervisors in estimating expenditures, interpreting budget reports, and assigning budget codes. Assists managers by preparing budget appropriations and specialized reports.
3. *Prepares annual financial statement* (F-196), specialized annual reports, and notes to financial statements. Reconciles and maintains fixed asset vouchers.
4. Serves as liaison between program managers and employees regarding accounting procedures.
5. Coordinates with business manager and administrative team preparation of annual budget (F-195), and *enters all data into computer system.* Updates budgets as required.
6. Monitors grants, invoices, accounts receivables, electronic grant billings, and grant inventory.
7. *Prepares journal vouchers* to correct errors in accounting transactions. Prepares inter-fund transfers as needed; processes, *reviews, and verifies accuracy of accounting data* for accounts payable, payroll and journal entries.
8. Prepares month-end reports for school board; *reconciles county treasurer reports and bank statements; prepares appropriate month end journal entries.*
9. Conducts internal audits of cash funds and departments.

> 10. Monitors expenditures and/or revenues for performance with adopted budgets and compliance with applicable laws and regulations. Coordinates month-end closing with departments; maintains reports in computer and maintains blending model program spreadsheets. . . .
>
> (emphasis added)

For the purposes of this inquiry, the key fact is that the financial information is compiled in a manner similar to the functions performed by TCA-represented employees working in the school offices. Again, the only major distinction is the physical location where the work is performed.

The administrative assistants have support tasks which differ as to details, depending on which administrator is being supported. The job description for one of those positions includes:

> 1. Coordinates substitute teaching assignments; set ups [*sic*] and *operates computerized substitute management system;* processes substitute application, prepares substitute payroll and handbook.
> 2. *Provides administrative support* to the Curriculum Coordinator; makes travel and conference arrangements; *maintains calendars and prepares correspondence;* locates presenters; sets up at location; maintains records; prepares contracts for consultant services, *purchase orders and journal vouchers.*
> 3. Coordinates staff development workshops; locates presenters; sets up at location; *maintains records;* prepares contracts for consultant services, *purchase orders and journal vouchers.*
> 4. Assists in coordinating grant applications and in monitoring grant funds and program compliance.
> 5. *Prepares and submits state and federal reports.*

6. *Makes travel arrangements* for all district personnel.
7. Compiles, *word processes* and edits the district newsletter and emergency phone chain.
8. Provides *secretarial assistance* to Strategic Planning Committee; *maintains files.*
9. Provides *administrative support* to the Superintendent; *prepares correspondence* and reports.
10. Serves as *backup to receptionist* and office manager as needed; greets callers and visitors, and routes incoming mail; attends Board meetings; takes and transcribes minutes in backup capacity.
11. Performs related duties of a similar scope and nature as required.

(emphasis added)

The job description for the other position sets forth similar responsibilities for other programs. The employer presented testimony that these two positions correspond to the office managers in the schools. The duties, skills and working conditions are within the office-clerical generic type, differing only as to the physical location where they work.

The receptionist provides support to the personnel office under a job description which includes:

1. *Greets and assists visitors and callers.*
2. Distributes all *incoming and outgoing mail and deliveries.*
3. *Orders and maintains office supplies* for the Administration Building.
4. *Word-processes and duplicates* materials; provides fax and *general clerical support* to the Superintendent, Executive assistant and Personnel Manager.
5. Maintains pool of paraeducator substitutes; schedules paraeducator substitutes to fill vacancies.

6. Distributes and accepts applications for employment; maintains applicant files and applicant database.
7. Assists Personnel Manager in publishing employment opportunities by *copying and mailing postings*, and updating jobline.
8. Schedules job interviews and prepares interview packets.
9. Performs other duties as assigned.

(emphasis added)

Again, the duties, skills and working conditions are clearly within the office-clerical generic type. The evidence indicates this position is analogous to the office assistants performing reception and clerical support functions at the schools.

The "operations assistant/purchaser" has clerical and technical functions under the employer's job description, including:

1. Performs district purchasing functions, including *ensuring correct codes and available funds*, authorizing expenditures, and accepting purchasing terms; responds to related request from district employees on procedures and budgetary transfers.
2. Assists in the *processing of request for proposals* (RFP's), including receiving written bids as directed.
3. *Prepares monthly student enrollment report* in accordance with state and district guidelines.
4. Oversees district's advanced travel funds.
5. *Prepares accounts payable journal entries, reconciles cash account* transmittals and statements, and provides general accounting support functions as necessary.
6. Provides a variety of *administrative support to the Business Manager, including preparing and sending correspondence, scheduling appointments*, and training new employees as directed.
7. May perform a variety of special projects as assigned, such a (sic) coordinating

> portions of remodeling projects, or working with consultants on other project areas. . . .
>
> (emphasis added)

The evidence indicates this position functions in much the same manner as the TCA-represented office managers in the schools, except for different administrators and in a different location.

Three coordinators support particular programs to which they are assigned, and provide liaison between the schools and the community: The coordinator for business partnerships works with outside business; the stay-in-school coordinator works with local courts concerning truancy matters; and the parent liaison works with families that have children enrolled in the schools. The job descriptions differ as to details, according to which program is being supported. For example, the responsibilities of the volunteer coordinator include:

1. Recruit businesses to collaborate and partner with the school district in a variety of programs; network with the business community; promote district/ business partnerships.
2. Recruit, retain and track volunteers; offer training to volunteers; coordinate volunteer recognition programs and events.
3. Coordinate internship program for high school seniors in conjunction with the senior economics class; locate business or government internship opportunities; write syllabus for students; design program materials; track student hours; visit placement sites and evaluate students.
4. Coordinate district tutoring program; generate tutoring contact; contact parents; facilitate tutor/student assignments.
5. Design, write and publish a newsletters [*sic*] for volunteers, business partners and other interested parties.

6. Serve on a variety of district and other committees as requested.
7. Organize and track data for assigned programs; produce reports as necessary.

. . .

All of these positions require knowledge of office procedures and equipment. Importantly, Melencio testified that similar skills and responsibilities are required for a "family support specialist" position represented by the TCA.

The performing arts center manager works at the high school campus. The job description includes:

1. Schedules Performing Arts Center facilities, equipment and personnel.
2. Provides technical services to groups using the performing arts center, including lighting and stages design.
3. Plans and implements maintenance of facility and equipment; troubleshoots and *performs minor maintenance and repairs*; or contracts with service providers.
4. Trains and supervises paid student employees and students working and learning in the Arts Center; enures (sic) safe operations.
5. Purchases supplies; plans and implements equipment purchases within assigned budget.
6. Promotes the use of the Performing Arts Center facilities to the community and commercial groups.
7. Prepares necessary financial documents, including rental cost estimates and billings.
8. Performs related duties of a similar scope and nature as required.

(emphasis added)

The employer aptly compares the responsibilities of this position to those of its employees who perform technical work in the

bargaining unit represented by the TCA. The positions cited as comparable include a computer network technician, a computer network specialist, a computer lab manager, and a library media technician, all of whom are responsible for facility and equipment maintenance, troubleshooting and performing minor repairs, training and supervising student employees, and ordering supplies and equipment.

The security officer duties are suggested by the title, but the employer likened the role to that of paraeducators represented by the TCA. The job description for the position includes:

1. Establishes effective working relationships with staff, faculty and others in and around the school environment.
2. Exercises independent sound judgment in determining course of action when confronted with security situations.
3. Patrols school property; assures safe environment for students, staff, and property.
4. Investigates personal and property violations; takes statements and drafts reports.
5. Initiates positive interaction with students and faculty; assists with enforcement of school rules and regulations.
6. Serves as positive role model; makes referrals of students to counselor social worker and/or principal for behavioral problems.
7. Diffuses volatile, hostile and/or violent situations.
8. Maintains effective open communications with security personnel, office and administrative personnel using portable radio and personal computer.
9. Attends meetings and maintains effective working relationship with local law enforcement agency to gain information related to criminal activity in the area.
10. Performs related duties of a similar scope and nature as required.

Both the security officers and the paraeducators are supervised by school building principals. Their similar responsibilities include supervision of students, enforcement of school rules, and positive interaction with students and the community.

The Registered Nurse duties suggested by the title are confirmed by the employer's job description, which includes:

1. Sets up and monitors administration of student medications at school; assesses for effectiveness and side effects.
2. Works with staff to accommodate health issues at school by providing presentations to staff on various health conditions, such as seizures, HIV/HEBT, asthma and diabetes; provides Multi-Disciplinary Team staff with information and explanations regarding student health conditions.
3. Writes care plans and maintains records.
4. Evaluates students for possible Child Protective Service (CPS) referral; coordinates with district staff to make CPS referrals.
5. Provides emergency first aid for students and staff; assesses student health issues and illnesses; make appropriate referrals to parents and health care providers.
6. Performs state-mandated assessment of student immunization status; monitors, tracks and refers parents for update; reports status to state.
7. Assesses and plans care of students with complex physical and/or mental disabilities; teaches staff various aspects of necessary medical procedures; delegates to and monitors non-licensed staff to provide care for these students.
8. Assists families and students to access outside agencies and services.
9. Provides state-mandated hearing, vision, and scoliosis screening for students; writes referrals and provides follow-up as needed.
10. Teaches staff First Aid/CPR.

11. Performs related duties of a similar scope and nature as required.

In this instance, the employer compares the position to the "health assistant" classification currently included in the bargaining unit represented by the TCA. The differences between those classifications relate to levels of expertise, rather than to the kind of work performed. In fact, the health assistants and registered nurses work in the same offices, and with the same population of students.

History of Bargaining -
This component of the statutory criteria will not operate in every case, and the employees in the bargaining unit proposed by the OPEIU have no history of bargaining themselves.

The existing units have histories which must be considered, and the evidence (or, sometimes, a lack of evidence) suggests that at least the security officer, registered nurse, and maintenance titles were excluded from other bargaining units by mistake or oversight. Because the employees sought by the OPEIU do not qualify as "skilled journeyman craftsmen" and do not constitute "a functionally distinct department," the overall history of bargaining weighs heavily against creation of the proposed separate bargaining unit.

The bargaining unit represented by the TCA has a history which dates back to 1985. According to the testimony of Melencio, the exclusion of the central office personnel began (or at least was formalized) between 1985 and 1998, while the SEIU represented the classified employees performing office-clerical, paraeducator, technical, health, and family support functions. From the testimony of a variety of witnesses, it is apparent that some positions were excluded from that bargaining unit based only on the fact that they were physically located in the central office. Such

an arrangement is contrary to Commission precedents which date back to at least 1985:

> This record suggests that some budget/fiscal functions have migrated back and forth between the central office and the building offices. Having had the potential for work jurisdiction conflicts brought to the attention of the Commission in this case, [footnote omitted] they cannot be ignored.
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> . . . In *Wapato School District*, Decision 2227 (PECB, 1985), a petitioning union sought a horizontal bargaining unit of office-clerical employees while that employer supported having a separate unit of employees performing functions generally similar to the "central office" employees in the case at hand. [The petitioner] would distinguish *Wapato* on the basis that it involved a smaller number of employees, but the principles relating to wall-to-wall, vertical and horizontal bargaining unit structures are not dependent on the size of the unit. [The petitioner] also emphasizes perceived similarities between the duties of the two groups of office-clerical employees in *Wapato* (and would maximize the differences between the petitioned-for employees and the building secretaries in Clover Park), but this record requires rejection of the claim that this employer has two office-clerical groups so separate from one another that there is no potential for functional overlaps, career progression or work jurisdiction conflicts.

Clover Park School District, Decision 7052 (PECB, 2000).

The TCA petitioned for the same unit after the SEIU disclaimed it, and inherited any problems with its structure. In *Tukwila School District*, Decision 6390 (PECB, 1998), a bargaining unit then numbering 76 employees was described as:

> All full-time and regular part-time classified employees of the Tukwila School District doing

> the work of office/clerical, instructional assistant, pre-school teacher, and childcare specialist, excluding supervisors, confidential employees and all other employees.

While that unit description could, on its face, encompass many of the positions in the unit now proposed by the OPEIU, they certainly were not excluded by Commission rulings and it appear they were not called to the attention of the Commission at that time.

The bargaining unit still represented by the SEIU has a history which dates back many years, and encompasses maintenance employees. Melencio testified that the "maintenance lead" position at issue in this case is not significantly different from the maintenance positions in the SEIU-represented unit. If that individual is merely a lead worker, Commission precedent would call into question the exclusion of that position from the SEIU-represented bargaining unit; if that individual has and exercises sufficient authority to warrant exclusion from the SEIU-represented unit as a supervisor, Commission precedent would still resist inclusion of that position in the unit of non-supervisory employees sought here by the OPEIU.[6] Thus, neither of the alternatives discernable from the history of bargaining would yield inclusion of the maintenance lead position in the bargaining unit proposed by the OPEIU.

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[6] No party to this proceeding has claimed this position is excludable from the SEIU-represented unit as a supervisor. During the hearing in this case, the OPEIU and TCA proposed the following stipulation:

> The position of maintenance worker is appropriately placed in the SEIU, Local 6 custodian, maintenance, food service and transportation bargaining unit.

The employer aptly declined to agree to that stipulation, on the basis that the appropriate placement of the position was beyond the scope of this proceeding. The SEIU is not a party to this proceeding.

Extent of Organization -

This component of the statutory criteria compares the unit at issue to the whole of the employer's workforce. In this case, the creation of another bargaining unit would tend to fragment the employer's workforce, and would give rise to a potential for work jurisdiction disputes.

The bargaining unit proposed by the OPEIU would particularly fragment the employer's office-clerical workforce, contrary to the principles discussed in *Clover Park*, *supra*, and *Wapato*, *supra*. At the same time, the unit proposed by the OPEIU would encompass a variety of technical and professional positions, while excluding employees performing comparable tasks in the employer's school buildings. Finally, and perhaps the most difficult to justify, the unit proposed by the OPEIU would include employees who do not even share the "central office" work location with the other employees involved in this case. The record establishes there is historical and ongoing interchange between the petitioned-for employees and the TCA-represented employees in daily operations, particularly as to computer systems and budget/fiscal matters. A separation of those two groups based only on their physical locations could also prejudice career and promotional opportunities for employees in both groups.

A potential for work jurisdiction conflicts would arise, under *South Kitsap School District*, Decision 472 *supra*, if the unit proposed by the OPEIU were to be created. The distinct possibility of encountering a "skimming" dispute at every turn would ultimately be to the detriment of the employer and both unions, and would impose a severe impediment to making adjustments in response to changing circumstances. Rather than waiting to see whether a problem arises, as occurred in *South Kitsap School District*, Decision 1541 *supra*, the employer and the TCA have properly called

attention to the potential problem before another bargaining unit is created.[7] The evidence indicates that some functions, particularly in the budget and fiscal areas, have migrated back and forth between the central office and the school offices, so the potential for work jurisdiction conflicts cannot be ignored.

Desires of Employees -

The Commission determines the "desires of employees" by conducting unit determination elections, but there is no occasion to conduct such an election unless two or more **appropriate** unit configurations are being proposed. *Clark County*, Decision 290-A (PECB, 1977). Because the unit sought by the OPEIU fails under the "duties, skills, and working conditions", "history of bargaining", and "extent of organization" criteria, no unit determination election is warranted here.

Precedents on Severance of Office-Clerical Units Inapposite -

The Commission has allowed office-clerical employees to sever themselves from broader bargaining units,[8] including units arguably comparable to the "integrated support operation" preserved in *Yelm, supra*. The units which have been allowed severance have, however, encompassed **all** employees who perform office-clerical functions for

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[7] The Commission had previously certified one of the bargaining units found inappropriate in *South Kitsap*, Decision 1541, *supra*, but the propriety of that unit had been stipulated by the parties in the representation case leading to that certification, and the overlap of functions with the pre-existing unit was not called to the attention of the Commission while that representation case was being processed.

[8] The Commission's decision in *Quincy School District*, Decision 3962-A (PECB, 1993) was affirmed by the Court of Appeals in *Public School Employees of Quincy v. PERC, et al.*, 77 Wn. App. 741 (Division III, 1995). The Supreme Court of the State of Washington denied review of the Court of Appeals decision.

the particular employer. In contrast, a petition for the office-clerical employees in selected departments of a public employer was dismissed in *Port of Seattle*, Decision 890 (PECB, 1980), upon a conclusion that the "H-shaped" unit configuration proposed there was inappropriate.

The bargaining unit sought by the OPEIU is factually distinguished from the units involved in the traditional office-clerical severance cases, and is comparable to the unit sought in *Port of Seattle, supra*. It would only encompass office-clerical employees in the employer's central office, while excluding building secretaries who have duties and skills within the same occupational type. Contacts between building secretaries and students have not provided a sufficient distinction to fragment the office-clerical employees in other school districts, and are not sufficient to do so here. There are undoubtedly wide variances of duties among office-clerical employees, but they are not determinative: A person performing reception, typing, or accounting assignments may have frequent contact with members of the public, while others performing similar duties only a few feet away in the same office may have little or no contact with the public, but there can be no doubt those are both office-clerical roles. The fact that the "public" in the school setting includes students does not alter the fundamental occupational type of persons who primarily support building principals and other administrators.

Conclusions on Propriety of Proposed Unit -

This record requires rejection of the claim that the unit proposed by the OPEIU can stand alone as an appropriate bargaining unit under RCW 41.56.060. Different from the situation in *City of Vancouver, supra*, where the historically-unrepresented employees could stand alone as a separate unit (once related positions were added to avoid stranding them), the unit proposed by the OPEIU is

more comparable to the situations in *City of Seattle*, *supra*, *South Kitsap School District*, Decision 1541, *supra*, and *Skagit County*, *supra*.

Confidential Exclusions

The employer has argued that several of the employees involved are confidential employees. The statutory basis for the exclusion of such persons from bargaining rights is found in RCW 41.56.030(2):

> (2) "Public Employee" means any employee of a public employer except any person . . . (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit. . . .

The Commission decides claims of "confidential" status in proceedings under Chapters 391-25 and 391-35 WAC.[9]

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[9] In doing so, the Commission implements the holding of *IAFF v. City of Yakima*, 91 Wn.2d 101 (1978), where the Supreme Court of the State of Washington ruled:

> We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

Thus, a "labor nexus" test is used for determining the validity of claimed "confidential" exclusions.

In this case, however, the conclusion that the bargaining unit sought by the OPEIU is inappropriate obviates the need to determine whether the exclusions proposed by the employer are warranted.

One logical extension of the conclusion reached in this case is that the units represented by the SEIU and TCA are now, and will continue to be, inappropriate to the extent that they categorically exclude central office positions which should be included in them. Once the OPEIU is out of the picture, the employer and the unions representing the existing bargaining units will need to sort out the unit placement of the employee involved in this case. In particular:

- It will behoove the employer and the SEIU to take steps promptly, either to accrete the "maintenance lead" position into their existing bargaining unit to restore its propriety, or to agree that exclusion of that position from the existing unit is warranted under *City of Richland, supra*.

- It will behoove the employer and the TCA to take steps promptly, to explore the propriety of accreting the office-clerical and technical employees involved in this case into their existing bargaining relationship. If the number of employees to be accreted raises a question concerning representation, it may be necessary for those parties to pursue representation proceedings under Chapter 391-25 WAC, as was done after *South Kitsap School District*, Decision 1541, *supra*, to restore the propriety of that bargaining unit.

- It will behoove the employer and the TCA to discuss any "confidential" exclusions under the "labor nexus" test set forth in *City of Yakima, supra*. The record made here contains evidence that the administrative assistant for administration and the budget/accounting specialist have some ongoing involvement with confidential labor relations materials, but

any such discussion (or litigation) would be in the changed context of there being no independent central office group.

The parties to such proceedings would be limited to the employer and the union representing the particular bargaining unit involved.[10] Recognizing the effort already invested in the hearing and briefs in this proceeding, the parties to any future proceeding would have the option to stipulate portions or all of the record made in this case as part or all of the evidence in such a future proceeding.

FINDINGS OF FACT

1. The Tukwila School District is operated under Title 28A RCW, and is a public employer within the meaning and coverage of RCW 41.56.020 and 41.56.030(1).

2. Office and Professional Employees International Union, Local 23 (OPEIU), a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of certain office-clerical, maintenance, professional and technical employees of the Tukwila School District.

3. The Tukwila Classified Association (TCA), a bargaining representative within the meaning of RCW 41.56.030(3), has been granted intervention in the proceedings as the incumbent exclusive bargaining representative of certain office-cleri-

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[10] The OPEIU would not be involved. The SEIU (which has not been a party in this case) would properly be involved in any case affecting the unit it represents.

cal, professional and technical employees of the Tukwila School District.

4. The bargaining unit now represented by the TCA was previously represented by Service Employees International Union, Local 6 (SEIU), and the exclusion from that unit of various employees performing office-clerical, professional and technical tasks dates back to agreements made, or to actions taken for no apparent reason, while the SEIU was exclusive bargaining representative of that unit.

5. The historical exclusions from the bargaining unit now represented by the TCA, including exclusions of claimed confidential employees, are called into question by changes of circumstances described in the testimony of an employer official in this proceeding.

6. The SEIU continues to represent a bargaining unit of the employer's classified employees which includes employees performing custodial and maintenance tasks.

7. The duties, skills and working conditions of a maintenance worker/lead position sought by the OPEIU are similar to those of employees represented by the SEIU, and are substantially different from those of the other employees in the bargaining unit sought by the OPEIU.

8. Although historically referred to as "central office" personnel, the positions sought by the OPEIU are not all housed in the same facility.

9. The employees in the bargaining unit sought by the OPEIU do not qualify as skilled journeymen craftsmen.

10. There is ongoing interchange between employees in the bargaining unit sought by the OPEIU and the employees represented by the TCA, so that the employees in the bargaining unit sought by the OPEIU cannot be classified as a functionally distinct department of the employer.

11. Contact between employees working in the employer's schools and students attending classes in those schools is ancillary to the primary responsibility of those employees to perform traditional office-clerical functions in support of the administrative functions of the employer.

12. Creation of the petitioned-for unit would not be productive of stable labor relations in the school district, and would create an ongoing potential for work jurisdiction conflicts between two bargaining units of office-clerical employees.

13. A bargaining unit combining the existing unit represented by the TCA and most of the petitioned-for employees would constitute an integrated support operation essential to the overall discharge by the employer of its primary educational function.

14. While the ability of Local 23 to represent the petitioned-for employees has not been challenged, the record contains no evidence that it has any special qualifications vis-a-vis those of the incumbent exclusive bargaining representative.

CONCLUSIONS OF LAW

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

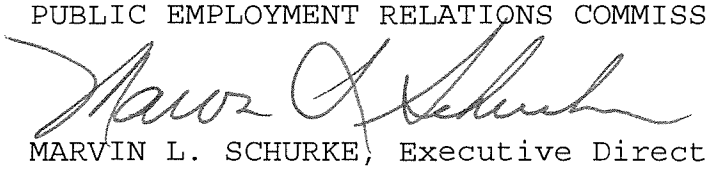
2. The bargaining unit sought in this proceeding by Office and Professional Employees International Union, Local 23, is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

ORDER

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

Issued at Olympia, Washington, on the 13th day of February, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.