

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TACOMA ASSOCIATION OF MID-)	CASE NO. 5326-E-84-966
MANAGEMENT EMPLOYEES)	
)	DECISION 2250-A - PECB
Involving certain employees of:)	
)	
TACOMA SCHOOL DISTRICT NO. 10)	DIRECTION OF ELECTION
)	
)	

Williams and Terry, by John David Terry II, Attorney at Law, appeared on behalf of the Tacoma Association of Mid-Management Employees.

Neil Hanson, Director of Employee Relations, Tacoma School District, and Kane, Vandenberg, Hartinger & Walker, by Elvin J. Vandenberg and Clifford D. Foster, Attorneys at Law, appeared on behalf of Tacoma School District No. 10.

Faith Hanna, Attorney at Law, Washington Education Association, appeared on behalf of intervenor, Tacoma Association of Public School Professional-Technical Employees.

On June 26, 1984, the Tacoma Association of Mid-Management Employees (TAMME) filed a petition with the Public Employment Relations Commission, for investigation of a question concerning representation. The petitioner seeks certification as exclusive bargaining representative of a bargaining unit of "all classified supervisors" of Tacoma School District No. 10. The Tacoma Association of Public School Professional and Technical Employees (the P-T Association) intervened as the incumbent exclusive bargaining representative of a unit of professional, technical and supervisory employees. A pre-hearing conference was held on August 28, 1984. A hearing was held in Tacoma, Washington, on September 24 and October 17, 1984, before Hearing Officer Ronald L. Meeker. At the request of the parties, the deadline for filing of post-hearing briefs was continued to March 25, 1985. On July 5, 1985, the Executive Director remanded this matter for further hearing, which

was held on March 10 and 12, 1986, before Hearing Officer Rex L. Lacy. The parties filed supplemental post-hearing briefs.

BACKGROUND

Tacoma School District No. 10 is located in Pierce County, Washington. The district has about 27,000 students.¹ It currently has in excess of 2,500 certificated and classified employees. The district has collective bargaining relationships with a number of organizations representing bargaining units under both Chapter 41.56 RCW and Chapter 41.59 RCW.

The non-supervisory certificated employees of the district are represented under Chapter 41.59 RCW by the Tacoma Association of Classroom Teachers (TACT), an affiliate of the Washington Education Association/NEA. Although that bargaining relationship pre-dates the effective date of Chapter 41.59 RCW and the creation of the Public Employment Relations Commission, its scope has been the subject of unit determination proceedings in Tacoma School District, Decision 390 (EDUC, 1978) [dealing with severance of a unit of vocational-technical institute certificated employees], Tacoma School District, Decision 652, 652-A (EDUC, 1979) [dealing with creation of a separate unit of certificated supervisors] and Tacoma School District, Decision 655 (EDUC, 1979) [dealing with "substitute" employees].

The non-supervisory certificated employees working in the district's L. H. Bates Vocational-Technical Institute are represented in a separate bargaining unit under Chapter 41.59 RCW by L. H. Bates Vocational-Technical Local 4184, affiliated with the Washington Federation of Teachers, AFT, AFL-CIO. See, Tacoma School District, Decision 390, supra.

¹ The district's enrollment has evidently been shrinking. Reference is found in Tacoma School District, Decision 655 (EDUC, 1979) to an enrollment at that time of approximately 35,000 students in the district's K-12 program alone.

Supervisory certificated employees of the district are represented in another separate bargaining unit under Chapter 41.59 RCW by the Tacoma Association of Public School Administrators (TAPSA). See, Tacoma School District, Decision 652, 652-A, supra.

Clerical employees of the district are represented for the purposes of collective bargaining under Chapter 41.56 RCW by the Tacoma Association of Educational Office Personnel, an organization now affiliated with the TACT.

The district's paraprofessional employees (instructional aides) are represented for the purposes of collective bargaining under Chapter 41.56 RCW by the Tacoma Federation of Paraprofessionals Local 461, an affiliate of the Washington Federation of Teachers, AFT, AFL-CIO. An organization affiliated with the TACT raised a question concerning representation in that bargaining unit in 1984, but Local 461 retained its status as exclusive bargaining representative. Tacoma School District, Decision 2093 (PECB, 1984).

The district's custodians, security patrol employees and bus drivers are represented for the purposes of collective bargaining in three separate units under Chapter 41.56 RCW by International Union of Operating Engineers, Local 286, AFL-CIO. See: Tacoma School District, Decision 1908 (PECB, 1984).

The district's food service employees are represented for the purposes of collective bargaining under Chapter 41.56 RCW by the Washington State Council of County and City Employees and Local 120 SCH of the American Federation of State, County and Municipal Employees, AFL-CIO.

The district's skilled maintenance employees are represented for the purposes of collective bargaining under Chapter 41.56 RCW by the Pierce County Building and Construction Trades Council.

A variety of "classified" professional, technical and supervisory employees of the district have heretofore been represented for the purposes of collective bargaining under Chapter 41.56 RCW by the Tacoma Association of Public

School Professional and Technical Employees. The P-T Association and the district have had labor agreements over the last 14 years, and were parties to a contract effective from September 1, 1981 through August 31, 1984. The membership of the P-T Association decided during 1983 to affiliate with the Tacoma Association of Classroom Teachers (TACT).

After the P-T Association affiliated with TACT, certain of the employees within the P-T unit perceived a potential conflict of interest between their duty to represent the employer as a supervisor and what TACT would expect of them as a member. They formed the Tacoma Association of Mid-Management Employees (TAMME), and filed the petition in this proceeding. The petition sought a unit of "all classified supervisors" employed by the school district, without limitation to those historically included in the P-T unit.²

DISCUSSION

The Unit Determination Issue

A unit determination issue must be addressed first in this proceeding. If the unit sought by the petitioner were to be found inappropriate, then the petition in this proceeding would be dismissed and there would be no occasion for ruling on the other issues framed by the parties (e.g., with respect to the supervisory and/or confidential status of particular individuals).

² The case was remanded for further proceedings in Tacoma School District, Decision 2250 (PECB, 1985) when it became apparent that all of the parties may have confined their view of the case to the narrower scope of a "severance" from the P-T unit. In response to the interim order, the district supplied a list of names of all of its classified employees who were either within a bargaining unit but claimed to be a supervisor, or who were not included in any bargaining unit. The petitioner and the intervenor then stated their positions concerning the persons and positions identified by the employer. The hearing was then re-opened to receive further evidence and argument concerning the issues framed by the parties.

The petitioner contends that the existing unit represented by the P-T Association is an inappropriate unit, as many of the individuals in that unit are known supervisors. The petitioner seeks the creation of a separate unit of supervisors, in which the affected individuals may be represented by an organization of their own choosing.

The P-T Association was granted intervention in these proceedings on the basis of its status as the incumbent exclusive bargaining representative of petitioned-for employees. It contends that there is a 14-year history of bargaining in the existing unit with no change in circumstances, and that severance of the disputed individuals from the existing P-T unit would constitute an unnecessary fragmentation of bargaining units among the employees of the school district.

It is the position of the employer that the unit issue should be resolved between the employees, not between the unions and the employer. The employer is not concerned about the potential for fragmentation created by this petition, and indicates a willingness to negotiate with any unit(s) determined by the Commission to be appropriate.

Issues have existed concerning the appropriate treatment of "supervisors" since the enactment of Chapter 41.56 RCW. Between 1967 and 1975, while the Department of Labor and Industries administered the statute, that agency saw fit to identify a class of "managerial type supervisors" and to exclude such persons from the rights and benefits of the Act. Rejecting that precedent in City of Tacoma, Decision 95-A (PECB, 1977), the Public Employment Relations Commission commented: "We see no statutory basis for such identification." Having been advised of the change of administrative interpretation of the law, the Supreme Court held in Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), that supervisors are public employees within the meaning of Chapter 41.56 RCW.

The notion of a separate bargaining unit of supervisors is also not new. The unit involved in City of Tacoma, supra, was a separate unit consisting of

some 18 supervisors. Similarly, the Supreme Court dealt with a separate unit of supervisors in METRO, supra, citing Packard Motor Car Co. v. National Labor Relations Board, 330 U.S. 485 (1947) [which, in turn, had dealt with the propriety of a separate unit of supervisors].

The determination of bargaining units is a function delegated to the Commission by the legislature. RCW 41.56.060. The Commission has indicated that particular care should be exercised in making unit determinations where a "severance" from an existing bargaining unit is proposed. Yelm School District, Decision 704-A (PECB, 1980). On the other hand, the policies and precedents of the Commission regarding the unit placement and bargaining rights of supervisors are also an outgrowth of the unit determination criteria of the statute. City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wa.App 599 (Division III, 1981); cert. den., 96 Wn.2d 1004 (1981). It should be clear that, conditioned upon meeting the time-for-filing requirements of Toppenish School District, Decision 1143-A (PECB, 1981), any supervisors within the existing P-T unit would be subject to exclusion from that unit in unit clarification proceedings.

Where unit clarification proceedings initiated by their employer have resulted in their exclusion from the bargaining unit which includes their subordinates, supervisors have nevertheless been permitted to form separate units. See, City of Bellingham, Decision 565 (PECB, 1979) [fire department supervisors excluded from the firefighter bargaining unit on a unit clarification petition filed by employer] and City of Bellingham, Decision 926 (PECB, 1980) [where those supervisors organized as a separate bargaining unit of supervisors]. See, also, City of Richland, Decision 1519-A (PECB, 1983) [where an attempt by fire department supervisors previously excluded from a rank-and-file unit to form a separate unit was rejected on the basis of a potential for conflict within the petitioning labor organization, rather than on any impropriety of the separate unit of supervisors itself].

But supervisors need not wait for the employer to obtain their exclusion from a rank-and-file bargaining unit. They are employees within the meaning of

the Act under City of Tacoma and METRO, supra, and they have a right to organize independent of the rights of their subordinates. The Seattle Police Management Association initiated the proceedings which led to City of Seattle, Decisions 689-A, 689-C (PECB, 1981), by filing a representation petition in which it sought certification as exclusive bargaining representative of a separate unit of police department supervisors. Similarly, the proceedings which led to City of Seattle, Decision 1797-A (PECB, 1985) were commenced by the Seattle Fire Chiefs Association, Local 2898, IAFF, AFL-CIO, with a representation petition seeking a separate unit of supervisors.

In theory, a separate unit of supervisors could thus be found appropriate in this case.

Duties, skills and working conditions -

Where, as here, there have been collective bargaining agreements in existence for a long period of time, it is not surprising that benefits such as insurance, holidays, vacations, leaves, and the hours of work should be the same, or at least very similar, among various employee groups within the same employer. Those are not, however, the only indicators of a community of interest. Supervisors have duties which are separate and distinct from the duties of those they supervise, particularly including the exercise of authority (on behalf of the employer) over their subordinates. The decisions in Kelso School District, Decision 303, 303-A (EDUC, 1978); Clover Park School District, Decision 376 (EDUC, 1978) and Tacoma School District, Decision 652-A, supra, all dealt with persons who were excluded from the rank-and-file employee bargaining units under Chapter 41.59 RCW upon a conclusion that they worked in support of the administrative function of the school district. The examples of similar results under Chapter 41.56 RCW and City of Richland, Decision 279-A, supra, are legion.

History of bargaining -

The record of these proceedings indicates that the school district extended voluntary recognition to the P-T Association for the existing bargaining unit comprised of both supervisory and non-supervisory employees. There is no

record of the propriety of the existing bargaining unit having been determined by the Commission or by the Department of Labor and Industries. Although the record indicates a 14-year history of bargaining, employers, employees, and labor organizations do not have the ability to bind the Commission by their agreements on matters of unit determination. Nor does their agreement on a matter of unit determination at one point in time assure that the unit will continue to be appropriate. City of Richland, Decision 279-A, supra. The policies of the Department of Labor and Industries that were in effect when the existing unit was created have long since been rejected by both the Commission and the courts. The history of bargaining notwithstanding, current interpretation of the statute endorses severance of supervisors from the existing bargaining unit for placement in a separate unit of supervisors.

Extent of organization -

It is clear that the vast majority of the school district's employees are included in the various bargaining units identified above. The petition in this proceeding encompasses all of the district's classified employees who are "supervisors" (which is the generic descriptor of the petitioned-for unit). The creation, under Commission precedent, of the bargaining unit sought by the petitioner in this proceeding will not strand any groups or otherwise fragment the "supervisor" class. It will add one more unit with which the employer will have to bargain, but the employer does not object.

Desires of the employees -

Where two or more different unit structures could each be appropriate, the Commission may conduct a unit determination election to obtain an un-coerced indication of the desires of the employees. Tumwater School District, Decision 1388 (PECB, 1982). However, no such unit determination election can be held where one of the choices to be made available would be an inappropriate unit. Clark County, Decision 290-A (PECB, 1977). The supervisory employees previously represented by the P-T Association in a mixed unit of supervisors and their subordinates have taken steps in this case to obtain representation in a separate unit of supervisors. Under METRO, supra, supervisors are "public employees" within the meaning of RCW 41.56.030(2) who

can constitute an appropriate unit for the purposes of collective bargaining.

Under City of Richland, Decision 279-A, supra, the same cannot be said for continuation of the historical mixed unit of supervisors and their subordinates. The conduct of a unit determination election is precluded in this case by the latter conclusion.

Eligibility Issues - Supervisors

Having concluded that the petitioned-for bargaining unit of supervisors would be appropriate, the task turns to identification of the persons eligible to vote on the question concerning representation in that unit.

Pursuant to the interim order, the employer has identified a number of individuals that it claims to be supervisors. The petitioner contends that employees identified by the employer as supervisors are properly placed in the proposed unit of supervisors. The P-T Association has not conceded that any of the members of its unit are supervisors.

Under Section 2(11) of the National Labor Relations Act, "supervisor"

. . . means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under RCW 41.59.040(4) (d), the term "supervisor" means:

. . . any employee having authority, in the interest of the employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely

routine or clerical in nature but calls for the consistent exercise of independent judgment.

Chapter 41.56 RCW does not define "supervisor", but the decisions of the Commission have looked to the exercise of the same types of authority over employees as are the focus of attention in the NLRA and EERA definitions.

Supervisor of Copy Center -

This position reports directly to the district's superintendent of schools. Steve Johnson,³ supervises six P-T unit employees and one secretary. He has responsibility for preparing the budget for the copy center, for acquisition of supplies and equipment, and for evaluation of the copy center employees. He has the authority to effectively recommend the hiring, firing, and discipline of employees. Johnson is the first step in the grievance procedure of the contracts covering his subordinates, and is clearly supervisory.

Office Manager, Pupil Services -

Romona Silvey reports to the district's assistant superintendent of pupil personnel services. Silvey supervises 24 secretaries, several part-time clerical employees, and one P-T unit employee. She evaluates subordinates, can effectively recommend hiring and firing of employees assigned to her section, is responsible for the payroll for employees under her supervision, grants overtime and compensatory time off, and has authority to discipline employees. Silvey is a supervisor.

Office Manager, Curriculum and Instruction -

Beverly A. Winther reports to Richard Manion, assistant superintendent of curriculum and instruction. There are approximately 50 to 60 employees in this division, of which 35 hold certificated positions and the balance hold classified positions. In the main, Winther supervises the secretarial

³ The names of incumbents used in this paragraph and those which follow are those who held the positions according to the record made in this case. The conclusions reached are applicable to any subsequent holders of the position unless circumstances change.

employees in the division, although she has participated in evaluating some of the P-T unit employees assigned to the division. Winther has the authority to effectively recommend hiring, to discipline employees, to grant overtime and compensatory time off, to schedule vacations and to re-assign employees. She is clearly a supervisor.

Coordinator of Volunteer Services -

Bonnie Pinckney also reports to Richard Manion. Pinckney oversees the district's volunteer service program. She is responsible for the recruitment, training, and placement of unpaid volunteers who assist classroom teachers in the educational program. It appears that the volunteers, as such, are not "employees" of the Tacoma School District who are included in any bargaining unit of district employees. Pinckney currently has one assistant, who primarily serves in a liaison role between Pinckney and classroom teachers. At one time, Pinckney oversaw a staff of 12 district employees, but that staff has been reduced due to budget reductions and the expiration of a grant from a private foundation. Pinckney's oversight of unpaid volunteers does not create a potential for conflicts of interest within the bargaining unit, and does not qualify her as a supervisor under Commission precedent. Her primary task relates to those volunteers, such that her oversight of the few remaining district employees in her program is limited. While she may have been a supervisor while she oversaw a much larger workforce, the record is insufficient to base a conclusion that she is now a supervisor, and she will remain in the P-T unit.

Office Manager, Personnel Office -

Phyllis Moore, reports to Willis Stewart, assistant superintendent of personnel. As the supervisor of nine secretaries, Moore has the authority to effectively recommend hiring and promotion. She grants leave requests, schedules vacations, has given reprimands, and evaluates employees. Her position is the first step in the grievance procedure of the collective bargaining agreement covering her subordinates. Moore holds a supervisory position.

Supervisor of Data Systems -

Donald Friermuth reports to the district's business manager, Nicholas Schaefer.⁴ Friermuth has 20 P-T unit employees under his direction, 10 of them reporting directly to him. The remaining employees report through a subordinate supervisor, William Andrea. Friermuth evaluates, disciplines, promotes and effectively recommends reclassification of employees. Friermuth holds a supervisory position.

Manager of Data Processing -

William R. Andrea reports to Donald Friermuth. Andrea supervises four computer operators, three production control employees, and two data entry employees. Andrea had only been employed for five months at the time of the initial hearing in this case, but the responsibilities outlined for him included interviewing job applicants, making effective recommendations on hiring and discipline of department employees, and scheduling the work hours of the employees under his supervision. Andrea holds a supervisory position.

Supervisor of Business Office -

Dolores Olson reports to Business Manager Schaeffer. At and prior to the time of the re-opened hearing, Olson supervised 12 P-T unit employees and 11 secretarial employees. Olson had been making effective recommendations concerning hiring and firing of employees. She grants overtime and compensatory time off, and schedules vacations. She has served as a consultant to a district negotiating team, but is not claimed to be a confidential employee. A reorganization of the district's business office was being undertaken at the time of the re-opened hearing. Under that reorganization, Olson was to assume some duties as a result of the retirement of Otterson, and was to have 3 additional supervisors under her direct control. Nothing indicates that the reorganization would diminish Olson's supervisory status.

⁴ At the onset of the proceedings, Friermuth reported to Carrol Otterson, a certificated administrator who held the title of "Administrator of Fiscal and Data Systems". After Otterson retired in 1985, oversight of Friermuth's function was transferred to the business manager, who is a classified employee of the district.

Supervisors Created in Reorganization of Business Office -

At the time of the reopened hearing, the employer indicated that it was within a week or two of implementing five new positions with titles of: "Supervisor of Payroll", "Supervisor of Accounts Payable", "Supervisor of Business Services", "Assistant Controller - Budget and Grants", and "Assistant Controller - Treasury". Testimony was adduced and job descriptions of the five positions were placed in evidence. It was anticipated that the persons holding the first three of those new titles would report to Delores Olson and would share the day-to-day supervision of about 18 of the employees theretofore under Olson's direct supervision. Although necessarily anticipatory, the evidence indicates that all five of the new positions would be supervisory in nature if implemented according to the terms set forth in this record. Following the close of the hearing, the employer supplied correspondence to the Commission and to all parties, indicating that the reorganization has taken place. None of the other parties has asked for re-opening of the hearing. The incumbents of those positions will be included in the list of employees eligible to vote in the forthcoming election, subject to challenge by any party claiming that the conclusion reached here is contrary to the actual subsequent developments.

Office Manager, School Facilities -

Alana Woolard reports to Oliver Magnuson, administrator of school facilities. Woolard supervises two P-T unit employees and eight secretaries. Woolard and Magnuson co-evaluate employees under Woolard's supervision. Woolard has the authority to effectively recommend hiring, firing, and disciplining employees. She grants overtime and compensatory time off, develops vacation schedules, interviews new job applicants, and has effectively recommended a reclassification for an employee. Woolard holds a supervisory position.

Supervisor of Engineering Services -

This position also reports to Oliver Magnuson. There was a change of incumbents in this position during the processing of this case, and it is currently held by Robert Boehm. The only evidence submitted at the hearing was the job description for the position and testimony by Magnuson to the

effect that the position supervises the four other employees in the department. A review of the job description in evidence indicates delegation of authority similar to that of other positions found herein to be supervisory, thus supporting a conclusion that this position is also supervisory.

Assistant Director of Purchasing -

Kenneth W. Davis reports to Larry Mjelde, the director of purchasing of food services. Approximately two years ago, the district's purchasing department and food service department were merged with Mjelde as the director. The resulting unit is broken down into three areas: purchasing, food service, and warehousing/distribution. Prior to the merger Davis was the office manager in the purchasing department, with supervisory responsibilities for the purchasing area. Subsequent to the merger, Davis' main responsibility is as a buyer for schools and departments other than maintenance. His salary as the assistant director is approximately 20% greater than the two other buyers in the division, but his supervisory duties are limited to acting in the absence of the director, occasionally participating in the interviewing process for new employees, and doing a preliminary evaluation of two P-T unit employees in the division. From the record it appears that this may once have been, but no longer is, a supervisory position. It will continue to be in the P-T unit.

Office Manager, Purchasing and Food Services Department -

Carol McKay now holds the position that was held by Kenneth Davis prior to the merger of the purchasing and food service departments. She reports to Larry Mjelde. McKay and Mjelde co-evaluate employees of the department. McKay plans, coordinates and directs the work of the clerical staff in the purchasing and food service department (approximately eight employees). She participates in interviewing job applicants, and has authority to discipline employees, grant overtime and compensatory time off. McKay is a supervisor.

Supervisor of Food Service -

Jeanne Oloufa also reports to Larry Mjelde. Oloufa supervises a total of 250 employees, acting primarily through head cooks who are lead workers at the

various kitchens in the district. She interviews applicants referred by the personnel department, and effectively recommends hiring food service employees. She assigns part-time employees to 58 different schools for lunch and/or breakfast programs, and has authority to promote, transfer, schedule, evaluate, and discipline employees. Oloufa clearly holds a supervisory position.

Food Services Field Assistant (2 positions) -

Dorothy Johnson and Wynona Dawson report to Jeanne Oloufa. Johnson and Dawson are responsible for quality control in the district's school lunch program. They inspect the cooking sites and service locations to ascertain that the quality of the food meets U.S. Department of Agriculture and Tacoma School District guidelines. They issue inspection reports detailing violations of the guidelines, but issue warnings to employees only with Oloufa's approval. Johnson and Dawson do not participate in the hiring, discipline, discharge or assignment of employees. Their only recommendations on personnel matters are made to Oloufa, who independently makes the final decision. Johnson and Dawson are not supervisors, and will remain in the P-T unit.

Supervisor of Warehousing and Distribution -

This position was described in the testimony of Larry Mjelde. The incumbent was Bob Gleason. The position was historically included in the bargaining unit represented by the Pierce County Building and Construction Trades Council. The potential involvement of the position in this case was identified as a result of the procedure following the interim order issued in this matter. The Council filed a letter with the Commission asserting that the position should remain in the skilled maintenance bargaining unit where it historically has been. At the pre-hearing conference on March 5, 1986, the parties stipulated to exclude this position from the petitioned-for unit.

Assistant Supervisor, Operations Department (2 positions) -

Paul Beckstead and Neil Yuckert report to Don Buck, the district's supervisor of operations. Beckstead and Yuckert co-supervise 225 custodial employees. Beckstead works on the day shift and Yuckert works on the "swing" shift.

They assist Buck in interviewing applicants, they assign custodial work, evaluate employees, grant overtime and compensatory time off, and schedule vacations. Both have issued oral and written reprimands to custodial employees. Their positions are supervisory.

Chief of Security -

William Bradley reports to Terry Palmer, the district's supervisor of safety and risk management. Bradley supervises seven security officers who are represented by the International Union of Operating Engineers. Bradley has the authority to hire, fire, and discipline employees under his supervision. He can adjust employee grievances, schedule work and vacations, grant overtime and compensatory time off, and grant leaves of absences. Bradley holds a supervisory position.

Transportation Supervisor -

Mark C. Wilham reports to Director of Transportation Paul Plumis. Wilham supervises the special education sector of the transportation department, which consists of 42 regular drivers, 13 substitute drivers, 2 P-T unit employees, 6 bus monitors, 1 vehicle service attendant, and a payroll secretary. Wilham develops, modifies, and approves all bus routes and schedules, develops and monitors the special education sector of the transportation budget, effectively recommends hiring and firing, disciplines employees, and prepares performance evaluations on all employees under his direction. Wilham holds a supervisory position.

Chief Engineer, KTPS-TV -

Albert Bednarczyk reports to the manager of the educational television station operated by the school district. The position has authority over three P-T unit employees and eight part-time employees, including screening of applications, interviewing candidates for employment, making effective recommendations on hiring, discipline and discharge of employees, approval of leave requests, overtime and compensatory time off, and evaluation of employees. The position is supervisory.

Program Manager, KIPS-TV -

Thomas D. Rogstad was in this position at the time of the initial hearing. Reporting to the station manager, Rogstad supervised four P-T unit employees, two secretaries and the staff at the L. H. Bates Vocational-Technical Institute when they worked in the studios. By the time of the re-opened hearing, the position had been eliminated.

Development Manager, KIPS Television -

John McShane reports to the station manager. The main focus of the position is fund raising for the public television station. In the performance of that function, McShane is normally assisted by a secretary and one P-T unit employee (although the P-T unit position was vacant at the time of the re-opened hearing). While McShane has authority to evaluate the two employees under his direct supervision, to assign their duties, and to recommend hiring and firing, grant time off, and adjust grievances, his opportunities to exercise supervisory authority are clearly limited by the small number of subordinates. The record indicates that the position was in a state of flux, and that part of the duties formerly assigned to the abolished program manager position had been assigned to this position. While a close question is presented on this record, it is concluded that McShane should remain in the P-T unit.

Eligibility Issues - Confidential Employees

The final task in this case is the determination of disputes concerning claims of "confidential" status made as to persons who might otherwise be eligible to vote on the question concerning representation in the supervisor unit. The background to this subject is complex, as indicated below.

The applicable law is well established. RCW 41.56.030(2) provides:

(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, or any person

elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer.

The term "confidential" was interpreted narrowly by the Supreme Court in City of Yakima v. International Association of Firefighters, 91 Wn.2d 101 (1978) to include a "labor nexus":

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.

Since "confidential" employees are excluded from coverage of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, the exception has also been narrowly construed by the Commission, which has imposed a "heavy" burden of proof on those who would exclude an employee from the coverage of the Act. City of Seattle, Decision 689-A (PECB, 1979). Possession of supervisory authority, including authority concerning the administration of collective bargaining agreements, does not suffice to warrant exclusion as "confidential". City of Seattle, Decision 689-C (PECB, 1981); City of Seattle, Decision 1797-A (PECB, 1985). Thus, persons holding positions as high as "battalion chief" (i.e., second in command) in the fire departments of the cities of Yakima and Richland, "major" (i.e., third in command) in the police department of the City of Seattle, and "deputy chief" (i.e., third in command) in the fire department of the City of Seattle have been included in separate units of supervisors.

The Commission has previously been called upon to rule on the "confidential" employees of this employer. In the proceedings which led to Tacoma School District, Decision 652, 652-A (EDUC, 1979), this employer contended that

. . . its superintendent and 22 other persons responsible for the general operation of the district, consultation on the employer's labor relations policies and participation on one or more of the district's ten separate collective bargaining teams

were "confidential" employees within the meaning of RCW 41.59.020(4)(c). The persons in dispute there were identified as members of the superintendent's "cabinet" and participants on employer bargaining teams under both Chapters 41.56 and 41.59 RCW. The organization seeking certification in those proceedings as the exclusive bargaining representative of certificated supervisory employees of the district disputed 12 of the claimed exclusions, arguing that the employer was seeking "to have more 'confidential' exclusions than are legitimately needed to conduct the district's labor relations with its employees". The argument was rejected there by the Executive Director, noting that the "necessarily implies a confidential relationship" language of RCW 41.56.030(2)(c) has no precise counterpart in RCW 41.59.020(4)(c). As a result of those proceedings, the following positions were excluded from the unit of certificated supervisors:

- 1.* Superintendent of Schools
- 2.* Associate Superintendent, Educational Services⁵
- 3.* Associate Superintendent, Support Services⁶
- 4.* Assistant Superintendent, Pupil Personnel Services
- 5.* Assistant Superintendent, Curriculum and Instruction
- 6.* Assistant Superintendent, Personnel
- 7.* Administrative Director - Division of Health
- 8.* Business Manager and Deputy Secretary⁷
- 9.* Administrative Director - Vocational-Technical Education

5 Del Cross, who is now the superintendent of schools, was listed as the incumbent of this position in Decision 652. No reference is found in the present record to the continued existence of the title, although there is reference to an "administrative assistant" title not mentioned in the earlier proceedings.

6 No reference is found in the present record to the continued existence of the title, although there is reference to a new "Administrator - Fiscal" title.

7 The record in this proceeding indicates that the title of "business manager" is now held by Nicholas Schaeffer, a classified employee.

- 10.* Director of Employee Relations
- 11.* Director of Research and Evaluation
- 12. Assistant Superintendent, School Facilities
- 13. Assistant Superintendent, Affirmative Action, Community Affairs
and Staff Development⁸
- 14. Administrative Assistant - Special Education
- 15. Administrator for Elementary Education
- 16. Associate Administrative Director, Vocational-Technical Education
- 17. Administrator for Secondary Education
- 18. Administrative Assistant, Personnel
- 19. Administrative Assistant, Budget and Data Processing⁹
- 20. Administrative Assistant, Pupil Personnel Services
- 21. Assistant Administrator, Secondary Education
- 22. Assistant Administrator, Elementary Education
- 23. Director of Information¹⁰

The titles in the foregoing list which are preceded by an asterisk (*) were excluded from the unit of certificated supervisors by stipulation of all parties in the proceedings leading to Decision 652.¹¹ None of the parties pursued the "confidential" issue on appeal to the Commission.

In the context of the foregoing, none of the parties to the instant case dispute the exclusion from the coverage of Chapter 41.56 RCW (as "confidential" employees) of the classified employees holding the titles:

-
- 8 The position was vacant at the time of Decision 652. The record in the instant proceeding indicates that the title is now held by Rindetta Stewart, a classified employee.
 - 9 The record indicates that the incumbent of this position at the time of Decision 652 has retired, and that the responsibilities have been transferred to business manager Schaeffer and other classified employees.
 - 10 The record in this proceeding indicates that the title is now held by Kay Engelsen, a classified employee.
 - 11 The superintendent of schools was, and is, the chief executive officer of the school district. The holder of that position is per se excluded from the coverage of Chapter 41.59 RCW by RCW 41.59.020(4)(a) and (b), and would also be the "executive head of the bargaining unit" under RCW 41.56.030(2). Similarly, the "associate superintendent", "assistant superintendent" and "business manager" titles listed in items 2, 3, 4, 5, 6, 8, 12, and 13, above, would appear to have been excluded per se by RCW 41.59.020(4)(b). No similar exclusion-by-title language exists in Chapter 41.56 RCW.

Secretary to Superintendent
Secretary to Business Manager
Secretary to Administrative Assistant
Secretary to Director of Employee Relations
Secretary to Administrator - Fiscal

Following the issuance of the interim order in this case, the employer has identified a number of other classified employees that it claims to be "confidential" employees within the meaning of RCW 41.56 .030(2)(c). During the further course of these proceedings, the parties have stipulated that the individuals holding the following titles are "confidential" employees within the meaning of RCW 41.56.030(2)(c):

Director of Transportation
Director of Purchasing and Food Services
Supervisor of Operations
Supervisor of Maintenance
Assistant Superintendent, Affirmative Action, Community Affairs
and Staff Development
Public Information Officer
Business Manager
Supervisor of Classified Employees
Supervisor of Safety and Risk Management
Legal Assistant

With limited exceptions,¹² it must be observed that the exclusion of these individuals from the coverage of the Act is based exclusively on the

¹² The record does disclose that:

The Supervisor of Classified Employees (Gerry Tanagi) has signed some of the district's collective bargaining agreements with unions representing its classified employees.

The record also discloses that the collective bargaining agreement covering the "security patrol" unit was signed on behalf of the district by the Supervisor of Safety and Risk Management (Terry Palmer).

Notice is taken of the docket records of the Commission in Tacoma School District, Case No. 5996-U-85-1121, which indicate that the Legal Assistant (Susan Schreurs, a former member of the Commission staff) appeared as the representative-of-record for the employer in those proceedings before the Commission. Testimony, along with a job description, establishes that the person holding the legal assistant position will be involved in all aspects of the employers labor relations with its unionized employees.

stipulation of the parties, without any supporting evidence in this record. Acceptance of their stipulation here does not constitute a ruling of the agency that they are "confidential" employees.

Inferring that one of the certificated positions dealt with in Decision 652 has since disappeared (per footnote 7, above) and that three of the certificated positions dealt with in Decision 652 have since been replaced by "classified" employees (per footnotes 5, 6 and 8, above) who are now stipulated excluded as "confidential", it appears that the district has something on the order of 34 employees excluded from the coverage of the collective bargaining statutes (19 as "administrative" and/or "confidential" under Chapter 41.59 RCW, and 15 as "confidential" under Chapter 41.56 RCW) before getting to any of the positions contested in this proceeding.

The employer continues to seek the exclusion of the following additional positions as "confidential" employees:

- Controller
- Assistant to Business Manager
- Internal Auditor
- Project Manager for Bond Issue Projects
- Editorial Assistant

In seeking those additional exclusions, the District indicates a desire in the instant proceedings to increase the number of confidential employees, because it uses a bargaining team approach in negotiating contracts with bargaining representatives.

The petitioner claims in its post-hearing brief that the controller and the project manager for bond issue projects are "supervisors" who are properly included in its bargaining unit.

With the exception of the controller, who it acknowledges in its post-hearing brief to be "confidential", the P-T Association contends that the individuals holding the five positions identified above are not confidential employees within the meaning of the Act.

Neil Hanson, the district's director of employee relations, has been the district's chief bargainer for a number of years. Hanson negotiates with all of the organizations representing bargaining units of Tacoma School District employees. The district has historically assigned classified supervisory employees to assist Hanson at the bargaining table. In the past, each team normally consisted of Hanson and 2 to 5 other school district officials. In some cases, officials other than Hanson have served on district bargaining teams for two or more sets of negotiations in the same year. The district's brief anticipates a problem with its proposal to expand the number of "confidential" employees assisting Hanson, stating:

Any argument that the District has extended confidential duties too far down in its chain of command has also been previously rejected. In [Decision 652, supra], the Executive Director ordered the exclusion of 23 certificated positions as "confidential". He noted:

The TAPSA argument suggests that the employer has watered down the meaning of "confidential" by spreading the confidentiality among too many persons In view of the size of the District's total operation, the number of bargaining relationships involved and the evidence showing actual delegation and participation in the labor relations policy area, the arguments of both employee organizations are found to be without merit.

The employer's argument here is framed so as to be misleading, and is without merit. Lest there be any mis-understanding, at the point where the "...." appears in the foregoing quotation from Decision 652, the school district has excised the following sentence:

The argument also appears to key into the "necessarily implies a confidential relationship" language of RCW 41.56.030(2)(c) which has no counterpart in RCW 41.59.020(4)(c).

The Executive Director is quite capable of recalling, let alone looking up, what he said, and of understanding the points of law relied upon in Decision

652. This case is under Chapter 41.56 RCW. The employer must reckon with the statutory "necessarily implies" language in this case.

A number of questions are raised by the facts and circumstances in the instant case:

- In light of the injection of an additional labor relations professional into its full-time staff (legal assistant Susan Schreurs) who is to be involved in representing the school district in grievances and litigation before arbitrators, the Commission and possibly the courts, can the historical practice concerning structure of bargaining teams be taken as a valid indicator of necessary practices for the future?

- Even if the historical practice is continued, is the occasional assignment of "line" supervisory or professional employees to one of the district's several bargaining teams a sufficient contact with privileged labor relations information to warrant exclusion?

- What is the effect of the decline in the size of the district's overall operation (as measured by the approximate 29% decline of its enrollment from approximately 38,000 students to approximately 27,000 students) over the past 7 years on its need for "confidential" employees?

None of the classifications remaining at issue have titles or principal duties in the labor relations area which, on their face, suggest exclusion. Rather, in each case, labor relations would be a secondary activity for each of the individuals in dispute.

Controller -

The new title of "Controller" came out of the reorganization of the district's business office that was to be implemented just after the close of the hearing in this case. The new position replaced a position formerly titled "Comptroller". Reporting to Business Manager Nick Schaeffer, the controller was to be responsible for the management and direction of all the financial offices in the business services division. The design of the position called for the person holding the position to evaluate all the staff under their direct supervision, and to make effective recommendations on

hiring, firing, transfer, promotion within the division and discipline. The position was to be authorized to adjust grievances, and to grant leave and time off. There can be little doubt that the position would be at least supervisory. It was envisioned that the controller would, like the comptroller position which it replaced, serve on one or more of the district's bargaining teams. Of far greater importance, it was envisioned that the controller, like the comptroller before him, would be responsible for compiling financial data to be used in collective bargaining, and for participating in cabinet and other pre-negotiations meetings where such data will be used in the formulation of the employer's labor relations policies. Given the historical involvement of the position which it replaced, the plans for the future of this position cannot be diminished as speculative. It is concluded that the position meets the requirements for exclusion as a confidential employee under RCW 41.56.030(2)(c).

Assistant to the Business Manager -

This is another newly created position that was to result from reorganization of the business office, with the employee holding the position reporting directly to the business manager. The duties of the position were formerly assigned to a "Manager of Fiscal Data" position which was to be abolished under the reorganization. At the conclusion of the hearing, the position was authorized but unfilled. Schaefer testified that the assistant to the business manager was envisioned as a liaison person between the business division and other departments and divisions of the district, as well as liaison with the state Superintendent of Public Instruction, but such duties do not suggest necessary involvement with the employer's labor relations policies. Other projected duties included serving, in conjunction with the controller, as a resource person for district bargaining teams, coordinating state salary "compliance" data, and attending meetings of the district's board of directors when the business manager is absent, but the record in this case will sustain no more than a conclusion that his work as a resource to bargaining is only "in conjunction with" the excluded controller. There is insufficient evidence of need for such work, and speculation as to its implementation. Speculation is an insufficient basis for exclusion. City of

Pasco, Decision 2294 (PECB, 1986). From the evidence of record, it appears that the position was to be at a level parallel to the Supervisor of the Business Office, Delores Olson, who was allocated to the supervisor unit. This position will be treated similarly.

Internal Auditor -

Charles Cuzzetto reports jointly to the superintendent of schools and to a finance and audit committee composed of the superintendent, two school board members, and four citizens. Cuzzetto audits the financial operations of the district. Additionally, he performs audits to check for compliance with statutes, rules and regulations, efficiency and effectiveness of management, and to determine if the district is properly applying the terms of collective bargaining agreements. Cuzzetto does not directly supervise any other district employee. He is clearly a "professional", but he is not a designated bargaining team member, is not required to attend negotiations sessions, and does not participate in the decision-making process with regard to the district's positions on bargaining proposals. His position thus does not necessarily imply a confidential relationship to the executive head of the bargaining unit on matters including the formulation, implementation, or effectuation of the employer's labor relations with its employees. In the absence of evidence to sustain classification as a "supervisor", the position will remain in the P-T unit.

Project Manager For Bond Issue Projects -

Duanne Zinger reports to Oliver Magnuson, administrator for school facilities. Zinger oversees the planning, design, and construction of the district's "phase-1 capital improvements program", a \$35 million package which includes eight renovation and new construction projects. In the performance of those responsibilities, Zinger supervises four district employees, and has the authority to effectively recommend hiring, firing, and discipline, to grant overtime and compensatory time off, approve leave, schedule vacations, and determine assignments. The position is supervisory. Zinger works with the contractors, consultants, and architects involved the construction. Zinger serves on the superintendent's administrative committee, which makes a

weekly review of the progress on bond projects, mediates disputes among the crafts unions on jurisdictional disputes, negotiates with contractors about contract compliance, and establishes a two-gate system when work stoppages occur among the craft unions involved with the construction projects. Zinger has not served on any of the school district's bargaining teams, and has no history of nexus with confidential information concerning the district's collective bargaining process. The employer's "desire" to use Zinger in such a capacity in the future is too speculative, in light of the large number of existing confidential exclusions and the circumstances as a whole, to warrant an exclusion here. Zinger will be an eligible voter in the supervisor unit.

Information Coordinator -

Pat Flynn formerly held the title of editorial assistant, serving as an assistant to Public Information Officer Kay Engelsen. The change of title was not to be accompanied by any substantial alteration of the position. Flynn's primary duties involve professional and/or technical level work editing of school district bulletins and publications. Flynn oversees the work of a free-lance writer who is employed from time to time on a personal services contract, but has no direct supervision of any other district employee. The absence of supervisory authority precludes her inclusion in the petitioned-for unit of supervisors. The district seeks to have Flynn excluded from either of these bargaining units because she attends school board meetings where negotiations are being discussed. The record indicates, however, that her attendance at school board meetings is limited to occasions when Engelsen is absent. The statute requires that duties of the employee(s) being considered for exemption under RCW 41.56.030(2)(c) "necessarily imply" a confidential relationship to the executive head of the applicable bargaining unit. In her occasional role as a backup to Engelsen (who is excluded as a confidential employee), Flynn is not necessarily involved in the employer's labor relations policies and the required labor nexus for exclusion as a confidential employee thus does not exist. The position appears to belong in the P-T unit.

FINDINGS OF FACT

1. Tacoma School District No. 10 is a school district organized and operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).
2. Tacoma Association of Mid-Management Employees, a bargaining representative within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of a bargaining unit of supervisors employed by Tacoma School District No. 10.
3. Tacoma Association of Public School Professional-Technical Employees, a bargaining representative within the meaning of RCW 41.56.030(3), is recognized as the exclusive bargaining representative of classified employees of Tacoma School District No. 10 who hold professional, technical and supervisory positions. Said organization has been granted intervention in these proceedings on the basis that some or all of the positions involved in these proceedings have heretofore been included in the bargaining unit it represents.
4. The procedures of the Tacoma School District regarding hiring provide for a series of recommendations up through the line of authority to the superintendent of schools, who then makes the recommendation to the board of directors of the school district.
5. The procedures of the Tacoma School District regarding discipline, granting overtime and compensatory time off, reclassification, assignments, grant leaves of absence and evaluation of employees call for action or recommendations by district officials subordinate to the superintendent of schools, within the confines of district policy and/or applicable collective bargaining agreements.

6. The individuals holding the titles of: supervisor of copy center; office manager, pupil services; office manager, curriculum and instruction; office manager, personnel office; supervisor of data systems; manager of data processing; supervisor of business office; supervisor of payroll; supervisor of accounts payable; supervisor of business services; assistant controller, budget and grants; assistant controller, treasury; office manager, school facilities; supervisor of engineering services; office manager, purchasing and food service; supervisor of food service; assistant supervisor(s), operations department; chief of security; transportation supervisor; chief engineer KIPS TV; assistant to the business manager; and project manager for bond issue projects, have the authority to take action and/or make effective recommendations affecting the wages, hours, working conditions and grievances of subordinate employees.
7. The individual holding the title of controller has duties and responsibilities involving the formulation and implementation of the labor relations policies of the employer.

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 individuals holding the titles listed in paragraph 6 of the foregoing findings of fact are supervisors whose inclusion in the existing unit of professional, technical and supervisory employees poses a potential for conflicts of interest within the bargaining unit and warrants their exclusion from the existing unit pursuant to RCW 41.56.060.
3. A bargaining unit consisting of all full-time and regular part-time classified supervisors, excluding the superintendent of schools, chief administrative officers of the district, confidential employees,

certificated employees and non-supervisory employees, is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060 and a question concerning representation exists in said unit.

4. The public employees holding the titles listed in paragraph 6 of the foregoing findings of fact are supervisors who are eligible to vote on the question concerning representation in the bargaining unit described in paragraph 3 of these conclusions of law.
5. The individual holding the title of controller is a confidential employee within the meaning of RCW 41.56.030(2)(c) who is not an eligible voter in the representation election in these proceedings.

DIRECTION OF ELECTION

An election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all full-time and regular part-time classified supervisors employed by Tacoma School District No. 10, excluding the superintendent of schools, chief administrative officers of the district, confidential employees, certificated employees and non-supervisory employees, to determine whether a majority of the supervisors eligible to vote in such election desire to be represented by the Tacoma Association of Mid-Management Employees or by the Tacoma Association of Public School Professional-Technical Employees or by no representative.

DATED at Olympia, Washington, this 21st day of November, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.