

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CLASSIFIED PUBLIC EMPLOYEES)	CASE NO. 6427-E-86-1131
ASSOCIATION/WEA)	
)	
Involving certain employees of:)	DECISION 2584 - PECB
)	
UNIVERSITY PLACE SCHOOL DISTRICT)	DIRECTION OF ELECTION
)	
)	

Faith Hanna, Attorney at Law, Washington Education Association, appeared on behalf of the petitioner.

Michael S. Newman, Attorney at Law, appeared on behalf of the employer.

Edward A. Hemphill, General Counsel, appeared on behalf of the intervenor, Public School Employees of Washington.

On June 3, 1986, Classified Public Employees Association/WEA (CPEA or petitioner) 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 secretarial/clerical employees of University Place School District. Public School Employees of Washington (PSE or intervenor) timely moved for intervention in the proceedings as the incumbent exclusive bargaining representative of the employees covered in the petition. A pre-hearing conference was conducted on July 9, 1986. A statement of results of pre-hearing conference was issued on July 11, 1986, specifying that several issues were

unresolved. A hearing was conducted on October 7, 1986, before Hearing Officer Kenneth J. Latsch. The parties submitted post-hearing briefs.

BACKGROUND

The University Place School District provides educational services for approximately 4,000 students in the western portion of Pierce County. The school district's facilities include an administration building, four elementary schools, one junior high school, and one senior high school. An elected board of directors establishes general policy to be followed in the district. An appointed superintendent and an administrative staff manage the daily affairs of the district.

The school district presently has collective bargaining relationships with organizations representing two bargaining units of its employees. An affiliate of the Washington Education Association represents the approximately 220 non-supervisory certificated employees of the district under Chapter 41.59 RCW. Public School Employees of Washington has represented essentially all of the school district's classified employees.

The bargaining relationship between PSE and the school district has existed since 1972. At the time of the hearing in this matter, the union represented approximately 125 classified employees in a bargaining unit described in the collective bargaining agreement in effect from September 1, 1983 through August 31, 1986 as:

. . . all . . . classified employees in the following general job classifications: Custodial, Maintenance, Food Service, Bus Drivers, Secretarial/Clerical, and Aides.

The agreement also contained provisions specifically excluding certain district employees from the bargaining unit:

Nothing contained herein shall be construed to include in the bargaining unit any person whose duties as deputy, administrative assistant, District Office bookkeepers, or District Office secretaries imply a confidential relationship with the Board of Directors or Superintendent.

The record indicates that there is no history of separate representation for any of the groups within the existing bargaining unit.

The 1983-1986 collective bargaining agreement contained a salary schedule which detailed the rates of pay for each of the groups listed in its recognition clause. Apart from establishing base wage rates, the schedule also contained a series of incremental steps for each classification. While the wage rates varied among the different work classifications, all bargaining unit employees received the same medical insurance premium modified only by the individual employee's "full time equivalency".

The hours of work vary somewhat among the groups within the existing bargaining unit. Secretaries work an eight (8) hour day. Bus drivers typically work less than six (6) hours a day, and most of the drivers work a split shift with one bus run in the morning and a second bus run in the afternoon. Food service employees work varying hours, but the majority work less than six hours a day. In like manner, aides generally work less than six hours daily. However, the record indicates that two aides (one employed in the district's "gifted student" program, and the other employed in the district's computer

program) work eight hours a day. Custodians work eight hours, but there is variation in the custodian's work shifts.

Just as there is variation in the hours worked among the groups of classified employees, there is also variation in the length of the work year for each of the groups within the bargaining unit. The work year varies among the approximately 18 clerical employees depending on the work location; building secretaries work only ten months per year, while central office clerical employees work the full year. Drivers, food service employees, and aides work only during the student year. The custodial and maintenance employees are employed on a year-around basis.

Work locations also vary among the different groups. Secretaries work at the school buildings as well as in the district's administrative office. Drivers report to work at the district's "bus barn" located in the auxiliary service center. From there, the drivers are responsible for specific routes throughout the district. Food service employees work in individual kitchens located in several district facilities. Aides work in the various school buildings operated by the employer. Maintenance employees report for work at the auxiliary services center, but they can be assigned throughout the district. Custodial employees are assigned to specific school buildings.

Different supervisors direct the employees in the different work classifications. The building principals supervise and evaluate the secretaries assigned to the various school facilities, while clerical employees working in the district's administration office are supervised by a number of administrators. Individual school principals evaluate and generally supervise aides, but the teachers who work with the aides in the classroom also have input in the evaluation process. Rick

Hjelm, who holds the title of "Supervisor of custodians, lunchrooms, and transportation" supervises all custodial, food service, and transportation employees.

For the most part, the employees do not transfer among the various classifications within the bargaining unit. Of particular interest in the instant matter, the record reflects that the secretarial/clerical group has been very stable. The intervenor has documented only four instances where aides have transferred to clerical positions. There is no record of any clerical employee transferring to an aide position.

The clerical employees perform a wide variety of duties. The secretaries working in the central administration office generally perform work specifically related to the individual administrators. The one secretary assigned to the auxiliary services center deals primarily with clerical matters that affect the transportation, custodial, and food service operations. In the school buildings, the secretaries work in a number of different assignments, including typing of routine correspondence, preparing daily enrollment documents and (for the head building secretaries) typing all evaluation forms and any disciplinary reports issued by the principal. Secretaries assigned to school buildings often deal with students and, in some instances, are responsible for handling student funds.¹

Two bookkeepers assigned to the school district's business office are responsible for accounts payable and the district's capital improvement fund account. One of the bookkeepers assists the business manager with the preparation of the annual

¹ The record indicates that several aides assist secretaries in school offices. However, it appears that the office aides perform only routine typing and filing duties.

budget document. A payroll technician assigned to the business office monitors salary and benefit information.

POSITIONS OF THE PARTIES

The petitioner argues that a separate bargaining unit of clerical employees is appropriate in this case. The petitioner asserts that the Public Employment Relations Commission has allowed the creation of such bargaining units in the past, even if the clerical unit had to be severed from an existing "wall-to-wall" bargaining unit. The petitioner contends that the clerical group at issue in this case shares a community of interest that is unique from the rest of the bargaining unit, and that there has been very little interchange between the clericals and the other bargaining unit employees. Turning to the confidentiality issues raised by the employer, the petitioner points out that the head secretaries in the school buildings have always been part of the bargaining unit. It claims that neither they nor the business office clerical pool meet the Commission's confidentiality standards, and that the employer cannot demonstrate any need to exclude them on the basis of confidentiality. As to other clerical employees in the administration office, the petitioner contends that a prior agreement between the employer and the incumbent union has no bearing on the confidentiality issue. Petitioner argues that the bookkeepers and the payroll technician do not share an intimate fiduciary relationship with the employer concerning labor relations matters.

The employer maintains that the proposed clerical bargaining unit is inappropriate. It argues that creation of a new bargaining unit would lead to an unnecessary fragmentation of the existing bargaining structure. Further, the employer

argues that the employees in the existing unit share a substantial community of interest in relation to wage rates, benefit levels, supervision, and integration of function. The employer contends that all of its central office clerical employees work in a small area, so that it would be difficult to keep confidential material secure unless the entire office clerical staff were excluded from the unit on the basis of confidentiality. Additionally, the employer contends that all of its head building secretaries assist the building principals in handling a variety of correspondence that includes materials used in collective bargaining negotiations, and so are confidential employees who must be excluded from any proposed bargaining unit.

The intervenor opposes the creation of a separate bargaining unit of clerical employees. It maintains that it has a long-established history of bargaining with the employer, and that secretaries and clerical employees have regularly participated in union business. The intervenor argues that creation of a separate bargaining unit would create fragmentation and complicate the bargaining process. Responding to the confidentiality exclusions proposed by the employer, the intervenor argues that the employer has demonstrated that the payroll technician shares a confidential relationship on labor relations matters and should be excluded along with two secretaries stipulated to be confidential, but maintains that the "head building" secretaries should not be excluded from the bargaining unit.

DISCUSSION

The Appropriate Unit

The parties have widely differing views over the propriety of the proposed bargaining unit of clerical employees. While the

employer and the incumbent bargaining representative point to a history of common representation, petitioner points to functional dissimilarity among the various work classifications and the lack of meaningful interchange between different bargaining unit occupations.

A long and stable bargaining history tends to mitigate against the severance of a group from within a broadly based existing bargaining. Yelm School District, Decision 704-A (PECB, 1978). However, the history of a bargaining relationship cannot be addressed in a vacuum. Apart from the bargaining history, RCW 41.56.060 and Commission precedent require analysis of factors such as the duties, skills and working conditions of the employees, the extent of organization, and the desires of the employees.

The propriety of a separate bargaining unit of office clerical employees, and of severance of such a unit from a broader unit, has been addressed most recently in Longview School District, Decision 2551 (PECB, 1986). It was noted there that this subject ceased to be a matter of serious debate under the National Labor Relations Act after General Electric Co., 107 NLRB 70 (1953), where the NLRB permitted the severance of a unit of office clerical and technical employees from a plant-wide bargaining unit which had existed for a number of years, saying:

Although the Board is reluctant to disturb the contract unit or units established as a result of collective bargaining and desires to give recognition and weight to a satisfactory bargaining history effectively evincing the intent of the parties, it does not accord conclusive weight to a history which is repugnant to established Board policy respecting the composition and scope of bargaining units. As the interests and working conditions of office clerical

employees differ substantially from those of the production and maintenance employees, we shall, in accord with well-established Board policy exclude them from the production and maintenance unit.

The Public Employment Relations Commission precedent on the subject dates back to Franklin Pierce School District, Decision 78-B (PECB, 1978), where secretaries who had been represented as part of a larger bargaining unit for approximately eight years were permitted to sever from that unit to create a separate unit of office clerical employees. In each of these cases, the length of the bargaining relationship was considered, but in the final analysis, a separate clerical bargaining unit was found to be appropriate.²

The record in this case reveals that the clerical employees in question share a community of interest that is distinct from the rest of the employees in the existing bargaining unit. While certain wage and benefit levels are set by a common collective bargaining agreement, the clerical employees are expected to fulfill unique obligations within the district. There is little history of interchange between the clerical group and the rest of the unit.

² Office clerical employees are generally found to work under distinct working conditions and to perform unique work in support of the administrative functions of the employer, so as to constitute a presumptively appropriate bargaining unit. Absent conclusive evidence that the clerical operation is so integrated into the employer's overall structure, a separate bargaining unit will be created. As noted in Longview, supra, such integration goes beyond mere interchange of work products among employees holding different job classifications. The party resisting creation of a separate unit would have to demonstrate that the affected employees perform a number of different tasks beyond typical clerical work, and that removal of the clerical group would seriously damage the employer's ability to carry out its primary function.

Fragmentation of the existing collective bargaining structure would be within acceptable bounds. At the time of hearing, the employer had only two bargaining relationships, meaning that its supervisory employees had refrained from exercising the rights available to them under the statutes and Commission precedent to create at least three additional units as a matter of right. Creation of a separate unit of office clerical employees under Commission (and NLRB) precedent would not seriously fragment the existing structure.

The Confidential Exclusions

Just as the parties hold differing views concerning the propriety of the proposed bargaining unit, there is also a substantial divergence of view among them concerning the eligibility of certain clerical employees to belong to any bargaining unit.

RCW 41.56.030(2) specifies that certain individuals cannot be considered "public employees" and, therefore, cannot engage in collective bargaining. The statute refers to confidential employees as individuals:

. . . whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit . . .

In administering the "confidential" exclusion, both the Commission and the Washington State Supreme Court have applied a "labor nexus" test. As explained by the Supreme Court in International Association of Fire Fighters v. City of Yakima, 91 Wn.2d 101 (1978):

. . . 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.

The party seeking the exclusion of an employee on the grounds of confidentiality has a heavy burden of proof. City of Seattle, Decision 689-A (PECB, 1979); San Juan County, Decision 1690-A (PECB, 1984). When attempting to sustain that burden of proof, the moving party must rely on evidence that the affected employee has intimate contact with, and necessary knowledge of, the public employer's labor relations policies and practices. It is not enough to demonstrate that the employee in question has access to "privileged" information concerning non-labor relations matters. Richland School District, Decision 2208 (PECB, 1985). In like manner, confidentiality claims have been rejected where the affected employee dealt only with routine personnel matters. Cape Flattery School District, Decision 1249-A (PECB, 1982).

The parties have stipulated in this case to the exclusion of the superintendent's secretary and the personnel director's secretary as confidential employees.

The business manager participates in collective bargaining negotiations on behalf of the district and routinely asks the payroll technician for salary and benefit data to be used in the formulation of district proposals. The record clearly demonstrates that the business manager routinely delegates a great deal of responsibility to the payroll technician for the preparation of negotiations materials, and that the payroll technician has necessary and continuing access to materials used by the employer in the preparation of monetary proposals

for collective bargaining. The position will be excluded as "confidential".

The history and the willingness of the incumbent intervener to agree to their exclusion notwithstanding,³ the record does not establish a basis for exclusion of central office clerical employees other than the payroll technician and secretaries to the superintendent and the personnel director. While the central office clerical employees work in a restricted area, the existence of a "small office" is not enough, in itself, to support a "confidential" claim. Crescent School District, Decision 1572 (PECB, 1983). Absent convincing evidence that the additional central office clerical staff necessarily has regular access to confidential labor relations materials, the employer has not proven that those employees should be excluded from the coverage of the statute.

The school district assigns its principals to sit in, on a rotating basis, on district bargaining teams for negotiations with unions representing district employees. Typically, one or two principals are on the bargaining team for each contract negotiated. If not on the bargaining team, the building principals are kept informed of the status of negotiations, and they can be called upon by the school district as a resource for developing the employer's bargaining positions. Although they, as a class, have the statutory right to do so, it is

³ The agreement of parties on a matter of unit determination does not assure that the result is or will continue to be appropriate under the statute and Commission precedent. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.App. 599 (Division III, 1981), cert. den., 96 Wa.2d 1004 (1981). See, also, South Kitsap School District, Decision 1541 (PECB, 1983) concerning the consequences of agreement on an inappropriate unit.

inferred that the building principals have not exercised their option to constitute themselves a bargaining unit under Chapter 41.59 RCW.

While the building principals have a role in the collective bargaining process, as indicated above, the six disputed head building secretaries do not share the same level of activity in the bargaining arena. The head building secretaries have never participated in any negotiation sessions, nor have they typed employer proposals for bargaining. The record indicates that the head building secretaries screen mail addressed to the principals and may, in so doing, encounter bargaining information. Such documents are typically marked "confidential", however, and there is neither a need for nor a practice of having the head building secretaries read such material before it is forwarded to the principals.⁴ In this case, the record clearly shows that the head building secretaries are not confidential employees. At most, the building principals have a sporadic involvement with collective bargaining negotiations. Even when the principal is on the bargaining team, there is no indication that the building secretaries need to have any contact with labor relations materials.

The auxiliary services secretary routinely deals with employee personnel files, but that individual has never participated in any collective bargaining activities on behalf of the employer.

⁴ Several secretaries presented credible testimony that labor relations matters are transmitted in envelopes marked "confidential", and that they never open such envelopes before they are given to the principals.

FINDINGS OF FACT

1. University Place School District is a school district operated under Title 28A RCW and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington, a "bargaining representative" within the meaning of RCW 41.56.030(3), has, since approximately 1972, represented a bargaining unit consisting of all classified employees of the University Place School District.
3. Classified Public Employees Association/Washington Education Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition seeking to represent a separate bargaining unit of office clerical employees of the University Place School District.
4. The school district bargains collectively with another organization for a bargaining unit of non-supervisory certificated employees under Chapter 41.59 RCW.
5. The duties, skill, and working conditions of the office clerical employees are distinct from those of the balance of the employees in the existing bargaining unit represented of classified employees of the school district.
6. The creation of a new bargaining unit will not unduly fragment or disruption of labor relations within the school district.
7. The secretary to the superintendent, the secretary to the personnel director, and the payroll technician necessarily

and routinely have access to confidential information concerning the labor relations policies of the employer.

8. With the exception of the individuals holding the titles enumerated in paragraph 7 of these Findings of Fact, the central office clerical staff and the head building secretaries employed by the school district do not have necessary and routine access to confidential information concerning 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.
2. By reason of its history of bargaining, the existing consolidated bargaining unit of classified employees, set forth in paragraph 2 of the foregoing Findings of Fact, could continue to be an appropriate unit for the purposes of collective bargaining, within the meaning of RCW 41.56.060, if the desires of employees so indicate.
3. A separate bargaining unit of all full-time and regular part-time office clerical employees, excluding supervisors, confidential employees, and all other employees of the employer, could be an appropriate unit for collective bargaining, within the meaning of RCW 41.56.060, if the desires of the employees so indicate.
4. The secretary to the superintendent, the secretary to the personnel director, and the payroll technician are confidential employees within the meaning of RCW 41.56-.030(2)(c).

DIRECTION OF ELECTION

1. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission in the following voting group:

All full-time and regular part-time office clerical employees of the University Place School District, excluding supervisors, confidential employees, and all other employees of the employer

to determine whether a majority of employees eligible to vote in such election desire to constitute themselves a bargaining unit separate and apart from all other employees of the employer.

2. In the event that a majority of those eligible to vote in the voting group described in paragraph 1 of this order cast ballots in favor of creation of a separate bargaining unit, then a representation election shall be held under the direction of the Public Employment Relations Commission among the employees in that bargaining unit, to determine whether a majority of those employees desire to be represented by Classified Public Employees Association/WEA; by Public School Employees of Washington; or by no representative.

DATED at Olympia, Washington, this 30th day of December, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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