

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
CLASSIFIED PUBLIC EMPLOYEES	)	CASE NO. 6125-E-85-1103
ASSOCIATION, WEA/NEA	)	
	)	DECISION 2395-B - PECB
	)	
Involving certain employees of:	)	
	)	
INCHELIUM SCHOOL DISTRICT	)	ORDER DETERMINING
	)	ELIGIBILITY ISSUES
	)	

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David Fleming, Attorney at Law, appeared on behalf of intervenor, Public School Employees of Washington.

Jeffrey Thimsen, Attorney at Law, appeared on behalf of the employer.

This case was initiated by a petition of Classified Public Employees Association (CPEA), seeking to represent certain classified employees of the Inchelium School District. The petition was filed November 22, 1985. Public School Employees (PSE) moved for intervention and supplied a showing of interest. PSE, CPEA and the district participated in a pre-hearing conference held January 17, 1986. An election agreement and a supplemental agreement were signed, in which the parties agreed to defer hearing on the eligibility of two positions for inclusion in the bargaining unit. PSE was issued interim certification as exclusive bargaining representation after it won an election held on February 12, 1986, and CPEA has not participated in the proceedings thereafter. The hearing on the eligibility disputes was held August 18, 1986 before Hearing

Officer J. Martin Smith. Briefs were filed to complete the record. The Hearing Officer has subsequently been authorized under WAC 391-25-390 to decide the eligibility issues.

#### BACKGROUND

The Inchelium School District offers educational services to approximately 241 students living in southeast Ferry County. Most of the district is situated on the Colville Indian Reservation. The district maintains a modern twelve-grade school at Inchelium, and a small grade school with 11 students at Hazelmere, 21 miles to the south.<sup>1</sup> Mark Jacobsen is the superintendent and chief administrative officer.

Though a small district by pupil population, classified employees at Inchelium must confront its large geographic size: bus routes with students travel rural highways to reach Hazelmere and Inchelium schools. There are six bus drivers to accomplish the transportation function, and some history of bus drivers working as custodians or bus mechanics. There is one classified employee working as a food-service aide and three working at Inchelium as instructional aides. In addition to the teacher, Hazelmere is staffed by a combination custodian-instructional aide. The district employs three secretarial-clerical employees, including one at Inchelium High School and two working at the district office located in the same building.

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<sup>1</sup> Until abolished by the 1985 Legislature, Hazelmere school operated as a separate school district. The school has been accorded "remote and necessary" status by the Superintendent of Public Instruction, so that lengthy bus transport of the students to Inchelium is avoided. All its operations are managed by Inchelium School District.

During the pre-hearing conference, the parties agreed to include all classified employees in one bargaining unit. The unit is described as:

All full-time and regular part-time classified employees of the Inchelium School District, including office-clerical, aides, custodians, food service and transportation employees, but excluding the secretary to the superintendent, confidential employees and all other employees of the employer.

Pursuant to the supplemental agreement, the parties have developed a record on the job duties of two employees for the purpose of making a determination on whether they are excludable from the unit as supervisors.

Jo Hemming has been with the Inchelium School District for over ten years, and is now paid as the "head custodian". During Hemming's first two years with the school district, Jean Judd was head custodian. Hemming is one of two full-time custodians at Inchelium School, the other being Jim Holzer. There are also two part-time custodians, Alvin Toulou and Anthony Harris. Hemming directs the other three custodians on a daily assignment basis, leaving for herself restrooms clean-up at Inchelium School. Jim Holzer is usually assigned to do maintenance work in classrooms and the gymnasium. Hemming has been involved in selecting applicants for interview and hiring employees, and is responsible for the written reprimand of other employees when the need arises. Hemming also has been told by the superintendent that she will be responsible for "checking out" the situation at Hazelmere School on a periodic basis during the 1986-87 school year. Hemming has been responsible for ordering all of the custodial supplies needed at the schools; the usual

practice being to have Hemming submit a list of required materials to the district office for purchase. This usually amounts to \$15,000 to \$20,000 per year. Hemming also supervises four or five students, who are employed under the J.T.P.A. youth employment program.

Tony Harris works for the district in multiple capacities. During the summer, he works on custodial and maintenance tasks. During the school year, he is responsible for driving one of the school busses and for maintenance work on the busses. He has performed in this manner for two years. When a new bus driver was hired for a route to Hazelmere School, Harris was asked his opinion as to one of the interviewed applicants. Harris approves driver requests for leave, so long as the driver has arranged for a substitute, and reviews "pink sheets" filled out by drivers who have had to discipline pupils on the bus. He considers himself to be the first level of discipline, but has not thus far exercised such authority. The superintendent must approve requests for leave of absence, but allows Harris to handle citizen complaints regarding bus service, assign routes and drivers, and assign the eight school busses in service.

The district does not have an official procedure for evaluation of the job performance of classified employees, and hence neither Hemming or Harris has completed written evaluations of classified staff. On one occasion in June, 1986, Hemming determined that a custodial employee's job performance merited termination. In a consultation with the superintendent, it was agreed that the employee would be suspended and placed on probation. Hemming had drafted a letter of reprimand to the employee, and Superintendent Jacobsen offered suggestions in wording of some sections of the letter. The outcome was positive and the work performance improved.

POSITIONS OF THE PARTIES

The union urges the Commission to find that neither Hemming or Harris are supervisors, and that they should be included in the bargaining unit of classified employees. Based on the fact that the district has no formal evaluation system for its classified employees, PSE contends that the disputed employees exercise no independent authority to hire, fire or discipline. The union argues that Hemming and Harris are, at most, "working lead persons" in a small unit of custodial employees, and share a community of interest with the rank-and-file employees in the bargaining unit.

The district argues that Hemming and Harris are supervisors, irrespective of the fact that only a few employees are being supervised. It urges that the disputed employees have disciplinary authority, scheduling authority and power to budget money in their departments. In addition, Harris and Hemming are alleged to exercise independent judgment with respect to hiring and firing decisions. The district thus urges the Commission to exclude Harris and Hemming from the unit of classified employees.

DISCUSSION

Chapter 41.56 RCW makes no provision for exclusion of "supervisors" from the coverage of the Public Employees Collective Bargaining Act. In fact, supervisors are employees under RCW 41.56.010, et. seq., who may form their own bargaining units of supervisory employees. City of Tacoma, Decision 95-A (PECB, 1977); Municipality of Metropolitan Seattle v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

As a matter of unit determination policy under RCW 41.56.060, however, the Public Employment Relations Commission has excluded supervisors from the bargaining units containing their rank-and-file subordinates, viz:

[W]here a potential exists for conflicts of interest within the bargaining unit, or within the labor organization certified as exclusive bargaining representative, supervisors will be excluded from the bargaining unit which contains their subordinates ..."

Spokane International Airport, Decision 2000 (PECB, 1984); citing City of Richland, 279-A (PECB, 1978) aff'd, 29 Wn.App. 599 (Div. III, 1979).

The rules for determining who is a supervisor, and who is not, have followed a consistent ten-year evolution. In the absence of a statutory definition like that found at Section 2(11) of the National Labor Relations Act, the criteria for "supervisor" exclusions under Chapter 41.56 RCW are found in developing case law. See, City of Sunnyside, Decision 2058 (PECB, 1984); City of Toppenish, Decision 1973, 1973-A (PECB, 1985); Wapato School District, Decision 2227 (PECB, 1985). The key to supervisory status is the amount and frequency with which an individual exercises independent authority and control over other employees of the employer. Such activity includes the authority to hire, interview and screen new employees, train new employees, evaluate new employees' work for purposes of promotion or retention, discipline, and discharge employees. Also critical is whether the individual directs the daily activities of other employees, schedules their work, and excuses them from working for appropriate leave of absence reasons. Montesano School District, Decision 2155 (PECB, 1985). It follows, of course, that the Commission is not bound to follow NLRB precedent in dealing with school district classified employees covered by

Chapter 41.56 RCW. Hence, traditional NLRB practices such as a "rule of seven" (i.e., one person excluded from coverage for each seven employees covered) is not particularly helpful in determining this case.<sup>2</sup>

The features of this case are dominated by size. Inchelium is a small school district. There are few buildings. There are few certificated employees. There are few classified employees. School districts of this size are typically operated by a superintendent and one or two building principals.

#### The Custodial Supervisor

Comparing the facts of this case to the criteria set forth in Commission precedent, it is concluded that Jo Hemming is a supervisor in the Inchelium School District.

Hemming is the most senior classified employee in the district and, at nearly ten years seniority, is probably senior to most of the employees of the district. Before Mr. Jacobsen became superintendent, the former superintendent saw fit to promote Hemming to "head custodian". It is evident that at that time, and at present, all instructions to custodial employees were and are delivered through Hemming. It is important to note that the district is undergoing something of a transformation in its classified staff, in that the three full-time custodial positions which existed several years ago are now occupied by two full-time people (Hemming and Holzer) and three part-time people (including Harris). It is thus more important than

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<sup>2</sup> A circumstance potentially related to the NLRB rule is that the NLRB has no jurisdiction over very small employers. By contrast, Chapter 41.56 RCW applies to all school districts, regardless of their size.

before that someone schedule the work times and duties of the employees, and that duty has fallen to Jo Hemming. In addition, the new Hazelmere responsibility will require Hemming to monitor the custodial needs of that facility. Hemming is also responsible for fielding requests for sick leave and for arranging for substitutes on a daily basis.

At the present time, it is also evident that Superintendent Jacobsen relies upon Hemming to recommend candidates for hiring in the district, and that she has participated during the last year in such a hiring decision. The hiring of Jim Holzer in early 1985 began as a group activity including two board members, Hemming and the superintendent. But the decision to hire Holzer was made after Hemming and Jacobsen narrowed the field to three candidates and interviewed them. Hemming clearly made the decision as to which candidates to interview, although the other committee members had separate lists of five candidates.

Although the district has only an informal budgeting process, Hemming has the responsibility to inform the district as to what materials are needed during the school year and what suppliers and price ranges for said supplies are appropriate.

Likewise, while there is only an informal evaluation procedure for employees and a series of job descriptions which are to be drafted, the record establishes that discipline of employees begins with verbal warnings and written warnings issued by Hemming, moving on towards the written recommendation of termination made by Hemming in the spring of 1986.

Clearly, Hemming participates in bargaining unit work. It is even evident that a majority of her time is engaged in such work. Nevertheless, the indicators of supervisory status are



self-evident, and close identity with the work of the supervised employees is not in itself grounds for inclusion within the bargaining unit. Naches Valley School District, Decision 969 (PECB, 1980); White Pass School District, Decision 573-A (PECB, 1979); Timberland Regional Library, Decision 555-A (PECB, 1979).

#### The Bus Mechanic

When the criteria set forth in Commission precedent are considered, it is concluded that Anthony Harris is not a supervisor who is excludable from the bargaining unit.

Harris has been "consulted" on recent hirings into the transportation department, but has not been given authority to make effective recommendations on applicants interviewed for bus driving positions.

There is no evidence that Harris has authority (or that he has had the occasion) to discipline employees or to recommend discipline to the superintendent. It is likewise clear that problems between students and the drivers are actually handled by building principals.

It is instructive to compare Harris' duties with that of the transportation supervisor in Montesano School District, Decision 2155 (PECB, 1985), where the incumbent there was paid the drivers' rate of pay for her two hours of bus driving duty and was paid a higher, administrative rate for her six hours of administration of the bus drivers and the transportation program. Harris, by contrast, spends a majority of his time as the district's only bus mechanic, handling lubrication, tire changes, and transmission work. During the summer months, Harris is shifted to custodial duties at the district's main

school building. Prior to the last school year, Harris drove a regular bus route. Harris does not have authority to hire substitutes and allows employees time off for sick leave or related causes based upon a showing that the driver has arranged for his own substitute. There is no evidence that, like the supervisor at Montesano, Harris evaluates drivers, maintains an office for administering the program, or otherwise plays a major role in determining budget expenditures for purchasing school busses.

If there is independent authority on the part of Harris to direct policies of the transportation function of the district, it is limited to day-to-day or "ministerial" commands and not those of a supervisor in a strict sense. The policies of the district in this area are left solely to the superintendent in consultation with his building principals.

#### FINDINGS OF FACT

1. Inchelium School District is a school district operated pursuant to Title 28A RCW and is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Public School Employees of Washington and its affiliate, Public School Employees of Inchelium, is a "labor organization" within the meaning of RCW 41.56.010 and a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Public School Employees has been selected in a secret ballot election conducted by the Public Employment Relations Commission as the exclusive bargaining representative of all full-time and regular part-time classified

employees of the Inchelium School District, excluding supervisors and confidential employees. A dispute concerning the eligibility of Jo Hemming and Anthony Harris for inclusion in that bargaining unit was reserved by supplemental agreement for post-election determination by the Public Employment Relations Commission.

4. Possessing and exercising independent authority, Jo Hemming schedules and assigns work, initiates discipline, and approves leaves of absence for the custodial employees of the Inchelium School District, such that her inclusion in the bargaining unit would create a potential for conflict of interest arising from her exercise of authority as a supervisor.
5. Anthony Harris is the sole bus mechanic in the school district, as well as a part-time custodian and school bus driver. Although he acts as the conduit for transmitting some information between school district management and the other school bus drivers, his participation in bargaining unit work far exceeds any exercise of independent authority in a supervisory capacity, so that he shares a community of interest with the members of the bargaining unit.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The head custodian has duties and responsibilities as a supervisor which are disparate from the community of interest of her subordinates, warranting that the head

custodian be excluded under RCW 41.56.060 as a "supervisor" from the bargaining unit described in paragraph 3 of the foregoing findings of fact and the interim certification issued in this matter.

3. The bus mechanic/bus driver/custodian is a public employee within the meaning of RCW 41.56.010 who shares a community of interest under RCW 41.56.060 with the members of the bargaining unit described in paragraph 3 of the foregoing findings of fact.

ORDER

1. The head custodian is excluded from the bargaining unit for which Public School Employees has been certified in these proceedings.
2. The bus mechanic/bus driver/custodian is included in the bargaining unit for which Public School Employees has been certified in these proceedings.

DATED at Spokane, Washington, this 16 day of January, 1987.

ISSUED at Olympia, Washington, this 26th day of January, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
J. MARTIN SMITH, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.