

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	CASE NO. 6428-E-86-1132
CLASSIFIED PUBLIC EMPLOYEES)	
ASSOCIATION)	DECISION 2551 - PECB
)	
Involving certain employees of:)	
)	
LONGVIEW SCHOOL DISTRICT)	DIRECTION OF ELECTION
)	
)	

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

Ray Kahler, Administrative Assistant, appeared on behalf of the employer.

Hafer, Price, Rinehart, & Schwerin, by Kim Williams, Attorney at Law, appeared on behalf of the intervenor, Service Employees International Union Local 288.

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 Longview School District. Service Employees International Union, Local 288 (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 June 9, 1986. A statement of results of pre-hearing conference was issued on July 7, 1986, specifying that a dispute existed

concerning the propriety of the bargaining unit sought by the petitioner. A hearing was conducted on August 28, 1986, in Longview, Washington, before Hearing Officer Kenneth J. Latsch. The parties submitted post-hearing briefs.

BACKGROUND

Located in Cowlitz County, the Longview School District is operated under the policy direction of an elected board of directors. An appointed superintendent of schools is responsible for the daily administration of school district business. The school district currently has collective bargaining relationships with organizations representing two bargaining units of its employees. An affiliate of the Washington Education Association represents a bargaining unit of approximately 420 non-supervisory certificated employees under Chapter 41.59 RCW. Service Employees International Union, Local 288, represents a unit of classified employees under Chapter 41.56 RCW.

The July 1, 1983 - August 31, 1986 collective bargaining agreement between the school district and Local 288 described the existing bargaining unit as:

. . . all classified employees of the Employer except managerial and supervisory employees and confidential secretaries to the Board of Directors; Superintendent; Assistant Superintendent; Administrative Assistant, Personnel & Employee Relations; and Administrative Assistant, Budget and Finance.

At the time of the hearing in this matter, the unit consisted of approximately 280 employees, with a full-time equivalency of 210. Within the unit are five generic work classifications:

Aides, maintenance/operations, secretarial/clerical, food service and school bus drivers.

The bargaining relationship between the school district and SEIU Local 288 dates back to approximately 1956. While the record is not clear as to the period between 1956 and 1969, it is clear that the union and the school district worked together on an "employee handbook" starting in 1969. The secretarial/clerical employees were added to the bargaining unit in 1969. The handbook was continued in use until 1976, when those parties signed their first collective bargaining agreement.

Their 1983 - 1986 collective bargaining agreement contained four separate wage schedules for:

1. Secretarial/clerical employees;
2. Business office and copy center employees;
3. Maintenance, operations, transportation and warehouse employees; and
4. Food service employees.

The contract provided that all bargaining unit members were to receive medical insurance benefits under the same general procedure, with the only restriction on such benefits being the requirement that the individual employee must work at least 1,350 hours per year to qualify for coverage. The contract also contained a grievance procedure applicable to all bargaining unit employees.

The district's classified employees are based and perform work at a variety of locations within the geographical boundaries of the school district. The maintenance employees report to the district's maintenance center, but are assigned to specific projects throughout the district. Operations employees

classified as custodians are assigned to specific buildings, but those classified as "sweepers" can be assigned to more than one building and thus travel between multiple work locations during a duty shift. Transportation employees are based at the district's maintenance center, which also serves as the district bus barn. Food service employees are assigned to work either in the district's central kitchen or in one of four satellite kitchens. Aides are typically assigned to one of the district's school buildings, but several aides work in the district's business office. Secretarial/clerical employees are found in each of the district's school buildings, at the maintenance center, in the business office and in the central administrative office.

Just as the classified employees work at different locations, so also do they have varying work hours and lengths of work year.

The district's 80 custodian and skilled maintenance employees generally work year-around on an eight-hour "day" shift, but two painters are scheduled on a 3:00 p.m. to 11:00 p.m. shift. Certain sweepers work on a 2:30 p.m. to 10:30 p.m. shift only during the student year.

The district's 40 transportation employees work only during the student year. Sixteen of those employees work an eight hour shift; the balance generally work split shifts, with specific hours depending on the length of assigned bus runs.

The school district's 100 aides work only during the student year. Although the record indicates that a few aides have worked eight-hour shifts, these employees generally work less than six hours per day. The district had reduced the number of hours worked by most of its aides so that, at the time of the

hearing, a large majority of aides worked four or five hours daily. The specific work hours depend on the grade level of the school building to which the employee is assigned. In the secondary schools, the typical work day begins at 8:00 a.m. and ends at 2:30 p.m. In the elementary schools, aides may report at 8:00 a.m. and work until 3:30 p.m.

There are approximately 30 food service employees in the bargaining unit, all of whom work only during the student year. Employees working in the district's central kitchen facility typically work four to six hours per day. Those working in the satellite kitchens do not work over four hours per day.

The district's secretarial/clerical staff consists of approximately 50 employees. There is at least one secretary in each of the district's 14 school buildings, and the employees assigned to school buildings work 10 months per year. The balance of the secretarial/clerical employees work year-around in support and administrative facilities. The majority of these employees work an eight-hour day, with some variation in reporting times depending on the work location. Thus, elementary school secretaries work from 8:00 a.m. to 4:00 p.m., while secondary school secretaries work from 7:30 a.m. to 3:30 p.m. and central administration secretaries generally work from 8:00 a.m. to 4:30 p.m.

The classified employees of the school district have different supervisors, depending on the classification involved. The maintenance employees and groundskeepers report to a district administrative assistant, but are also subject to oversight by building principals while they are on assignment in the district's school buildings. Custodians and sweepers are supervised directly by the building principals, although the district's manager of operations also reviews their work

performance. Transportation employees are supervised by a manager of transportation. Food service employees working at the central kitchen are under the direct supervision of the manager of food services, while other food service employees are under the immediate supervision of building principals. Aides are supervised by building principals, but receive their immediate direction from classroom teachers. Secretaries report to a variety of supervisors, including building principals and (in the secondary schools) vice-principals. The authority to evaluate, and to recommend discipline or discharge, is vested in these various supervisors. The employer uses the same evaluation form for all bargaining unit members except school bus drivers, whose evaluations must be done on forms provided by the state of Washington.

The record indicates that there is some history of interchange among the generic work classifications within the bargaining unit, including at least 20 instances since 1972 when individuals have moved from the "aide" group to the "secretarial/clerical" group. There was also one incident of an employee transferring from the secretarial/clerical group to another bargaining unit classification.

During the time that Local 288 has represented the classified employees of the school district, individuals from each of the generic work groups have participated as members of the union's executive board and as its representatives in collective bargaining with the employer. In addition, the record discloses that several of the secretarial/clerical employees have been elected to union office in Local 288.

POSITIONS OF THE PARTIES

The petitioner argues that the secretarial/clerical employees in the petitioned-for bargaining unit have a unique community of interest separate and apart from the rest of the employees in the existing bargaining unit, so that creation of a separate unit of secretarial/clerical employees is appropriate in this case. The petitioner relies on Public Employment Relations Commission precedent which has allowed the creation of such bargaining units, even if the clerical unit had to be severed from an existing "wall-to-wall" bargaining unit.

The employer opposes creation of a separate secretarial/clerical bargaining unit, contending that it will unnecessarily fragment the existing collective bargaining relationship.

The intervenor argues that the secretarial/clerical group should not be severed from the existing bargaining unit. The intervenor maintains that it has always represented the best interests of all bargaining unit employees, and that it has been effective in that pursuit. The intervenor contends that there has been a significant amount of interchange within the existing bargaining unit, that there is common supervision of bargaining unit employees, and that there is no rational basis for severing the secretarial/clerical group from the existing unit. The intervenor further contends that Commission precedent on severance of clerical employees can be distinguished, and should not be applied in this case.

DISCUSSION

The parties have widely differing views as to the propriety of the severance of the proposed bargaining unit of secretarial/

clerical employees from the existing bargaining unit containing all of the school district's non-supervisory classified employees. The Public Employment Relations Commission determines the propriety of bargaining units under standards set forth in RCW 41.56.060.

The Public Employment Relations Commission dealt with the criteria for "severance" in Yelm School District, Decision 704-A (PECB, 1980), where it rejected a proposed severance of school bus drivers from a broader unit of classified employees. The Commission there indicated a preference for preservation of "an integrated support operation essential to the discharge by the district of its primary educational function" which was better dealt with as a unit. Such integration would seem to go beyond mere interchange of work products among employees holding different job classifications.

The Commission has also been asked to address proposed severances of "office clerical" groups in a number of past cases. In Franklin Pierce School District, Decision 78-B (PECB, 1978), the secretarial/clerical employees of a school district had been represented as part of a larger bargaining unit for approximately eight years, but the severance of a separate unit on "community of interest" grounds was affirmed by the Commission. Similarly, substantial histories of bargaining which existed in Snoqualmie Valley School District, Decision 529 (PECB, 1978), and in Mukilteo School District, Decision 1008 (PECB, 1980), did not preclude the possibility of severance of units of office clerical employees.

Other "clerical severance" cases decided by the Commission may be distinguishable from the instant case on bases which are not helpful to the disposition of this case. In Quincy School District, Decision 306 (PECB, 1977), [decided by an authorized

agent under since-abandoned procedures and rules] a proposed severance of office clerical employees from a wall-to-wall unit was rejected in the context of a very small school district and a proposed seven employee clerical unit so small as to cast doubt upon its viability as a separate bargaining unit. By contrast, the 50 employee unit sought in this proceeding is of sufficient size to be viable. In North Thurston School District, Decision 1418 (PECB, 1982), office clerical employees were severed from a unit in which they had been combined with only the custodial/ maintenance employees of the employer, raising the suggestion under Pierce County, Decision 1039 (PECB, 1980) that the unusual underlying unit did not warrant application of severance principles.

The National Labor Relations Board has also addressed the propriety of separate bargaining units of clerical employees. In General Electric Co., 107 NLRB 70 (1953), a single, plant-wide bargaining unit of all employees had existed for a number of years, and the parties had negotiated several collective bargaining agreements. The petitioning union sought to represent only the office clerical and technical employees. In determining that such a bargaining unit was appropriate, the NLRB succinctly explained its rationale in the following terms:

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-estab-

lished Board policy exclude them from the production and maintenance unit.¹

Review of subsequent NLRB decisions discloses that the General Electric precedent has not been modified. The major area of dispute in the more recent cases has centered on the type of work actually performed by the clerical employees. In those cases where the affected employees actually work in a number of different positions, the creation of a separate bargaining unit is not allowed. Similarly, the board routinely rejects requests for the creation of a separate bargaining unit of "plant clerical" employees.²

Analysis of NLRB decisions thus reveals that the Commission has acted in accord with NLRB precedent when it has allowed the creation of separate bargaining units of office clerical employees. Whether in private industry or in the public sector, office clerical employees perform unique work³ under distinct working conditions. Office clerical units have sometimes been described as "presumptively appropriate"⁴. The party resisting creation of a separate unit of office clerical

¹ The Board's reference to "established policy" relates to earlier decisions creating separate bargaining units of office clerical employees. See, International Smelting and Refining, 106 NLRB 223 (1952); National Cash Register Company, 95 NLRB 2 (1951) and Kohler Company, 93 NLRB 398 (1951).

² The Commission has also dealt with the distinction between "plant clerical" and "office clerical" employees. See, Shelton School District, Decision 2084 (PECB, 1984).

³ The work of such clerical employees is often in direct support of the administrative functions of the employer, such as those found excludable in Tacoma School District, Decision 652 (EDUC, 1979) and Clover Park School District, Decision 376 (EDUC, 1978), and is thus only indirectly in support of the "production" work of the employer.

⁴ Shelton School District, Decision 2084 (PECB, 1984).

employees would have to demonstrate that clerical functions are so integrated into the employer's overall structure (e.g., that the affected employees perform a number of different tasks beyond typical clerical work) that removal of the clerical group would seriously damage the employer's ability to carry out its primary function. Absent conclusive evidence sufficient to rebut the presumption, a separate bargaining unit of office clerical employees will be created.⁵

Turning to the instant matter, the record 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. Moreover, there is relatively little history of interchange between the clerical group and the rest of the unit, and the vast majority of what interchange has occurred has been the predictable movement from the aide ("plant clerical") classification to the office clerical classification. The supervision by building principals that is shared in common by some office clerical employees with some other bargaining unit employees does not change the fundamental fact that those clericals assist their supervisors in the "administrative" function, as distinguished from the "educational" function.

⁵ Although of limited use as precedent, it is noteworthy that the clerical employees of the Yelm School District were severed from the "wall-to-wall" unit involved in Decision 704-A, supra, as the result of "consent" representation proceedings initiated in the same month as the proposed severance of school bus drivers. Yelm School District, Decision 623 (PECB, 1979).

History of bargaining is a factor to be considered in making a unit determination, and there is evidence here of a 30-year relationship between the SEIU and the school district. Looked at in isolation, that fact would suggest that if a severance of office clerical employees were ever to be denied on "history of bargaining" grounds, this would be such a case. Close scrutiny of the facts indicates, however, that history of the relationship prior to 1969 is not probative here, because the clerical employees were not made a part of the existing unit until 1969.⁶ Additionally, the historical value of the 1969 - 1976 period must be questioned in the absence of signing of a collective bargaining agreement as called for by RCW 41.56.030 (4) and interpreting judicial precedent.⁷ The remaining 10 year history of bargaining in the existing unit is not overwhelming, as compared to the lengths of bargaining history dealt with in earlier cases where the lengths of bargaining histories were considered but, in the final analysis, a separate clerical bargaining unit was found to be appropriate. As in Mukilteo, supra, the history of bargaining in the instant case does not preclude giving the office clerical employees an opportunity, in a unit determination election, to express their desires on their unit placement and, in so doing, to overrule their history of bargaining.

Finally, concern has been expressed under the "extent of organization" criteria of the statute about "fragmentation of

⁶ History of the relationship prior to the enactment of Chapter 41.56 RCW in 1967 is also arguably irrelevant as a matter of law under Renton School District, Decision 379-A (EDUC, 1978) and Clover Park School District, Decision 386-A (EDUC, 1978).

⁷ State ex. rel. Bain v. Clallam County, 77 Wn.2d 542 (1970), holding that until reduced to writing and executed by the bargaining parties, an agreement does not, under the statute, become a collective bargaining agreement.

the existing collective bargaining structure". At the time of the hearing in this matter, the employer had only two bargaining relationships. Looked at in percentage terms, the creation of a separate unit of office clerical employees will increase the number of units by 50 percent. On the other hand, the addition of one unit for the employer to deal with will not seriously fragment the existing structure in absolute terms. Creation of "supervisor" units available under the statutes and established precedent could create three additional units as a matter of right, yet could not be rejected on "fragmentation" grounds. The propriety of the separate unit is supported by PERC and NLRB precedent.

FINDINGS OF FACT

1. Longview School District is a school district of the state of Washington operated under Title 28A. RCW, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Service Employees International Union, Local 288, a "bargaining representative" within the meaning of RCW 41.56.030(3), represents a bargaining unit which includes office clerical employees along with all other classified employees of the school district. The relationship between Local 288 and the school district dates from 1956.
3. Classified Public Employees Association, 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 to represent a bargaining unit of office clerical employees of the Longview School District.

4. The duties, skills, and working conditions among the office clerical employees of the school district are distinct from the rest of the bargaining unit employees.
5. The creation of a new bargaining unit will not unduly fragment or disrupt labor relations within the school district.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The existing bargaining unit consisting of all classified employees of the employer 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 of the employer, excluding supervisors, confidential employees, and all other employees of the employer, could be an appropriate unit for collective bargaining pursuant to RCW 41.56.060, if the desires of the employees so indicate.

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 Longview 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 Service Employees International Union, Local 288; or by no representative.

DATED at Olympia, Washington, this 16th 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).