STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
PUBLIC SCHOOL EMPLOYEES OF FORKS	)	CASE NO. 6883-E-87-1184
	)	
Involving certain employees of:	)	DECISION 2809 - PECB
	)	
QUILLAYUTE VALLEY SCHOOL DISTRICT	)	
	)	DIRECTION OF ELECTION
	)	

Eric Nordlof, General Counsel, appeared on behalf of the petitioner.

Curry, Dionne and Hanson, by James J. Dionne, Attorney at Law, appeared on behalf of the employer.

Donald Stephenson and Jamie Leinan appeared on behalf of proposed intervenor classified employees' group.

On May 22, 1987, Public School Employees of Forks, an affiliate of Public School Employees of Washington (PSE) filed a petition with the Public Employment Relations Commission, seeking investigation of a question concerning representation among certain classified employees of the Quillayute Valley School District (employer). A prehearing conference was conducted at Forks, Washington, on June 29, 1987, at which time a claim was advanced that the petition was untimely, due to the existence of a collective bargaining agreement between the employer and an incumbent organization. A statement of results of the prehearing conference was issued on June 30, 1987, specifying three unresolved issues which were to be the subject of a hearing in the proceeding. A hearing was held on July 20, 1987, before Hearing Officer Kenneth J. Latsch. The parties made closing statements and a time was set for the submission

of post-hearing briefs. PSE submitted a post-hearing brief. A number of employees signed a letter expressing their desires concerning continuation of the existing arrangement.

BACKGROUND

Forks, Washington, is the largest community on the western side of the Olympic Peninsula. The Quillayute Valley School District provides educational services for approximately 1500 students in the Forks area. The three school buildings operated by the employer are located in a central "campus" area. A transportation garage is located nearby. The employer's work force consists of 80 certificated employees and approximately 60 classified employees.[1]

The employer has existing collective bargaining relationships covering three bargaining units which are not involved in this proceeding:

(1) The non-supervisory certificated employees of the employer are represented for purposes of collective bargaining by an affiliate of the Washington Education Association.

(2) The employer's certificated administrative personnel are represented by the Forks Principals' Association.

(3) Classified employees working as school bus drivers are represented by an affiliate of Public School Employees of Washington (PSE).

The remaining classified employees of the employer, holding titles such as secretary, clerk-typist, cook, custodian, maintenance, tutor/aide, bus mechanic, and bus serviceperson, are covered by the document which has been put forth as a

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[1] The classified employees fill approximately 48 Full Time Equivalency (FTE) positions.

contract barring the petition in the instant proceedings.[2] The document at issue is titled:

CLASSIFIED AGREEMENT
September 1, 1986, through August 31, 1988

The document consists of five typewritten pages of text covering subjects limited to: wages, health benefits, overtime, early dismissal, retirement, vacation schedule for full-time employees, paid holidays, sick leave, bereavement/family illness, employee business/emergency leave, absence, reduction in force, professional growth leave, and duration of agreement. There is a one-page "ADDENDUM" which covers classified vacation computation. There is no mention of a procedure for resolution of disputes concerning the interpretation or application of the document. There is no recognition of, or reference to, an organization as exclusive bargaining representative of the employees, although there is an oblique reference to the concept of "recognition" in a paragraph dealing with supervisors and central office secretaries, as follows:

> Supervisors and Central Office Secretaries may bargain for appropriate negotiation items under this comprehensive agreement, but are recognized as independent units by nature of their supervisory responsibility or involvement with confidential materials.

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2 The school bus mechanic and the bus serviceperson both work in the bus facility, under the supervision of the employer's transportation supervisor. The mechanic performs more complex vehicle repairs, while the serviceperson deals with routine upkeep and inspection of busses. They are both clearly part of the employer's transportation activity, and neither of them performs any work outside of the transportation area. Nevertheless, neither of them is included in the existing bargaining unit represented by PSE.

One page of the document contains only signatures, none of which are dated.[3]

The evidence of record in this proceeding indicates that the classified employees' "group"[4] does not have an official name, constitution, bylaws or other indicia of an organized entity. The "group" does not have meetings on a regular basis, and does not have elected officers.

The school district has dealt with its classified employees for a number of years through processes which have resulted in documents generally similar to the document at issue in this proceeding. For the September 1, 1984 through August 31, 1986 period, a number of separate documents were created covering the following groups: Bus mechanics and bus service personnel; classified staff supervisors; superintendent's office secretaries; other secretaries and clerk/typists; and the cooks, custodians, maintenance, aides and tutors. Those separate documents contained identical provisions for wages, overtime, longevity, retirement, sick leave, bereavement/family illness leave, and employee business/emergency leave, as well as vacation schedules for nine-month and twelve-month employees. Those documents contained identical procedures to be followed in the event of a reduction in the employer's workforce, but established separate layoff and call-back lists within each occupational group. The form of document, although not the essence of the process, changed in 1986, when the single

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3 Four signatures appear under a heading for the employer's board of directors. Ten signatures, each of which is associated with an occupational group, appear under a "CLASSIFIED REPRESENTATIVES" heading.

4 To the extent that a "group" is referred to in the instant decision, it is for the sake of convenience and clarity, and does not imply a ruling on the disputed question of the status of the organization.

document was signed covering all of the classified employees that had previously been covered by the separate documents.

The record indicates that the process leading to the signing of the 1986 - 88 "Classified Agreement" commenced on May 12, 1986, when the employer's superintendent directed a memo to 14 named employees,[5] inviting them to meet on May 15, 1986 "to discuss the process for negotiations." A May 15, 1986 memo directed by the superintendent to "Classified Unit Representatives" detailed an eight-step process and timeline for negotiations. Nine individuals, apparently constituting all of the classified employees in attendance, signed a copy of the May 15th document to indicate their assent to the procedure outlined. Minutes of the May 15th meeting were issued by the superintendent in a May 19, 1987 memo addressed to 14 employees.[6] The employee representatives were expected to report back to the various occupational groups before agreement could be reached on any subject that affected that particular segment of the workforce. Next, the representatives of at least some of the occupational groups presented the employer with proposals from their constituent groups, within the May 30, 1986 deadline specified by the superintendent. For the most part, the proposals submitted dealt with working conditions issues. The record

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5 Among those was: Robin Moorhead, who the employer would seek to have excluded (as a supervisor) from the unit sought in this proceeding; Richard Hanson, who is excluded as a supervisor from the existing bus driver unit and who the employer would seek to have excluded (as a supervisor) from the unit sought in this proceeding; and Jamie Leinan, who the employer would seek to have excluded (as a confidential employee) from the unit sought in this proceeding. The copy of the May 12th memo which is in evidence indicates the typewritten name of one other employee crossed off and another name substituted by hand.

6 The list of addressees reflects one additional substitution of a name from the original list.

does not reflect any employee requests for wage or salary improvement.

A meeting was held on June 5, 1986, when ten classified employees were in attendance. On June 9, 1986, the superintendent issued a memo to the 14 employees identified on the May 19th memo, setting the next meeting. Ten employees signed in for a June 10, 1986, meeting. A third meeting was held on June 19, 1986, with 11 classified employees signing in. The process was substantially completed by the end of June, and the superintendent informed the participating employees that the results would be prepared in final form by the middle of July. An August 19, 1986 letter directed by the superintendent to ten named employees invited them to stop by the administration office to sign the document. The "1986-88 Classified Negotiated Agreement" was the subject of an approval action at a meeting of the employer's board of directors held on the evening of August 19, 1986.

There is substantial room for doubt as to how the so-called "representatives" came to occupy that status. It was the testimony of one such employee that she found herself in that capacity based upon correspondence from the superintendent, without any knowledge of there having been a meeting or an election among the employees to confer that status upon her.

There is also room for doubt as to the scope of authority of the so-called "representatives". The record indicates that the final document was not presented to the entire workforce it was intended to cover, and that each occupational group held separate ratification votes. The record is silent as to the procedure that would have been followed if one or more of the separate occupational groups had voted against ratification.

POSITIONS OF THE PARTIES

PSE argues that the document advanced as a bar to the petition is not a "collective bargaining agreement" within the meaning of RCW 41.56.070 and WAC 391-25-030, so that the petition herein was filed in a timely manner. Noting that the document does not contain any type of grievance procedure, PSE contends that inclusion of a grievance procedure in a collective bargaining agreement is required by RCW 41.56.030(4), and thus reasons that the omission is controlling in this case. In addition, the petitioner maintains that the classified employee "group" is not a bargaining representative within the meaning of the applicable statute, and that the employer has not taken any steps to determine whether the "group" represents a majority of the employees in the purported bargaining unit. Finally, the petitioner contends that the employer has unlawfully dominated the "group" in such a manner that the employer completely controls the course of negotiations. With respect to the bargaining unit status of the bus serviceperson and mechanic, PSE maintains that those positions are more appropriately included in the existing transportation bargaining unit, and it proposes their accretion to that unit.

The employer argues that the document at issue is a legal and enforceable contract, and that it should be considered sufficient to constitute a "contract bar" to the representation petition in the instant case. The employer contends that the classified employee "group" is a "bargaining representative" within the meaning of the statute, and that the employer has engaged in collective bargaining with that organization. The employer cites prior decisions of the Commission as standing for the proposition that the statute does not contain stringent requirements for status as a "bargaining representative."

The employees who appeared on behalf of the "group" contend that they are satisfied with the extent of bargaining currently taking place, and consider the document at issue to be an effective contract which bars the instant petition.

DISCUSSION

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, secures the right of public employees to select a lawful organization as their exclusive bargaining representative and to engage in collective bargaining. The quality of representation to be provided by any particular organization, and the quantum of success provided by any historical process, are not before the Commission in this proceeding. Such matters are for the employees themselves to decide, if an election is directed. Rather, the questions before the Commission here go to the identification of the nature and result of the historical process disclosed by the evidence.

Is the classified employee "group" a union?

Among the several issues to be resolved in the instant case is whether the classified employees' "group" is a "bargaining representative" within the meaning of RCW 41.56.030(3), which provides:

> **RCW 41.56.030 Definitions.** As used in this chapter:
>
> . . .
>
> (3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers. (emphasis supplied)

The collective bargaining process is composed of many inter-related parts. As a starting point for analysis, the parties to a collective bargaining relationship under Chapter 41.56 RCW must be an employer within the coverage of the statute and a bargaining representative within the meaning of the statute.

The parties stipulated in this case that the Quillayute Valley School District is a public employer within the meaning of the statute and within the jurisdiction of the Public Employment Relations Commission.

The parties also stipulated that PSE is a "bargaining representative" within the meaning of the statute. A question remains as to whether the "group" meets the same qualification.

Commission precedent holds that an organization can qualify as a "bargaining representative" without demonstrating that it has a sophisticated internal structure. Southwest Washington Health District, Decision 1304 (PECB, 1981). Reviewing National Labor Relations Board (NLRB) precedent in that case, it was noted:

> An organization in which employees participate, which was established for the purpose of representing employees, and which intends to carry out its purpose if certified, is a labor organization within the meaning of Section 2(5) [of the NLRA], even though it does not have a constitution or bylaws and collects no dues or fees.

Two recently created organizations with hastily adopted bylaws and recently designated officers were each found in Southwest Washington to qualify as a "bargaining representative" under the statute. It must be remembered, however, when applying the Southwest Washington analysis that, regardless of how slight, there is a test which must be met. A party which wishes to

take advantage of rights conferred by the statute must undertake the burden to prove its qualification to enjoy the right(s) claimed. Grant v. Spellman, 99 Wn.2d 815 (1982).

The classified employee "group" in the instant case is substantially less structured than either of the two organizations involved in Southwest Washington. In fact, it appears from review of the record made here that there is no organization at all. The "group" has no constitution, by-laws or other documentary evidence of its existence.[7] There is no record of any meetings, elections, officers, dues, records, or other pragmatic indicia of the formation or operation of a separate entity. At best, the classified employees of this employer have conducted a series of separate elections within the several occupational groups to identify (or ratify the employer's designation of) individuals to meet with the employer. There is no indication that the entire classified workforce has ever considered itself to be, or has acted as, a single entity. Nor is there any indication that any of the separate occupational groups have any idea what the other occupational groups may wish to propose or what concerns the employees in the other occupations may have.

In the absence of qualification under the statute, the "group" is not entitled to intervention in these proceedings. Its "negotiations" cannot be deemed to be "collective bargaining" within the meaning of the applicable statute, and its contract cannot be deemed to be a "collective bargaining agreement."

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7 While a constitution and bylaws are not a statutory requirement, such documents constitute the contract among the members of an organization for the conduct of the organization, and present tangible evidence of the existence of an entity separate and apart from the individual members. In the absence of documentation, the consent of members is more difficult, but not impossible, for an organization to prove.

The conclusion that the would-be incumbent intervenor is not a "bargaining representative" within the meaning of the statute could be the basis for ending the discussion at this point. The point is debatable, however, and no PERC precedent is cited or found on the point. There are several additional, and equally compelling, reasons to reject the motion for intervention, so that the disposition of this case need not rest exclusively on the conclusion that the classified employees "group" is not a "bargaining representative" within the statutory definition.

Has there been "Collective bargaining"?

Recognition -

Collective bargaining operates on the principle of majority rule, leading under RCW 41.56.080 to the recognition or certification of an "exclusive bargaining representative". Here, there is no record of a certification of the "group" under the representation case provisions of the statute. A complaint was dismissed in City of Mukilteo, Decision 1571-B (PECB, 1983), because the union failed to demonstrate that there had been a legitimate voluntary recognition. Similarly, there is no evidence here that the would-be intervenor has ever claimed to have, let alone in fact demonstrated, majority support among the employees claimed.

The Propriety of the "Existing" Unit -

Apart from concerns about the organization and its status, there are several reasons to conclude that the set of employees covered by the document at issue is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060. If the bargaining unit is not appropriate, any ensuing contract cannot be considered to be a contract bar. South Kitsap School District, Decision 1541 (PECB, 1983).

Prior to 1986, each occupational group engaged separately in a process which resulted in a signed document covering only the employees in that occupation. In 1986, the documents were consolidated into one, but each occupational group had discrete ratification procedures. In essence, the employer has initiated something that looks like a "master agreement" covering a number of occupational groups. The record raises substantial doubt as to whether any of the separate occupational groups could stand alone as an appropriate bargaining unit under RCW 41.56.060. The mere combination of the separate groups under a common document has not cured the defect.

More importantly, the document, on its face, purports to cover "supervisors" within the meaning of the statute and Commission precedent, as well as their subordinates. Supervisors can participate in collective bargaining through a separate bargaining unit. METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1977). In order to avoid the potential for conflicts of interest that would arise from supervisors being intermingled in the same unit with rank-and-file employees, supervisors are excluded from such units. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.App 599 (Division III, 1981), cert. den. 96 Wn.2d 1004 (1981). PSE has not sought to include the supervisors in the unit it seeks, and the employer even proposes their exclusion from a unit represented by PSE, but they are covered by the document at issue.

Moreover, the document covers employees who the employer now claims to be "confidential employees" within the meaning of the statute and Commission precedent. Distinguished from the right of "supervisors" to bargain collectively but separately, those who are found to be "confidential employees" within the meaning of RCW 41.56.030(2)(c) do not have any collective bargaining rights at all. City of Yakima, 91 Wn.2d 101 (1978). If an

employee has regular and necessary contact with the employer's collective bargaining materials, or participates in the formulation or implementation of the employer's collective bargaining policies, that individual will be excluded from an appropriate bargaining unit and from the collective bargaining process even if the employer says it is willing to have them included. Wapato School District, Decision 2227 (PECB, 1985). In the instant case, the two central office secretaries regularly prepare documents needed for collective bargaining and are claimed by the employer to be "confidential employees" in its response to PSE's petition. Their inclusion in the classified employee "group" and their coverage under the document at issue requires that the claimed existing unit be deemed inappropriate.

The Nature of the Historical Process -

Even in the absence of the organization, recognition and propriety of bargaining unit problems noted above, the process which led to the purported collective bargaining agreement appears to be fatally flawed. Collective bargaining is defined in RCW 41.56.030(4) as:

> . . . the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

Bargaining is a two-party transaction, to be conducted at arm's length. RCW 41.56.140(2) prohibits control or domination of an exclusive bargaining representative by an employer. Yet, the record here is replete with references which demonstrate the employer's complete control of the course and result of the "negotiation" process.

There is no indication whatever that the historical process originated with the employees. Rather, it is clear that the employer called the employee "representatives" together to commence the process in 1986. There is indication in the record that the presence of a supervisor among the representatives led one of the non-supervisory employees to refrain from active participation in the process. The employer then established the entire procedure and timetable for negotiations in a manner which appears to go far beyond negotiation of ground rules. While the employees who did participate did not object to the guidance and direction given by the employer, such acquiescence does not excuse the employer's actions. There was a process of negotiation, but it cannot be considered collective bargaining within the meaning of the statute. It follows that the resulting document cannot stand as a contract bar to the instant petition.

Continuing Role of Excluded Employees

Finally, it must be noted that the classified employee "group" was represented in these proceedings by one of the central office clerical employees who both the employer and PSE would exclude from the petitioned-for unit as a "confidential employee." The employer cannot have it both ways. A petition was dismissed in Kitsap County, Decision 2116 (PECB, 1984) due to its having been filed by a management official who was properly excluded from the petitioned-for bargaining unit.

Reference was made therein to Metro and City of Richland, supra, as well as to Douglas Aircraft Co., Inc., 53 NLRB 486 (1943), where the NLRB ruled that it would strike down as tainted any representation effort for non-supervisory employees which is initiated or led by supervisors. For this additional reason, the motion for intervention must be denied.

The Petitioned-For Unit

The petition in this matter seeks an election in a bargaining unit composed of all full-time and regular part-time aide, custodian, food service, maintenance and office-clerical employees of the employer, excluding elected and appointed officials, the superintendent of schools, certificated employees, confidential employees, supervisors and bus drivers.

The record indicates that the two bus maintenance employees have only limited contact with the other employees in the unit sought by PSE. Indeed, their duties, skills and working conditions are more closely aligned with, and they likely share a stronger community of interests with, the employees in the existing bargaining unit represented by PSE. On the other hand, reference to the existing unit as a "transportation" unit overstates the facts. The unit consists only of bus drivers. The bus maintenance positions have evidently existed for some time, yet have never been included in that unit. PSE would not be able to pick up the positions through the unit clarification process absent a showing of their recent creation or changed circumstances. Wenatchee School District, Decision 1197 (PECB, 1981). No such showing was made in this record. The petitioned-for unit amounts to a "residual" unit consisting of all unrepresented, non-supervisory classified employees of the employer, and the inclusion of the bus maintenance employees in that unit is not inappropriate. Their inclusion in that unit

will permit them to exercise their statutory right to vote on the question concerning representation.

FINDINGS OF FACT

1. Quillayute Valley School District, based at Forks, Washington, is a school district organized and operated pursuant to Title 28A RCW, and is a "public employer" within the meaning of RCW 41.56.020 and 41.56.030(1).

2. Public School Employees of Washington, a "bargaining representative" within the meaning of RCW 41.56.030(3), has filed a properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of certain employees of Quillayute Valley School District.

3. Certain employees, supervisors and confidential employees of the employer have moved for intervention in these proceedings, claiming to be the incumbent exclusive bargaining representative of the petitioned-for employees. The proposed intervenor does not have a name, and is referred to as a "group" herein only for purposes of convenience and clarity. The group does not have a constitution, bylaws or other documents indicating its organization. The group does not hold regular meetings. The group does not sanction officers or agents by elections in which employees participate, although employees have been identified by the employer as representatives and such designations have been ratified by employees.

4. The employer has historically entered into a process of communications with certain of its classified employees,

supervisors and confidential employees. Prior to 1986, a number of separate, but similar, documents were signed covering the separate occupational groupings within the employer's workforce of classified employees.

5. In May, 1986, the employer directed a letter to certain of its classified employees, supervisors and confidential employees, inviting them to participate in a process of communications. In subsequent meetings and correspondence, the employer outlined the procedure and timetable for the process. During the course of the process, a single document was developed to cover the occupations of secretary, clerk/typist, cook, custodian, maintenance, tutor-aide, bus mechanic, bus serviceperson, supervisors and administrative office clerical employees. The document covers the period from September 1, 1986 through August 31, 1988. Each occupational group conducted a separate ratification process, and the board of directors of the employer took action to ratify the document.

6. The document referred to in paragraph 5 of these findings of fact does not contain provision for the recognition of an organization as the exclusive bargaining representative of employees. The document also does not contain a grievance procedure or a wage schedule.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The process of communications described in paragraphs 4 and 5 of the foregoing findings of fact, is directed and

controlled by the employer, and is not "collective bargaining" within the meaning of RCW 41.56.030(4).

3. In view of the inclusion of supervisors and confidential employees in the group of individuals participating in the process of communications described in paragraphs 4 and 5 of the foregoing findings of fact, that group is not an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

4. The individuals who signed on behalf of classified employees on the document entitled "Classified Agreement" covering September 1, 1986 through August 31, 1988 have not constituted themselves as an organization qualifying as a "bargaining representative" within the meaning of RCW 41.56.030(3).

5. The motion for intervention made in this proceeding is procedurally defective, under WAC 391-25-010, having been made and pursued by supervisors of employees in the petitioned-for bargaining unit and/or confidential employees.

6. The document described in paragraph 6 of the foregoing findings of fact is not a valid written and signed collective bargaining agreement within the meaning of RCW 41.56.070 and WAC 391-25-030(1), and so does not constitute a bar to the representation petition filed in this matter.

7. A bargaining unit consisting of all full-time and regular part-time aide, custodian, food service, maintenance and office-clerical employees of the Quillayute Valley School District, excluding elected and appointed officials, the

superintendent of schools, certificated employees, confidential employees, supervisors and bus drivers, is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and a question concerning representation currently exists in such unit.

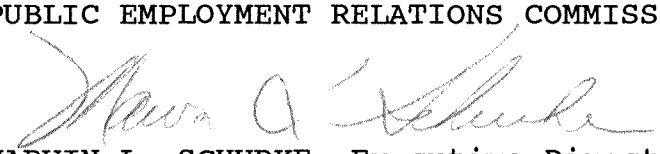
ORDER AND DIRECTION OF ELECTION

1. The motion for intervention as incumbent intervenor made in this proceeding pursuant to WAC 391-25-170 is DENIED.

2. An election shall be conducted among employees in the appropriate bargaining unit described in paragraph 7 of the foregoing conclusions of law, to determine whether a majority of such employees desire to be represented for purposes of collective bargaining by Public School Employees of Washington.

DATED at Olympia, Washington, this 24th day of November, 1987.

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.