

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of:	)	
TEAMSTERS UNION, LOCAL NO. 690	)	CASE NO. 7246-E-88-1246
	)	
Involving Certain Employees Of:	)	DECISION 2946 - PECB
CUSICK SCHOOL DISTRICT	)	DIRECTION OF ELECTION
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John DeLauder, Business Representative, appeared on behalf of Teamsters Local 690.

Winston Law Offices, by Jeffrey J. Thimsen, Attorney at Law, appeared on behalf of the employer.

Eric Nordlof, Attorney at Law, appeared on behalf of the intervenor, Public School Employees of Washington.

On February 4, 1988, Teamsters Local 690 filed a petition with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain bus drivers and mechanics in the employ of the Cusick School District. On February 19, 1988, Public School Employees of Washington (PSE) filed a motion for intervention in the proceedings. A pre-hearing conference was held at Spokane, Washington, at which time all parties were present and issues were framed for hearing. A hearing was conducted on April 18, 1988, at Cusick, Washington, before Hearing Officer J. Martin Smith. Briefs were filed to complete the record, the last of which was received on May 23, 1988.

BACKGROUND

Cusick School District No. 59 serves approximately three hundred students residing in the area in and around the communities of Cusick and Usk, in Pend Oreille County. Ray E. Korb serves in multiple roles as elementary school principal, superintendent of schools and chief administrative officer of the school district.

The employer's classified employees presently include the secretary to the superintendent, the business manager, the high school secretary, eleven classroom instructional aides (one of whom also works as a cashier/office aide), two food service employees, two custodial/maintenance employees, and five employees in the transportation department (including school bus drivers and mechanics).

Beginning in 1977, Public School Employees represented a bargaining unit of classified employees of this employer. The docket records of the Commission for Case Number 878-E-77-168 reveal that PSE was certified on May 13, 1977, as exclusive bargaining representative of a "wall-to-wall" unit of:

. . . full and regular part-time classified employees of Cusick School District No. 59  
. . . [excluding] the Secretary to the Superintendent.

Cusick School District, Decision 277 (PECB 1977).

PSE and the employer were parties to a collective bargaining agreement covering the 1985-87 period. The recognition clause of that agreement defined the bargaining unit as:

. . . all classified employees in the following general job classifications:  
secretarial-clerical (except secretary to

the superintendent and the bookkeeper);<sup>1</sup>  
food service; transportation; custodial/  
maintenance and aides. [emphasis supplied]

In March, 1986, the employer and PSE agreed to amend the recognition clause of their 1985-87 agreement to exclude the bus driver and bus mechanic employees from the bargaining unit. The record indicates that PSE took its own "straw vote" at about that time, to determine whether the bus drivers and mechanics would leave the bargaining unit and the coverage of the 1985-87 labor agreement. The transaction was accomplished by a "letter of agreement", drafted on PSE stationery as follows:

2. All parties to this agreement have the following agreements and understandings as a result of the above change:

a. The transportation unit heretofore represented by the Public School Employees of Cusick, is now a separately standing bargaining unit.

b. Public School Employees of Cusick, at the request of a majority of the transportation unit hereby disclaims its representation rights of the transportation unit.

c. The Transportation Employees of Cusick do not hereby request recognition by the District as a separate bargaining unit. The Transportation Employees of Cusick agree and understand that as of the date of execution of this agreement, they are unrepresented employees for the purposes of collective bargaining.

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<sup>1</sup> It is not certain when the exclusion of the bookkeeper came into being, but the record is clear that both the secretary to the superintendent and the bookkeeper remain specifically excluded from the bargaining unit.

d. The provisions of this agreement are effective on the date in [sic] which the last representative signs it. This agreement shall remain effective until changed by mutual agreement, the expiration of the collective bargaining agreement between PSE and the District, or the obtaining of recognition under RCW 41.56 by the Transportation Employees of Cusick or other collective bargaining agent seeking to represent that bargaining unit . . . .

The letter of agreement was signed on behalf of PSE under date of March 5, 1986, by attorney Ed Hemphill. The agreement was signed, under date of March 25, 1986, by Superintendent Korb for the employer. The letter of agreement was also signed, under date of March 25, 1986, by Bethi Stacy on behalf of the "Transportation Employees of Cusick" and by four of the other transportation employees. Finally, the document was signed, under date of March 26, 1986, by Marjie Miller on behalf of the local chapter of PSE.

A successor collective bargaining agreement between PSE and the employer was ratified for the September 1, 1987 through August 31, 1990 period. That contract covers the classified employees outlined above, excluding the transportation employees:

Section 1.2. The bargaining unit to which this Agreement is applicable shall consist of all classified employees in the following general job classifications: Secretarial/Clerical (except the secretary to the Superintendent and the bookkeeper), Food Service, Custodial/Maintenance, and Aides.

None of the provisions of the current PSE agreement appear to deal with the wages, hours or working conditions of the transportation employees.

Bethi Stacy spends four hours per day driving her own bus route. She is additionally responsible for posting bid sheets and other papers, and for certain training, such as first aid. When matters surface needing attention in the transportation operation, the superintendent calls upon Stacy to solicit her input and to implement his decisions and policies. Superintendent Korb is responsible, however, for all decisions concerning hiring, firing, and discipline of employees. At one point in time, Stacy was president of the Cusick chapter of PSE. Later, however, she was instrumental in getting the transportation group disassociated from PSE.

The motion for intervention filed by PSE was supported by a showing-of-interest.

#### POSITIONS OF THE PARTIES

The petitioner, Teamsters Local 690, seeks a bargaining unit limited to the transportation employees (e.g., the bus drivers and mechanics), and contends that the position occupied by Bethi Stacy is properly within that bargaining unit.

The employer urges dismissal of the petition. It alleges that creation of the petitioned-for separate bargaining unit of transportation employees would result in an inappropriate fragmentation of the historical "wall-to-wall" bargaining unit. The employer offered during the hearing to stipulate that Bethi Stacy is not a supervisor.

The intervenor, Public School Employees, again seeks to be certified as exclusive bargaining representative of the transportation employees. It argues that a separate unit is appropriate and not an improper fragmentation. PSE urges that

Bethi Stacy is a supervisor who should be excluded from the petitioned-for bargaining unit.

## DISCUSSION

### The Appropriate Bargaining Unit

It is clear that "wall-to-wall" bargaining units of classified employees presently exist among numerous school districts of this state. Historically, the Public Employment Relations Commission has disfavored fragmentation of bargaining units among school district classified employees.

It is also clear that separate bargaining units of school transportation employees (including school bus drivers and/or vehicle mechanics) do exist among school districts of this state. No case is cited or found where such a unit has been rejected in the context of organizing among unrepresented employees, where "duties, skills and working conditions" and "extent of organization" will tend to be the operative criteria in determining the existence of a community of interest. The ongoing propriety of such separate "transportation" units is reinforced by the "history of bargaining" criteria of RCW 41.56.060 where they do exist. It thus cannot be said that the petitioned-for bargaining unit is inherently inappropriate.

"Wall-to-wall" bargaining units of school district classified employees have generally been protected from "severance" petitions, except perhaps for separate bargaining units of office-clerical employees under long-standing National Labor Relations Board (NLRB) precedent. Efforts to sever transportation employees from existing "wall-to-wall" bargaining units were rejected in Yelm School District, Decision 704, 704-A

(PECB, 1979); West Valley School District (Yakima), Decision 1129 (PECB, 1981); and Lake Washington School District, Decision 1170 (PECB, 1981). As summarized in Lake Washington, separate bargaining units of bus drivers and/or vehicle mechanics will not be carved out of a larger existing unit where there has been a history of bargaining for the overall unit, where the proposed severance does not describe a homogenous group of skilled craftsmen, or where the transportation operation in the district is integrated into the support operations of the school district. The fact of transportation employees having become disgruntled with their exclusive bargaining representative would likely not be enough to warrant a severance in the instant case, since those were the facts in the Lake Washington and West Valley situations. See, also, Mabton School District, Decision 2419 (PECB, 1986) and Centralia School District, Decision 2599 (PECB, 1987). But this is not a severance case.

The "disclaimer" agreement executed on March 26, 1986 did not purport to operate for a specific period. There is no need to debate whether the disclaimer was originally intended to be effective only until the August 31, 1986 expiration of the collective bargaining agreement then in effect, or was to be effective until some "other collective bargaining agent[s]" were certified to represent the transportation employees. The result of such an exercise matters little, and the documents and actions of the parties speak for themselves. The current collective bargaining agreement between PSE and the employer does not purport to cover the transportation employees, and PSE has not sought intervention in this proceeding as the "incumbent" bargaining representative under WAC 391-25-170.

Citing the authority of the Commission to determine bargaining units, the employer argues that the "severance" criteria

embraced in Yelm School District should be applied in this case. Notwithstanding the fact that it was a party to the March, 1986 disclaimer agreement document, and that it was a party to excluding the transportation employees from the coverage of its latest collective bargaining agreement with PSE, the employer now attacks the propriety of the partial disclaimer. In that respect, the instant case must be considered in light of Kent School District, Decision 127 (PECB, 1977), where an attempt by PSE to disclaim vehicle mechanics from a broader unit of school district classified employees came into question. PSE's bargaining history in Kent included organization of two separate bargaining units, one limited to custodians and maintenance employees and the second consisting of all mechanics in the transportation department, but a de facto merger of those units had resulted from executing one contract covering both groups. When PSE later decided to disclaim the mechanics and another organization simultaneously petitioned to represent them, the disclaimer was viewed as a subterfuge to avoid the application of "severance" criteria, and the petition was dismissed. The Commission held that unit determination questions are within the authority of the Commission to decide, not matters for the labor organizations involved to divide up among themselves. On the facts present in Kent, the Commission held that no deference or weight was to be accorded to the "disclaimer" agreed upon by the two unions involved, and that, when the appropriate severance criteria were applied, the mechanics had no identifiable community of interest separate from the other craft positions represented by PSE.

The Commission was careful to note in Kent, that disclaimers of bargaining units can be made in good faith, so long as they are unequivocal and indicate that subsequent petitions to represent the employees are new or original petitions. Review of the



documents and subsequent actions of the parties in the instant situation indicates nothing in the way of subterfuge, or of an attempt by one or more of the parties to artificially influence or dictate the unit structure.

The March 26, 1986 Letter of Agreement was drafted by legal counsel for one of its parties and is signed by members of the affected employee group as well as by representatives of PSE and the employer. The agreement expressly indicates that the disclaimed group is to be "unrepresented" upon the effective date of the agreement. There is no indication that Teamsters Local 690 or any other labor organization was in any way involved with the transportation employees at that time, or that the disclaimer was made in contemplation of their immediate selection of another organization as their exclusive bargaining representative.

The employer has subsequently dealt with the transportation employees as unrepresented employees. Indeed, Superintendent Korb testified that he met with several of the transportation employees in order to discuss the amounts of money paid for extracurricular bus trips. Although there was no written agreement after March, 1986, the transportation employees behaved as if they were an identifiable group of employees with common interests as to wages. The superintendent also referred to himself as the "sole negotiator" for the transportation employees in presenting their situation to the school board.

No party has claimed, now or in the past, that the transportation employees are "confidential" employees or in any other way excluded from the coverage of Chapter 41.56 RCW. It should have been clear to all parties to the March, 1986, disclaimer agreement that the employees petitioned-for in this proceeding would continue to be entitled to assert collective bargaining

rights under Chapter 41.56 RCW. They have been unrepresented for some twenty-six months and, of course, they are entitled to change their minds about their choice of exclusive bargaining representative after the passage of that much time. The case at hand presents a terminated past bargaining history, so that it is as if the bus drivers and vehicle mechanics had never been represented for the purposes of collective bargaining. The employer cannot have it both ways, acting as if they were unrepresented at one point in time and then challenging the propriety of its own actions.

#### The Transportation Supervisor

Bethi Stacy has been referred to by the employer as the "transportation supervisor". The testimony at hearing revealed some of her job duties. The petitioner argued, and the employer was willing to concede, that she was not a "supervisor" who should be excluded from the petitioned-for bargaining unit. Although it is possible to infer that some of her duties are supervisory in nature, it is a reasonable conclusion in this case that she merely carries out the directives of the superintendent. The record does not substantiate that she has, or has authority, to make decisions on behalf of the employer, such as initiating disciplinary action or scheduling of employees time and duties, which are of a type likely to create a potential for conflict of interest with other employees in the bargaining unit. It is the responsibility of the party seeking exclusion of employee(s) from a bargaining unit to carry the burden of proof demonstrating the propriety of that result under RCW 41.56.060. Wapato School District, Decision 2227 (PECB, 1985). PSE has failed to sustain that burden, and Bethi Stacy will be eligible to vote in the representation election directed herein.

FINDINGS OF FACT

1. Cusick School District No. 59 is a school district operated under Title 28A RCW and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Teamsters Union Local 690, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition for investigation of a question concerning representation involving transportation employees of the Cusick School District.
3. Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported motion for intervention in these proceedings.
4. Public School Employees of Cusick, an affiliate of Public School Employees of Washington and a bargaining representative" within the meaning of RCW 41.56.030(3), has represented a bargaining unit of classified employees of the Cusick School District since 1977. That unit formerly included the transportation employees of the employer. In March, 1986, the parties to that bargaining relationship agreed, in writing, to exclude the transportation employees from the bargaining unit and from the coverage of a collective bargaining agreement then in effect.
5. Since March, 1986, the employer has treated the transportation employees as a separate and distinct group of unrepresented employees within its workforce, and has negotiated directly with those employees concerning their wages, hours and working conditions.

6. The creation of the petitioned-for bargaining unit consisting of all full-time and regular part-time bus drivers, mechanics and transportation employees, excluding supervisors, confidential employees and all other employees of the employer, will implement the statutory collective bargaining rights of those employees and, in light of the history and their current lack of representation, will not unduly fragment or disrupt the conduct of labor relations within the school district.
7. Bethi Stacy performs duties as a conduit for information and directives, but does not exercise independent authority as a supervisor of other employees in the petitioned-for bargaining unit. Her performance of those functions in addition to regular bus driving do not create a potential for conflict of interest requiring her exclusion from the petitioned-for bargaining unit.
7. Employees Don Andrews and Judy Jenks are regular part-time bus drivers with sufficient service to qualify them as eligible voters in the representation election directed herein, so long as they have worked as substitute drivers for more than 30 days during the 1987-88 day school year.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By reason of the history of bargaining and the employer's agreement to divide the historical classified employee bargaining unit structure, the bargaining unit set forth in paragraph 6 of the foregoing Findings of Fact is an

appropriate unit for purposes of collective bargaining, within the meaning of RCW 41.56.060.

3. Bethi Stacy and substitute employees who have worked the requisite number of days as indicated in paragraph 7 of the foregoing Findings of Fact are eligible voters in the representation election directed herein.

DIRECTION OF ELECTION

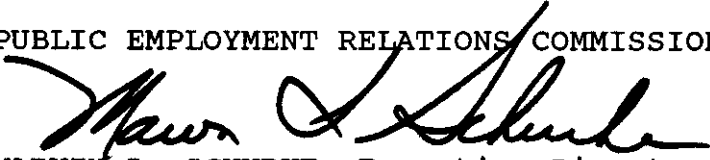
An election by secret ballot shall be held under the direction of the Public Employment Relations Commission among:

All full-time and regular part-time bus drivers, mechanics, and transportation employees of the Cusick School District, excluding supervisors, confidential employees and all other employees of the employer.

to determine whether a majority of the employees eligible to vote in such election desire to be represented by the Teamsters Union Local 690 or by Public School Employees of Washington, or by no representative.

DATED at Olympia, Washington, this 1st day of June, 1988.

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.