

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
CLASSIFIED PUBLIC EMPLOYEES)
ASSOCIATION / WEA / NEA) CASE 8633-E-90-1454
)
Involving certain employees of:) DECISION 3962 - PECB
)
QUINCY SCHOOL DISTRICT) DIRECTION OF ELECTIONS
)
)
)

Kathy O'Toole, Attorney at Law, appeared on behalf of the petitioner.

Tom L. Pickett, Superintendent, and Robert W. Winston, Jr., P.S., by Gregory L. Stevens, Attorney at Law, appeared on behalf of the employer.

Eric T. Nordlof, Attorney at Law, appeared on behalf of the incumbent.

On June 12, 1990, the Classified Public Employees Association / Washington Education Association / National Education Association (CPEA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The petitioner sought severance of a bargaining unit of office-clerical employees from an existing bargaining unit of classified employees of the Quincy School District. Public School Employees of Quincy, an affiliate of Public School Employees of Washington (PSE), was granted intervention in the proceedings, based upon its status as the incumbent exclusive bargaining representative of the petitioned-for employees. A pre-hearing conference was held on August 15, 1990, at which time the parties framed issues concerning the propriety of the petitioned-for unit, the existence of a question concerning representation and the list of employees eligible to vote. A hearing was held on those issues at Quincy, Washington, on October 19, 1990, before Hearing Officer Walter M. Stuteville. The parties filed post-hearing briefs.

The processing of this case was suspended for a time, while the Commission examined the validity of the authorization card form used by the CPEA in this and other cases.¹ While the Commission eventually found fault with that authorization card form, it specifically ruled that its decision should only be applied prospectively. The processing of this case was then resumed.

Upon examining the briefs filed by the parties, it was discovered that the record lacked evidence concerning three employees who arguably should be included in the bargaining unit.² The hearing was thus reconvened on July 24, 1991, to take testimony concerning two office-clerical employees working in the superintendent's office and concerning a newly-discovered "clerical-aide" position. At that hearing, it was determined that a fourth position (another "clerical-aide") had been added to the employer's workforce, and testimony was also taken on that position. After extensive testimony had been taken on the position of "accounting assistant", the parties stipulated at the hearing that the position was a "confidential" employee as defined by the statute. The parties then filed a second set of post-hearing briefs.

On November 15, 1991, following the filing of all briefs, the representatives of the parties conducted a telephonic conference with the Hearing Officer, at which time they stipulated that the "secretary to the superintendent" is also a confidential employee, as defined by RCW 41.56.030(2)(c).

¹ That question was decided in Central Kitsap School District, Decision 3671-A (PECB, 1991). The authorization card at issue there was the same printed format used by CPEA to submit its showing of interest in this case.

² The petition had estimated the number of employees in the bargaining unit as "six", and only six positions had been under consideration up to that time. Clarification was required, because one of the exhibits admitted in evidence listed nine secretaries working for the employer.

BACKGROUND

The Quincy School District provides education and related services to approximately 1600 students in kindergarten through high school. The employer operates three elementary schools, one middle school, one high school, and one alternative school. Altogether, the employer has about 150 employees.³

PSE is the exclusive bargaining representative of a "wall-to-wall" unit which includes approximately 64 classified employees. The bargaining relationship between the employer and PSE has existed since at least 1971. A previous attempt to sever a bargaining unit of office-clerical employees was rejected in Quincy School District, Decision 306 (PECB, 1977).⁴ PSE and the employer were parties to a collective bargaining agreement which expired on August 31, 1990. That contract defined the bargaining unit as:

ARTICLE I

RECOGNITION

Section 1.1 The School Board and Superintendent of School District Number 144-101 recognizes the local organization of Public School Employees of District Number 144-101, an affiliate of the Public School Employees of Washington, as the exclusive bargaining representative of all employees in classified positions for the purpose of consulting and negotiating on appropriate matters applicable

³ The employer's certificated teachers and principals are organized for the purposes of collective bargaining pursuant to the Educational Employment Relations Act, Chapter 41.59.RCW, and are not affected by this case.

⁴ Decision 306 was issued by an "authorized agent" under procedures of Chapter 391-20 WAC. Those rules were replaced by Chapter 391-21 WAC in 1978 and by Chapter 391-25 WAC in 1980, both of which vest unit determination authority in the Executive Director. Thus, the Executive Director has not had occasion to rule on propriety of this unit.

to any and all employees in the units [sic].
EXCEPT: Supervisors and **all administrative
office personnel.**

The management to which this Agreement is applicable consists of the School Board and the Superintendent.

Section 1.2 The bargaining units [sic] to which this Agreement is applicable are as follows: Food Service, Custodial Service, Clerical, Transportation, Grounds Maintenance, and Aides.

[Emphasis by **bold** supplied.]

The contractual recognition language appears to have been unchanged since the 1976-77 contract between PSE and the employer. Only the exclusion of administrative office personnel was different in the earlier contracts between PSE and the employer.

The representation petition filed with the Commission in the instant case described the petitioned-for bargaining unit as:

All Quincy School District Secretaries/Clerks excluding any Secretary whose duties imply a confidential relationship to the Superintendent or to the Board of Directors and all other employees of the employer.

Two full-time secretaries and one part-time secretary work in the elementary school buildings, one full-time secretary is assigned to the junior high school, two secretaries work full-time in the high school, one "clerical-aide" works part-time in the alternative school and part-time at the high school, and one "clerical-aide" divides her time between the junior high school and the administrative office.⁵

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The "secretary to the superintendent" and the "accounting assistant" stipulated as "confidential" employees both work full-time in the administrative office.

POSITIONS OF THE PARTIES

The CPEA contends that the employees doing office-clerical work for the employer, on either a full-time or regular part-time basis, have duties, skills and working conditions different from the other employees in the existing bargaining unit, and that they should be placed in a separate bargaining unit. The CPEA would include the clerical/aide employees in the petitioned-for bargaining unit.

The employer took a neutral position on the proposed severance of a separate bargaining unit, and on the issue of whether the two "clerical/aide" employees should be included in the petitioned-for bargaining unit.

PSE strenuously resists the severance of a separate office-clerical unit. Starting from the premise that a school district is not an industrial plant, and that the Commission has improperly relied on "a line of decades-old NLRB cases having nothing to do with the present reality of operating a school district" in past decisions permitting severance of office-clerical employees from larger bargaining units, PSE contends that the existing bargaining unit is appropriate. It argues that the "unprincipled fragmentation of the classified workforce by the petitioner must be stopped and it can be stopped if each case is considered on its own merits". PSE disputes the existence of a separate community of interests based on the "duties, skills and working conditions" shared by the petitioned-for employees. PSE particularly relies on the history of bargaining in the existing unit, which has been in its present form since 1971. PSE argues that the "clerical/aide" positions are neither clearly secretaries nor aides, but rather that they are well-integrated into both the instructional and administrative systems of the school district, so as to "illustrate the silliness of trying to describe the district's classified workforce in terms which do not fit the topic".

DISCUSSIONSeverance of Office-Clerical Bargaining Units

RCW 41.56.060 calls for the Public Employment Relations Commission to determine appropriate bargaining units on a case-by-case basis, using the following criteria:

In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.

The Commission is not limited to establishing "the **most** appropriate unit" in each case. Ben Franklin Transit, Decision 2357-A (PECB, 1986). It is only necessary that there be "an appropriate unit". Clearly, the law does not require a new and different result in each case where similar facts are presented.

The Commission has found units consisting of "all of the employees of the employer" to be appropriate, both in school districts and in other public sector settings. See, City of Winslow, Decision 3520-A (PECB, 1990). No party has challenged the propriety of the existing wall-to-wall unit in this case, and nothing in the statute or Commission precedent precludes office-clerical employees from being included in the same bargaining unit with other employees of the employer.

At the same time, the Commission has also given general affirmation to the propriety of dividing an employer's workforce into two or more smaller bargaining units:

Units smaller than employer-wide may also be appropriate, especially in larger workforces.

The employees in a separate department or division may share a community of interest separate and apart from other employees of the employer, based upon their commonality of function, duties, skills and supervision. Consequently, departmental (vertical) units have sometimes been found appropriate when sought by a petitioning union. [footnote omitted] Alternatively, **employees of a separate occupational type may share a community of interest based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, occupational (horizontal) bargaining units have also been found appropriate, on occasion, when sought by a petitioning union.** [footnote cited city-wide clerical unit in City of Tacoma, supra]

City of Centralia, Decision 3495-A (PECB, 1990).

The question thus remains in this case, as to whether the petitioned-for bargaining unit described in terms of the "office-clerical" occupational type is also an appropriate unit.

Duties, Skills and Working Conditions -

The record in this case clearly establishes that all of the petitioned-for employees perform traditional "office-clerical" tasks in support of the administrative functions of the school district. Those duties, and the skills necessary to perform them, are distinct from the duties and skills of custodians, maintenance workers, food service workers, and even from the aides, in the existing bargaining unit. Those distinctions support a conclusion that the petitioned-for employees are aptly described as an "occupational" grouping within the meaning of Commission precedent.

A long line of Commission precedents have recognized that office-clerical employees can have a community of interest separate and apart from other employees of their employer. Arguments similar to those advanced by PSE in this case were rejected in an earlier decision involving a unit represented by PSE:

Such [office-clerical] units are "horizontal" in nature, cutting across departmental lines to group together employees of the same generic occupational type.

"Fragmentation" concerns have been raised in connection with office-clerical units, but most often in the context of attempts to subdivide the office-clerical group itself. See, Lewis County, Decision 644 (PECB, 1979) [Employees working for separately-elected officials were placed in a single, courthouse-wide unit.]; Clover Park School District, Decision 683 (PECB, 1979) [Clerical employees in a quasi-independent operation were included in an employer-wide clerical unit.]; Port of Seattle, Decision 890 (PECB, 1980) [An attempt to fragmentize the employer's clerical workforce was rejected.]; South Kitsap School District, Decision 1541 (PECB, 1983) [Where the employer's clerical workforce had been fragmented into two separate, but overlapping, units, both units were found inappropriate.]; City of Port Angeles, Decision 1701 (PECB, 1983) [Clerical employees in a quasi-independent operation were included in an employer-wide unit.]; King County, Decision 2157 (PECB 1985) [Fragmentation of the employer's clerical workforce was rejected.]; Wapato School District, Decision 2227 (PECB, 1985) [Fragmentation of the employer's clerical workforce into separate "central office" and "outlying office" units was rejected.]; City of Ocean Shores, Decision 2550 (PECB, 1986) [Clerical employees in a quasi-independent operation were included in an employer-wide unit.]; and Renton School District, Decision 3121 (PECB, 1989) [Fragmentation of an employer-wide clerical unit was rejected.].

Describing the precedents in this area as "having nothing to do with the present reality of operating a school district", PSE points out that the petitioned-for employees are scattered among some 48 work sites, that the petitioned-for group includes a mix of salaried and hourly employees, and that the petitioned-for employees have pay periods, sick leave, holidays, and insurance benefits in common with other employees. PSE thus suggests a re-examination of Commission policy on "office-clerical" units.

The arguments advanced by PSE have been carefully considered, but are not found to be persuasive. Schools are not industrial plants, but the duties and skills of an office-clerical employee in a school setting seem to be virtually indistinguishable from the duties and skills of office-clerical employees in a myriad of other settings. Labor relations agencies at both the federal and state levels have long accepted that office-clerical employees share a greater community of interest among themselves than with other employees of the enterprise. The distinction between "working in support of the administrative function" and "working in support of the district's educational program" that was drawn with respect to certificated employees in Tacoma School District, Decision 652 (EDUC, 1979) has application here, as well. No basis is found to reverse many years of sound precedent in this area.

Highline School District, Decision 3562 (PECB, 1990).

The petitioned-for office-clerical employees and the people they work for are generally involved with making the employer's operations function in a businesslike manner. In the school district context, their concern with the student and the educational process is secondary to a primary emphasis on making things happen in a timely, adequate and coordinated manner. PSE appears to have given tacit recognition to that difference of emphasis by its blanket exclusion of the "administrative office" from the existing bargaining unit, without reference to the "confidential" exclusion called for by the statute. Although the office-clerical employees assigned to school buildings are in daily contact with other employee types, their interests remain somewhat separate and distinct from the "educational" workforce. These employees participate in the overall goals and objectives of the employer, and they remain "administrative", not "educational".

PSE places its focus on the "working conditions" of the petitioned-for employees, particularly noting the commonality of work sites

and benefits among employees in the existing bargaining unit, on the absence of unique work hours or number of days worked per year, and on the lack of separate supervision among the petitioned-for employees. Indeed, as a group, the office-clerical employees have some job and benefit characteristics similar to those of other employees within the existing bargaining unit. They also have some substantial differences from other employees, however.

Benefits shared by all classified employees include sick leave, which is provided at a rate of one day for each calendar month worked up to a maximum of 10 days per year, and holidays, where all employees under the PSE contract receive one less holiday than the number of months worked each year.

The basic work year and vacation benefits vary between classifications. For example, full-time custodians in the wall-to-wall unit are scheduled to work 40 hours per week for 12 months each year, and are eligible for vacation benefits. At the opposite extreme, the school aides, food service personnel and bus drivers in the wall-to-wall bargaining unit are employed only for the 180 days per school year of student attendance, and they generally work less than six hours per day. The petitioned-for office-clerical employees have work hours falling somewhere in the middle of that range, as 9 of the 10 work full-time, eight-hour days, and all of them work 220 days per year. Vacations are accrued only by the 12-month employees, however.

Lines of reporting and supervision also vary according to classification and work location. The custodial/maintenance, food service and transportation employees each have separate reporting relationships. Aides are assigned to an individual teacher or to a group of teachers. Except for the employees assigned full-time to the administrative office, the employees working under the "secretary" title generally report to the school principals. The employees in

the hybrid "clerical/aide" classification have unique reporting relationships:

Clerical/aide Alice Hayer is assigned half days at the alternative high school, where her duties consist of computer work, maintaining personnel records, providing secretarial support for the school director, computer testing of the students, and some direct interaction with students in support of the teacher. The other half of Hayer's work day is spent at the regular high school, where she performs secretarial support for the high school counselor. Taken together, the majority of Hayer's time is spent in support of the employer's administrative functions, while only about one quarter of her time is spent working directly in educational programs.

Clerical/aide Lynda Guehrn works part-time at the junior high school and part-time at the administrative office. In both locations, she works in support of other office-clerical employees. Her direct contact with students at the junior high school is of a clerical nature, and not as a part of the educational program.

Extent of Organization -

The "extent of organization" aspect of the statutory unit determination criteria compares the unit sought in a particular case to the whole of the employer's workforce, and particularly comes into play where sheer numbers (*i.e.*, the size and complexity of the employer's workforce or operations) would frustrate attempts to organize an "all employees", "vertical" or "horizontal" bargaining unit. Smaller divisions may then be necessary, if employees are to implement their statutory collective bargaining rights.

On the record made here, however, the "extent of organization" has little or no impact. In this case, the classified workforce of the employer appears to be fully organized. The petitioned-for group includes the entire occupational grouping, and the re-opened proceedings in this case assure that no other "office-clerical" or related employees remain to be stranded in an unorganized fragment.

History of Bargaining -

PSE relies heavily on the history of bargaining that dates back to at least 1971 in the existing bargaining unit. While that history is entitled to consideration, other clerical severance situations have permitted employees to overrule their bargaining history, as noted below.

PSE contends that the petitioned-for unit fails to meet the standards for "severance" enunciated by the NLRB in Mallinckrodt Chemical Works, 162 NLRB 387 (1966), and embraced by the Commission in Yelm School District, Decision 704-A (PECB, 1980). Mallinckrodt involved a question of "craft severance", and Yelm involved application of those principles to a unit of school bus drivers. Separately, a long line of Commission precedents has permitted office-clerical employees to "sever" themselves from broader units in which they have been mixed with other employee types. Selected cases in that line of precedent are Franklin Pierce School District, Decision 78-D (PECB, 1977), where the full Commission addressed the issue, Mukilteo School District, Decision 1008 (PECB, 1980), where the first use of the "unit determination election" procedure resulted in rejection of the separate unit by the office-clerical employees, and Highline School District, supra, where the office-clerical employees voted for creation of a separate bargaining unit but then retained the exclusive bargaining representative of the wall-to-wall unit as their exclusive bargaining representative in the separate unit. Other cases have resulted in both creation of a separate unit and a change of exclusive bargaining representative.⁶

⁶ The docket records of the Commission show, ironically, that PSE stipulated to the severance of office-clerical employees from the unit it had historically represented in the Yelm School District. The decision which denied severance of bus drivers from the historical unit came out of a case filed on January 5, 1979. Case 1931-E-79-344, filed on January 16, 1979, resulted in certification of a separate office-clerical bargaining unit in Yelm School District, Decision 623 (PECB, April 6, 1979).

The long history of inclusion of the petitioned-for employees in the same bargaining unit with others undoubtedly contributes to the existence of some commonality of employment practices and benefits, but that is not a basis for rejecting precedent in this case. It is neither surprising that the petitioned-for employees have some working conditions and benefits in common with other employees in the existing unit, nor is that circumstance different from other cases where office-clerical severances have been considered.

Desires of Employees -

The "desires of employees" aspect of the statutory unit determination criteria particularly comes into play where application of the other statutory criteria results in a conclusion that any of two or more bargaining unit configurations could be found appropriate. In this case, there seems little question that, in the absence of any history of bargaining, a "horizontal" unit that follows the "office-clerical" occupational type could be found appropriate under the "duties, skills and working conditions" and "extent of organization" criteria. Proof that there has been a history of bargaining here does not necessarily negate the possibility that a different unit configuration could work as well in the future.

Bearing in mind that RCW 41.56.040 protects the rights of employees to be represented by an organization of their own choosing, the Commission assesses "desires of employees", where appropriate, by conducting a unit determination election. The employees involved are thus given an opportunity to express their desires on their unit placement. In doing so, they have an opportunity to overrule their history of bargaining as part of a broader bargaining unit. As noted above, the unit determination elections conducted in a number of previous "clerical severance" cases have produced a wide range of results. The facts in the instant case lead to a conclusion that the petitioned-for employees should be afforded the same opportunity.

The "Clerical/Aide" Classification

It was disclosed somewhat belatedly in this proceeding that the employer has two employees working under the ambiguous title of "clerical/aide". Both employees divide their work time between two locations, but it was clear from the record that the majority of the time of both positions is spent in support of the administrative functions of the employer. The two "clerical/aide" employees are therefore eligible voters in the elections directed herein.

"Confidential" Employees

Assignment to an employer's administrative office is not, by itself, a basis for exclusion from a bargaining unit. Wapato School District, Decision 2227 (PECB, 1985). RCW 41.56.030(2)(c) does, however, exclude "confidential" employees from the coverage of the collective bargaining statute.⁷ By stipulations made in this case at the close of the second day of hearing and in a subsequent telephone conference, the parties have stipulated that the "accounting assistant" and the "secretary to the superintendent" are both confidential employees. Such stipulations appear to be in keeping with general practice in school districts of small-to-medium size, and are accepted as a basis for excluding those persons from the bargaining unit in this case.

FINDINGS OF FACT

1. Quincy 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).

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The exclusion is limited to those meeting a "labor nexus" test. International Association of Fire Fighters v. City of Yakima, 91 Wn.2d 101 (1978).

2. Classified Public Employees Association / Washington Education Association / National Education Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), has filled a timely and properly supported petition with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of office-clerical employees of the Quincy School District.
3. Public School Employees of Quincy, an affiliate of Public School Employees of Washington and a "bargaining representative" within the meaning of RCW 41.56.030(3), has been granted intervention in the proceedings as the incumbent exclusive bargaining representative of a "wall-to-wall" bargaining unit of classified employees of the Quincy School District which includes office-clerical employees.
4. Office-clerical employees have a history of bargaining within the existing bargaining unit which dates back to at least 1971.
5. The duties and skills of the office-clerical employees of the Quincy School District are generally similar to the duties and skills of office-clerical employees elsewhere.
6. The office-clerical employees of the Quincy School District have a community of interest with other employees in the existing bargaining unit described in paragraph 3 of these findings of fact, arising out of general commonality of working conditions. Such community of interest could continue to exist if the employees so desire.
7. The office-clerical employees of the Quincy School District have a community of interest among themselves, arising out of their duties and skills and the specific working conditions associated with their function as part of the administrative

operation of the employer. Such community of interest could be the basis for creation of a separate bargaining unit if the employees so desire.

8. The persons employed by the Quincy School District under the "clerical/aide" job title primarily work in support of the employer's administrative functions, performing office-clerical duties similar to those of other employees in the petitioned-for bargaining unit.
9. The parties have stipulated that the "secretary to the superintendent" and the "accounting assistant" are both "confidential" employees as defined by RCW 41.56.030(2)(c).

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. If the desires of employees so indicate, the existing unit consisting of aides, food service workers, custodial service employees, transportation employees, grounds maintenance workers, and office-clerical employees could continue to be an appropriate unit for the purposes of collective bargaining, within the meaning of RCW 41.56.060.
3. If the desires of employees so indicate, a bargaining unit limited to:

All full-time and regular part-time office-clerical employees of the Quincy School District, excluding supervisors, confidential employees, aides working in support of the educational program, and all other employees of the employer

could be appropriate for the purposes of collective bargaining pursuant to RCW 41.56.060.

4. A question concerning representation will exist under RCW 41.56.070 in the bargaining unit described in paragraph three of these conclusions of law, if the propriety of said bargaining unit is validated by a unit determination election.
5. The employees working under the "clerk/aide" title are properly included, under RCW 41.56.060, in the bargaining unit described in paragraph 3 of these conclusions of law, and are eligible voters in the elections directed herein.
6. Based upon the stipulation of the parties that they are "confidential" employees within the meaning of RCW 41.56.030-(2)(c), the persons holding the positions of "secretary to the superintendent" and "accounting assistant" are excluded from the bargaining unit.

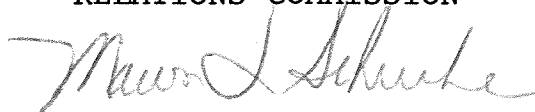
DIRECTION OF ELECTIONS

1. A unit determination election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the voting group described in paragraph three of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees eligible to vote desire to constitute themselves as a separate bargaining unit.
2. A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission in the appropriate bargaining unit described in paragraph three of the foregoing Conclusions of Law, for the purpose of determining whether a majority of the employees in such unit desire to be represented for the purposes of collec-

tive bargaining by PUBLIC SCHOOL EMPLOYEES OF QUINCY/PSE or by CLASSIFIED PUBLIC EMPLOYEES ASSOCIATION/WEA/NEA or by NO REPRESENTATIVE. The conduct of this representation election is conditioned upon the validation of the bargaining unit in the unit determination election directed herein, and the representation election ballots will be impounded in the event that the unit determination election fails to validate the propriety of the bargaining unit.

Dated at Olympia, Washington, this 21st day of January, 1992.

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.