

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.

The hearing in this matter was reconvened and concluded on July 9, 1991. The parties then filed post-hearing briefs.

BACKGROUND

The Omak School District provides education and related services to approximately 1950 students in kindergarten through high school.² The employer operates two elementary schools, one middle school, one high school, and one alternative school.

PSE is the exclusive bargaining representative of a "wall-to-wall" unit which includes the employer's classified employees.³ The bargaining relationship between the employer and PSE has existed since at least 1973. The contract between the employer and PSE for 1973-1976 described the bargaining unit as "All classified employees performing in the District", and it set forth wage rates for four "secretary" classifications. The 1976-1979 agreement

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 "Washington Education Directory", published by Barbara Krohn and Associates from data collected by the Superintendent of Public Instruction, 1991-92 edition, lists the Omak School District as having 1950 students.

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.

between the employer and PSE altered the description somewhat, specifying that the contract was applicable to:

... all classified employees ... in the following general job classifications: non-confidential secretarial, clerical, aides, transportation, food services, custodial, groundskeeping/maintenance.

The same generic description was used in the 1982-1983 contract between the employer and PSE, but the following was added:

The following positions shall not be considered as part of the unit: Secretary to the Superintendent (1), Secretary to the Board of Directors (1), Payroll/Personnel Officer (1), and Supervisor(s) of Grounds (1), Maintenance (1), Transportation (1), Custodial (1) and Food Service (1).

With minor changes not pertinent here, the same unit description was found in subsequent contracts through the 1988-90 agreement.

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

All Omak 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.

The petitioner entered "13" in the space on the petition form for the estimated number of employees in the bargaining unit, and that matches the number of employees listed by the employer as "building secretaries". They work under a variety of titles, including "principals' secretary", "records secretary", "counseling secretary", "vocational/athletic director secretary", "ASB secretary", "Early Childhood Education secretary", and "attendance counselor secretary".

Six other employees have job titles which suggest that they could be considered within the "office-clerical" occupational type, but are not assigned to particular buildings. They include: "media specialist assistant, "migrant records clerk", "substitute caller", and the "transportation dispatcher secretary".

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 media specialist employees in the petitioned-for bargaining unit.

The employer took a neutral position on the proposed severance of a separate bargaining unit.

PSE strenuously resists the severance of a separate office-clerical unit, claiming that those employees have no separate community of interest. 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. PSE particularly relies on the history of bargaining in the existing unit, which has been in its present form since 1973. It contends that office-clerical employees do not qualify as "craft" employees, so as to be eligible for severance under federal precedent on severance of craft employees. PSE argues that the "media specialist" positions are not office-clerical employees, and that they would not belong in a separate unit if one is created.

DISCUSSIONSeverance of Office-Clerical Bargaining Unit

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 office clerical employees are, or should be permitted to become, a separate bargaining unit.

Duties, Skills and Working Conditions -

The record in this case clearly establishes that most of the employees sought by the CPEA perform traditional "office-clerical" tasks in support of the administrative functions of the school district. Apart from the employees who serve as secretaries to school building principals, several customized job "classifications" have developed over the years,⁴ but still fundamentally provide support for administrative functions. For example:

Millie Gann is the "substitute caller". She works at the administration building, and it is her job to call teacher substitutes beginning at 6:00 a.m. on school days.

⁴ According to PSE's estimate, there were 55 separate job descriptions in the existing bargaining unit, covering some 124 classified employees of the district.

Betty Rusk is the "ASB secretary" at Omak High School. Her job emphasizes collecting and depositing of funds for the school's Associated Student Body organization, and preparing travel requests and other account ledgers.

The "attendance secretary" at the high school receives visitors, types minutes of meetings and receives telephone calls, in addition to her duties in keeping attendance records and files.

A "personnel clerk" at the administrative office monitors payroll for the employees in federally-funded programs.

Liz Gillette provides office-clerical support for the employer's Transportation Department.

Even where petitioned-for employees have regular contact with students, it is incidental to primary office-clerical functions. For example, Helen Schelhaas is responsible for enrolling and giving orientation to students new to the Alternative School, but she serves as the principal's secretary.

The duties of the petitioned-for employees, 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 fragmentized 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 of-

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. 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, but they remain "administrative", not "educational".

PSE places its focus on the similarities between the petitioned-for employees and the aides in the existing bargaining unit. 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. The collective bargaining agreement contains pay scales for nine separate job classifications. All of the "secretaries" are paid at one rate which is different (higher) than the "instructional assistants".

Other classifications are paid at rates higher or lower than the secretaries.

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 there is no indication of any other employees remaining to be stranded in an unorganized fragment.

History of Bargaining -

PSE relies heavily on the history of bargaining that dates back to at least 1973 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.⁵

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

⁵ 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).

this case, there seems little question that 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, in the absence of the history of bargaining. 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 and, in doing so, 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 Media Specialist Positions

A record was made in this case with respect to the "media specialist assistant" classification. Mary Ann Cramer, Judy Bevier and Shirley Yenke currently hold these positions. They work at the two elementary schools and at the middle school.

At various times, these positions were referred to as "media aide" or "library assistant", and they appear to be more closely affiliated with the classroom aide positions than with the office-clerical employees. Part of the job duties of these people is to answer library information questions for students, teachers and other staff. They perform all typical library-related tasks, including production of copies of instructional materials such as

transparencies, posters, audio tapes and video tapes. Generally, these people are supervised by the certificated librarian or work at the request of classroom personnel, rather than under the direction of administrative personnel. There is very little interchange between the media specialists and the building secretaries or other office-clerical employees. In the organizational format existing at Omak, these people are not office-clerical employees, but rather have their community of interest with the classroom aides in the existing wall-to-wall bargaining unit.

FINDINGS OF FACT

1. Omak 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. Classified Public Employees Association / Washington Education Association / National Education Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of office-clerical employees of the Omak School District.
3. Public School Employees of Omak, 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 Omak School District which includes office-clerical employees.

4. Office-clerical employees have a history of bargaining within the existing bargaining unit, dating back to at least 1973.
5. The duties and skills of the office-clerical employees of the Omak School District are generally similar to the duties and skills of office-clerical employees elsewhere.
6. The office-clerical employees of the Omak 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 Omak 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 Omak School District under the "media specialist" job title primarily work under the direction of certificated employees in support of the employer's educational functions, performing library and media production tasks and assisting students and faculty members with their use of the school library facilities. Their performance of clerical tasks is incidental to their educational functions.

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 Omak 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 "media specialist" title are not properly included, under RCW 41.56.060, in the bargaining unit described in paragraph 3 of these conclusions of law, and are not eligible voters in the elections directed herein.

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 collective bargaining by PUBLIC SCHOOL EMPLOYEES OF OMAK/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.