

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
WASHINGTON EDUCATION ASSOCIATION ) CASE 11987-E-95-1975  
Involving certain employees of: ) DECISION 5319-A - PECB  
COLVILLE SCHOOL DISTRICT ) DIRECTION OF ELECTION  
\_\_\_\_\_ )

Warren Henderson, UniServ Representative, appeared on behalf of the union.

Winston, Stevens & Clay, by Robert W. Winston, Jr., appeared on behalf of the employer.

Bruce Logan, Organizer, appeared on behalf of the intervenor, Public School Employees of Washington.

On August 18, 1995, the Washington Education Association (WEA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC. The WEA sought certification as exclusive bargaining representative of Colville School District employees in a bargaining unit which it described as:

All regular full-time and part-time office/clerical employees including substitutes of the Colville School District excluding confidential employees, supervisors, non-certificated coaches and extra-curricular employees, and all other employees of the employer.

The results of an election conducted by the Commission were vacated, for reasons explained below, and the matter remanded by order dated October 20, 1995.<sup>1</sup> A hearing concerning exclusions from the proposed bargaining unit was held in Colville, Washington,

---

<sup>1</sup> Colville School District, Decision 5319 (PECB, 1995).

on January 23 and 24, 1996, before Hearing Officer Pamela G. Bradburn. Public School Employees of Washington (PSE) moved for intervention in the proceedings, based on a claim that it was or should be the exclusive bargaining representative of some of the employees involved.<sup>2</sup> Testimony was taken from one more witness on February 1, 1996, by means of a telephone conference call.<sup>3</sup> The employer and WEA made oral closing arguments on February 1, 1996, and waived their right to file written briefs. The Hearing Officer received the transcript of the hearing on February 17, 1996.

#### PROCEDURAL BACKGROUND

##### Raising of the Question Concerning Representation

This is actually the WEA's second recent effort to organize a bargaining unit of office-clerical employees in the Colville School District. It is helpful to review of the history of both cases.

##### The WEA's First Petition -

In its first petition, filed on March 1, 1995,<sup>4</sup> the WEA indicated there were 15 employees in a bargaining which it described with the same terms it later used in the instant case. During a pre-hearing conference on March 20, 1995, the parties stipulated to an election by mail ballot and to a list of nine employees eligible to vote in that election. Another 10 employees were to vote by challenged ballot. Among those: Carroll Ferguson, Sheryl Clark, Robin Sphuler and Rawline Taylor were identified as central office

---

<sup>2</sup> PSE waived further participation in the proceedings after presenting its evidence on January 24, 1996.

<sup>3</sup> The witness testified from Colville, representatives of the employer and WEA participated from Spokane, and the Hearing Officer and court reporter participated from Kirkland, Washington.

<sup>4</sup> Case 11619-E-95-1910.

employees; Sandie Wollan, Sally Hedrick, Mavis Gibson, Rose Quimby, Nancy Cornwell and Helen Bushnell were identified as office managers at schools.<sup>5</sup> The Hearing Officer observed that the Commission was not likely to approve a unit that categorically excluded all employees working in the employer's central office, unless they were all supervisors or confidential employees.

Prior to issuance of a notice of election, the WEA withdrew that petition on March 30, 1995. That case was thus closed, on April 5, 1995.<sup>6</sup>

The Current Petition -

The WEA filed the petition to initiate this proceeding on August 18, 1995, again claiming there were 15 employees in the bargaining unit. A list of employees supplied by the employer on September 5, 1995, in response to a routine inquiry from the Commission staff, included 18 names. Central office employees Rawline Taylor and Robin Sphuler were listed as eligible voters; Sheryl Clark was listed with a note indicating she was on leave. On September 18, 1995, the employer provided a second list which differed from the September 5 list only by omitting Clark's name.

On September 20, 1995, the employer filed a third list with the Commission, proposing certain specific exclusions from the unit:

Frederick B. McCurdy, Business Manager (Supervisor & Confidential)

Trudy Hull, Executive Services Officer (Confidential)

Sharon Carr, Personnel/Payroll Officer (Confidential)

---

<sup>5</sup> Bushnell's name was marked "Ch" on the eligibility list, but was not among the challenged voters in the statement of results of pre-hearing conference issued in that case. This appears to have been an inadvertent omission.

<sup>6</sup> Colville School District, Decision 5058 (PECB, 1995).

Karen Harris, Food Service Director / Fiscal Officer (Supervisor)

Carroll Ferguson, Executive Assistant (Supervisor & Confidential)

During a pre-hearing conference held on that date, the employer and the WEA agreed to the following bargaining unit description:

All full-time and regular part-time office-clerical employees of the Colville School District excluding supervisors, confidential and all other employees.

Those parties also agreed to an eligibility list which did not include any of the employees working in the central office.

#### Election Results Vacated

Materials for a mail ballot election were issued on September 29, 1995, setting October 13, 1995 as the deadline for return of the ballots. On October 12, 1995, the Commission received a letter from a number of employees who objected to the exclusion of central office positions from the proposed unit.

A tally of ballots issued on October 13, 1995, indicated that nine votes were cast for the WEA and six votes were cast for the "no representation" choice. The results of the election were vacated on October 20, 1995,<sup>7</sup> for two fundamental reasons:

First, it was noted that the employer had not received the Statement of Results of the Pre-hearing Conference, which should have been posted by the employer prior to the election. Since the posting requirement of WAC 391-25-230 was not met, employees and potential intervenors could have been deprived of notice of the stipulations recited in that statement.

---

<sup>7</sup> Colville School District, Decision 5319 (PECB, 1995).

Second, it was noted the employer and WEA appeared to have stipulated to a categorical exclusion of the employer's central office staff because of their work location, rather than on the basis of demonstrated confidential or supervisory duties.

PSE's Motion for Intervention

A hearing scheduled for December of 1995 was delayed to January of 1996, when the WEA proposed adding six more positions to the list being considered for inclusion in, or exclusion from, its proposed unit. At that time, the WEA stated a belief that three library assistants and three disciplinary assistants were unrepresented.

The hearing opened on January 23, 1996, and ran into the next day. On January 24, 1996, Bruce Logan, an organizer for Public School Employees of Washington (PSE), formally moved for intervention.<sup>8</sup> PSE asserted that it had represented the library assistants and disciplinary assistants within the year before the WEA filed its second petition. The WEA opposed the motion for intervention, arguing that PSE had long ago relinquished representation of the library assistants and disciplinary assistants. The employer did not take a position on this issue.

Because the election result had been vacated, and the matter had been remanded for hearing, the Hearing Officer properly found PSE's motion was timely and properly permitted PSE to present evidence supporting its claim that it had represented the library assistants and disciplinary assistants since August 18, 1994. Analysis of the evidence presented requires, however, that PSE's motion for intervention be denied.

---

<sup>8</sup> Logan left messages for the Hearing Officer on January 22 and 23, 1996, and he had a telephone conversation with the employer's counsel on January 23. All contacts by Logan were placed on the record. Transcript pages 14-15 and 107-108.

Status as the incumbent exclusive bargaining representative of a bargaining unit creates a rebuttable presumption the organization enjoys the support of a majority of the employees in that unit. Wahkiakum County, Decision 1876 (PECB, 1984). PSE sought to intervene in this proceeding under WAC 391-25-170, which provides:

An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. No motion for intervention shall be considered if made after the close of the hearing on the petition or more than seven days after the filing and posting of an election agreement or cross-check agreement.

Intervention as an incumbent obviates the need for an organization to obtain current authorization cards from employees that it already represents, and is a limited exception to the otherwise-universal requirements of the statute and rules for a 10% showing of interest in support of a motion for intervention.

In this case, the record does not clearly indicate whether the library assistant and/or disciplinary assistant positions were included in the bargaining unit when PSE was certified, on June 13, 1989,<sup>9</sup> as exclusive bargaining representative of the employer's instructional aides and food service employees (hereinafter referred to as the "aide/food unit").

The record in this proceeding **does** indicate that two disciplinary assistants were specifically excluded from the aide/food unit by agreement of the employer and PSE in 1989: (1) Disciplinary

---

<sup>9</sup> Colville School District, Decision 3221-A (PECB, 1989).

Assistant Al MacDonald was exempted by PSE on June 23, 1989;<sup>10</sup> and (2) Disciplinary Assistant Nellie Kerns was exempted by PSE on October 17, 1989.

The record also includes a copy of a September 7, 1989 letter from a principal to the PSE representative stating: "[A]s you know, office assistants, library assistants, and discipline assistants were released from the unit". Although this record does not contain any written acknowledgement or acceptance of the September 7, 1989 letter by PSE, neither is there any evidence suggesting that PSE contemporaneously disputed the statements made therein.

The disciplinary assistants and library assistants were included on seniority lists jointly compiled by the employer and PSE at the end of subsequent school years, but that practice came into question after a double levy failure raised the specter of layoffs. Discussions between PSE and the employer which began in the spring of 1994 culminated in a PSE proposal that the library assistants and disciplinary assistants be included (and granted seniority) in the aide/food unit upon satisfying unspecified conditions. After the library assistants and disciplinary assistants rejected the proposed conditions, Superintendent Cole and the PSE chapter president sent them a March 6, 1995 memo which stated:

After careful review of your requests or [sic] considerations [sic] for PSE representation, we have agreed that you have been and will continue to be exempt employees. Your working agreements need to be finalized by the school district administration. In the event your future jobs may change, a unit clarification may be completed at that time.

There is no evidence of any change of that arrangement up to the filing of the instant petition on August 18, 1995.

---

<sup>10</sup> The record suggests this was done at the request of both MacDonald and the employer.

The Executive Director concludes a labor organization must make a stronger showing than PSE has made, if it is to enjoy the substantial benefits of WAC 391-25-170. The fact the employer and PSE had discussions about these employees during the requisite time period is not conclusive. Rather than representing the library assistants and disciplinary assistants, PSE was proposing conditions under which it would commence to represent them. In effect, PSE proposed voluntary recognition and the employer rejected that proposal. A failed request for recognition accomplishes nothing. The discussions never matured into actual representation by PSE.

Any other conclusion would disregard PSE's specific exemptions of MacDonald and Kerns in 1989, and the September 7, 1989 letter memorializing a broader agreement of the employer and PSE to exclude "office assistants, library assistants, and discipline assistants ... from the unit". The Commission gives effect to disclaimers of bargaining units, when the record indicates they are made in good faith and without intent to improperly affect the outcome of later representation proceedings. Cusick School District, Decision 2946 (PECB, 1988). There is no evidence or argument that PSE granted the 1989 and 1995 exemptions in order to improperly sway any later representation proceeding.

PSE's motion to intervene under WAC 391-25-170 is denied. A non-incumbent organization must supply a showing of interest from 10% or more of a proposed unit to intervene in representation proceedings. City of Bremerton, Decision 3367 (PECB, 1989); WAC 391-25-190. PSE has not supplied any authorization cards, and so is excluded from further participation in these proceedings.

#### FACTUAL BACKGROUND

The Colville School District serves approximately 2600 students in kindergarten through high school. It appears the employer has



office-clerical employees at its central office and at six schools. The employer has existing collective bargaining relationships with organizations representing three existing bargaining units:

\* The WEA represents approximately 200 non-supervisory certificated employees under Chapter 41.59 RCW. A collective bargaining agreement covering that bargaining unit is in effect for the period from September 1, 1995 through August 31, 1998.

\* PSE represents approximately 80 to 90 employees in the aide/food unit. A collective bargaining agreement covering that bargaining unit is in effect for the period from September 1, 1995 through August 31, 1996.

\* PSE separately represents about 30 to 40 custodial employees. The record does not include a copy of a collective bargaining agreement covering that bargaining unit.

Richard Cole has been the superintendent of schools at Colville since the 1991-1992 school year. Cole's predecessor had placed most of the responsibility for collective bargaining negotiations on the school principals, and one of the school board's charges to Cole was to consolidate collective bargaining in the employer's central office under his direct control.

## DISCUSSION

### Applicable Legal Standards

This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

#### The "Confidential" Exclusion -

The Legislature has excluded from the definition of "public employee", and therefore from the coverage of Chapter 41.56 RCW, those persons:

[W]hose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit.

RCW 41.56.030(2)(c).

To qualify for the "confidential" exclusion, a relationship with the executive head of the bargaining unit must involve formulation and implementation of the employer's labor relations policy. IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978). However:

[T]he "confidential" exclusion is not limited to those who directly participate in the formulation of labor relations policy and objectives, but also extends to those support personnel who process sensitive labor relations-related material at the direction of those responsible for collective bargaining matters.

Olympia School District, Decision 4736-A (PECB, 1994).

Because a confidential employee loses all protection of Chapter 41.56 RCW, the Commission places a heavy burden on the party seeking to exclude an employee from a bargaining unit on that basis. Further, the Commission expects an employer to apportion its confidential work so only a reasonable number of employees are excluded from representation. Olympia School District, supra.

#### Supervisory Exclusions -

Supervisors are employees within the meaning and coverage of Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). By application of the unit determination authority conferred upon the Commission in RCW 41.56.060, supervisors are routinely excluded from bargaining units which include the persons they supervise, to avoid a potential for conflicts of interest. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). The Commission has

concluded that disruptive conflicts of interest are likely if an individual exercises a preponderance of the indicia of supervisory authority listed in RCW 41.59.020(4)(d):

[A]uthority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action if ... the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment....

Snohomish Health District, Decision 4735-A (PECB, 1995).

Thus, the focus in deciding "supervisor" claims is on authority over subordinate employees, rather than on titles or authority over programs and functions.

Community of Interest Factors -

RCW 41.56.060 directs the Commission, in determining, modifying or combining bargaining units, to consider:

[T]he 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. ...

Employees are grouped together based on having a community of interest, usually based upon branches of the employer's table of organization or occupational groupings:

In making unit determinations, the Commission considers the degree of integration of managerial functions in an organization, similarities of pay and benefits, similarities of duties, and the degree of interchange of employee job functions.

City of Auburn, Decision 4880-A (PECB, 1995).

Bargaining units of employees in office-clerical occupations have often been found appropriate in numerous school districts.

### The Disputed Positions

The number of positions at issue in this matter has grown since the case was remanded. Before the hearing, the WEA added the disciplinary assistants and library assistants to the controversy. The employer ceased mentioning an employee "on leave" from its central office, but has filled a position in its central office. Employer organization charts placed in evidence at the hearing disclosed three central office positions that had not been mentioned before by any party (a maintenance director, a student support services director, and a technology coordinator), and the Hearing Officer took evidence on those positions to insure a complete record. This decision examines the disputed positions in three groups:

#### Administrators

Finance and personnel director	Fred McCurdy
Food services director [half-time]	Karen Harris
Maintenance director	Dean Albertson
Technology coordinator	Michael Swatzell
Student support services director	Michael Cashion

#### Clerical and Support Staff

Executive services assistant	Trudy Hull
Finance assistant [half-time]	Karen Harris
Payroll/insurance assistant	Sharon Carr
Student support services assistant	Carroll Ferguson
Accounts payable specialist [1/2 time])	)--Robin Sphuler
Student programs specialist [1/2 time])	
Office specialist	Rawline Taylor
Receptionist/clerk	Laura Moody

#### Discipline and Library Assistants

Discipline assistant	Kathryn Link
High school discipline supervisor	Albert MacDonald
PR assistant / ASB accountant	Nellie Kerns
Library assistant	JoAnne McConnell
Library specialist	Carol Bingman
Media specialist/library coordinator	Margaret Kester

The positions are discussed in that order, under the headings which follow.

Application of "Confidential" Precedents<sup>11</sup>The Administrators -

Finance/Personnel Director Frederick McCurdy has been the employer's primary financial officer since September of 1993, and he assumed personnel duties in October of 1995.<sup>12</sup> McCurdy reports directly to Superintendent Cole. McCurdy personally prepares financial analyses of proposals from the WEA and PSE, as well as of employer counterproposals to those unions. McCurdy accompanies Cole to negotiations with the certificated bargaining unit, acting as a resource to Cole. With regard to the aide/food unit, McCurdy shares bargaining responsibilities with Student Support Services Director Michael Cashion and Food Services Director Karen Harris. As finance director, McCurdy directly supervises and evaluates Carr and Taylor, as well as Harris in her half-time finance assistant role. McCurdy has hiring, firing, and disciplinary authority over those persons. As personnel director, McCurdy is responsible for the employer's general personnel procedures, with the assistance of Harris, Carr and Taylor. McCurdy also is primarily responsible for organizing a team to handle hiring for central office positions.

The employer and the WEA agree that McCurdy should be excluded from the proposed bargaining unit as a confidential employee. His involvement in collective bargaining on behalf of the employer clearly warrants his exclusion as a confidential employee under RCW 41.56.030(2).

---

<sup>11</sup> Where a position is excludable as a "confidential employee", no ruling is necessary (and none is made herein) on arguments that they are also excludable from this proposed unit as a "supervisor".

<sup>12</sup> The titles "business director", "business manager" and "director, finance/personnel" are all associated with McCurdy's name on employer-originated documents in this case file. If he was a certificated employee, he would be excluded, by title, from bargaining rights under Chapter 41.59 RCW. See, RCW 41.59.020(4)(b).

Food Services Director Karen Harris has held that position on a half-time basis since 1994.<sup>13</sup> Harris has performed various accounting, budgetary and financial tasks for the employer in its central office since 1979, and she continues to fill out her work day as "finance assistant". Harris reports directly to Cole in regard to food service matters. She participated in reviewing food service issues and preparing employer strategies for bargaining with the aide/food unit, and spoke for the employer at the bargaining table with PSE. Harris has hiring, firing, and disciplinary authority over all 24 food service employees, and directly supervises 7 managers. Any grievance for a food service worker would be presented to Harris at some step of the process.

The WEA and the employer agree that Harris should be excluded as a confidential employee in her capacity as head of the food service operation. The record supports the parties' agreement.

Maintenance Director Dean Albertson became responsible for the employer's facilities in 1990, after working for the employer in several custodial positions since 1986. Albertson reports directly to Cole. After consulting with Cole, Albertson negotiates with PSE for the custodial bargaining unit. In addition, Albertson participates in any grievances arising under the custodial contract. Albertson's supervisory duties include supervision and evaluation of the head custodians, supervision and evaluation of maintenance and grounds employees who are not represented for the purposes of collective bargaining, participating in hiring decisions, imposing discipline and recommending discharge where warranted, and ultimate responsibility for work assignments and schedules.

The WEA and the employer agree that Albertson should be excluded from the proposed unit as confidential. Albertson clearly meets

---

<sup>13</sup> This was formerly a full-time position, but was reduced to half-time after the employer suffered a levy failure.

the criteria for such an exclusion. The position is not, in any case, within the office-clerical generic occupational type which characterizes the proposed unit.

Technology Coordinator Michael Swatzell works in the employer's central office, and reports directly to Cole. A job vacancy announcement in evidence suggests that Swatzell has held the position since the summer of 1995.<sup>14</sup> The position requires, and Swatzell holds, a current teaching certificate. Swatzell is responsible for coordinating the employer's computer systems.

The WEA and the employer agree that Swatzell should be excluded from the proposed unit, because his job requires a teaching certificate. Positions which require a teaching certificate are covered by the Educational Employment Relations Act, Chapter 41.59 RCW. Under Castle Rock School District, Decision 4722-B (EDUC, 1995) and College Place School District, Decision 795 (EDUC, 1980), certificated positions cannot be included in bargaining units under Chapter 41.56 RCW, just as it is improper to place positions which do not require educator certification into bargaining units under Chapter 41.59 RCW.

Student Support Services Director Michael Cashion has held this position since 1987. He oversees the employer's special education, learning assistance, Title I, and disciplinary programs, along with other programs funded by grants. Cashion reports directly to Cole. Cashion is a member of the employer's bargaining team for the aide/food unit, with responsibility for issues concerning the instructional aides. He sits at the bargaining table for the employer in negotiations with WEA for the certificated bargaining unit, where his role is to supply language on issues within his subject-matter expertise. Cashion supervises 90 employees (23 certificated and 67

---

<sup>14</sup> The vacancy notice was admitted in evidence by stipulation. Swatzell was not called to testify.

instructional aides), participates in their hiring and evaluations, and has authority to recommend the discharge of at least the certificated employees. Cashion and the principal of the school involved jointly receive grievances at the first step.

The WEA and the employer also agree that Cashion should be excluded from the proposed unit as confidential. Cashion's participation in collective bargaining on behalf of the employer with two of the existing bargaining units clearly warrants his exclusion as a confidential employee.

The Clerical and Support Staff -

Executive Services Assistant Trudy Hull has provided secretarial support to the employer's superintendents since 1982. Her present duties include: Opening all of Cole's mail; typing and filing Cole's correspondence, including letters between Cole and the employer's labor counsel dealing with confidential labor issues; attending some executive sessions of the school board where labor relations issues or bargaining strategies are discussed; typing the employer's proposals or counterproposals for presentation in negotiations sessions; and, occasionally, accompanying Cole to negotiation sessions with the certificated bargaining unit, where she takes notes. Since a recent reorganization in the central office, Hull supervises Receptionist/Clerk Laura Moody. Hull participated on the team that interviewed candidates for that position and jointly chose Moody. Hull will evaluate Moody's performance at the appropriate time, and Hull believes she possesses authority to recommend discipline, including termination. When Hull's workload is burdensome, she can shift work to Moody or to another employee.

The WEA argues that Hull's position is confidential in relation to Cole, and the employer agrees. The nature of superintendents' roles in school districts, and the responsibilities customarily borne by their secretaries, necessarily imply those secretaries



will become privy to the employer's bargaining strategies and proposals before they are presented to a union. This is precisely the situation addressed by RCW 41.56.030(2)(c), as interpreted by the Supreme Court in City of Yakima, supra. The record in this case indicates that, in fact, Hull and Cole have a close and confidential working relationship which brings Hull directly into contact with the employer's labor relations materials. Hull is properly excluded from the proposed unit as a confidential employee.<sup>15</sup>

Finance assistant (half-time) Karen Harris has functioned in this role since 1979, and continues to do so on a half-time basis since becoming administrator of the employer's food service program.<sup>16</sup> In her capacity as finance assistant, Harris reports to McCurdy and is responsible for: Accounts payable work; collecting accounts receivable; preparing the annual general fund budget; handling the accounting and budgetary record-keeping for all grants; and preparing a variety of financial reports. She gathers and analyzes budget data for negotiations with both the certificated bargaining unit and the aide/food unit. Harris also participated in the hiring process for the accounts payable specialist, and evaluates and possesses disciplinary authority over that position.

The WEA contends that Harris should be excluded as confidential, and the employer agrees. Their agreement is supported by the evidence that Harris performs confidential computations in aid of the employer's collective bargaining.<sup>17</sup>

---

<sup>15</sup> Employers and unions usually agree to exclude the secretary to the employer's senior administrator, so that such issues rarely come to the Commission for decision. See, South Kitsap School District, Decision 938 (PECB, 1980).

<sup>16</sup> Harris's positions are discussed separately because the employer may assign her positions to two different people in the future.

<sup>17</sup> Her exclusion from this bargaining unit would be warranted in any case, because of her confidential status in the food services role.

Payroll/Insurance Assistant Sharon Carr has held this position since 1988. She reports to McCurdy, and is responsible for processing the employer's payroll, personnel, retirement, and insurance matters. Carr is widely recognized within the employer's management for her expertise regarding knotty issues of certificated employee salary placement, employee benefits, and retirement questions. Because of her knowledge of each employee's salary placement and benefit entitlement, Carr is called upon to provide the employer's negotiators with accurate computations of the cost of union proposals. Carr has provided such information for at least two separate sets of negotiations, involving both certificated and classified employees. The employer introduced evidence that it regards Carr as an irreplaceable resource for bargaining, and its actions support that claim. Carr has participated in management caucuses, and sat at the bargaining table on behalf of the employer in the most recent negotiations with PSE for the aide/food unit. Carr does the typing involved in preparing confidential labor relations data. Several employer officials testified that Carr also provides crucial information to management about what other school districts are doing on insurance benefits.

The WEA contends that Carr must be excluded as confidential. The employer agrees. Under City of Yakima, supra, exclusion is clearly appropriate for a person whose unique knowledge on questions of employee compensation is used by the employer before and during collective bargaining.

Student Support Services Assistant Carroll Ferguson has worked for Student Support Services Administrator Michael Cashion since 1988.<sup>18</sup> She does Cashion's typing (including correspondence, reports, reprimands, and responses to grievances), and acts on Cashion's behalf during his frequent trips out of the district.

---

<sup>18</sup> Ferguson was hired as the student support secretary. The position was renamed when the function was relocated to the employer's central office in 1992 or 1993.

The record indicates Cashion has used Ferguson as a sounding board for ideas he was considering presenting to PSE at the bargaining table for the aide/food unit. Ferguson has typed proposals for presentation to PSE in negotiations; she has even sat at the bargaining table for the employer, at Cashion's request. Ferguson has also participated on behalf of the employer in monthly labor/management committee meetings with PSE. The half-time student programs specialist works under Ferguson's direction.

The WEA asserts that Ferguson is a confidential employee, and the employer agrees. The record indicates Ferguson functions like an executive assistant to Cashion, acting on his behalf when he is away from the district. As noted in Edmonds School District, Decision 231 (PECB, 1977), cited with approval by the Supreme Court in City of Yakima, supra, assistants to second-level school district officials charged with responsibility for labor relations may have a derivative confidential relationship with the executive head of the bargaining unit, even without direct contact with the top official. Ferguson is clearly in a position to know the employer's plans and proposals before their presentation to a union. Under these circumstances, the exclusion of a fourth "confidential employee" in this office is warranted.

Accounts Payable Specialist and Student Programs Specialist Robin Sphuler currently holds two half-time jobs in the central office. She worked as a half-time office assistant and half-time instructional aide at the employer's junior high school from 1989 until 1992,<sup>19</sup> and moved to the central office as a full-time accounting specialist in 1992. The accounting role was reduced to a half-time position in 1995, due to a levy failure, and she was then assigned to student programs tasks in the central office for the remaining half of her work time.

---

<sup>19</sup> The half-time instructional assistant position was represented by PSE.

Sphuler's work station for both of her current roles is located in an open area near the offices occupied by Cashion and Ferguson.

\* Sphuler's accounting duties, which have not changed since 1992, include processing warrants, approving purchase orders, handling petty cash, advancing travel funds, keeping track of and preparing monthly reports on the individual building budgets, and preparing a consent agenda for approval of bills at each school board meeting. The only work Sphuler does in this role that relates to labor relations is: (1) Obtaining pay rates from the payroll/insurance assistant and delivering them to Harris, when requested by Harris for use in negotiations, and (2) reducing various proposals and ideas generated in negotiation sessions with the aide/food unit to typed and organized form. Sphuler's performance as accounts payable specialist is evaluated by Harris. Sphuler testified that the ongoing reorganization of the central office staff might result in someone else assuming responsibility for typing projects assigned by Harris. Sphuler's interaction on accounts payable issues with employees outside the central office is primarily by telephone.

\* Sphuler has worked in the "student programs specialist" role on a half-time basis since July of 1995. Up to the time of the hearing, Sphuler's duties included answering the telephone, maintaining separate budgets for each school in which student support programs occur, preparing reports on expenditures in individual schools, and filing documents prepared by Ferguson. Cashion has not negotiated with PSE for the aide/food unit while Sphuler has been assigned to the student support program. She speculated about a future role which would include obtaining labor cost data for Cashion from Carr, or being a sounding board for Cashion's brainstorming on labor relations matters.

The WEA contends Sphuler should be excluded from the proposed bargaining unit, on the basis that she handles confidential financial data in her accounts payable position and expects to do the same in her student programs position. The employer agrees,

although it originally listed Sphuler as an eligible voter in this case. On close examination, however, the record does not support what amounts to a stipulation of two parties (i.e., the union and employer) which would deprive Sphuler of her statutory rights.

The task of conveying data between Carr and Harris is a minor part of the accounts payable job, and it does not appear that Sphuler's involvement is necessary to the employer's performance of its labor relations responsibilities. Having Carr and Harris communicate directly is the kind of minor accommodation employers are expected to make, so that employees are not unnecessarily denied representation rights. Clover Park School District, Decision 2243-B (PECB, 1987). Because Sphuler is only organizing and typing ideas that have already been discussed by employer and union representatives at the bargaining table, that work deals with materials that are no longer "confidential".

The Commission has refused to exclude employees from the coverage of Chapter 41.56 RCW based on speculation about future assignments of labor relations-related duties. City of Seattle, Decision 689 (PECB, 1979). Sphuler's prediction about being asked to transmit data between Carr and Cashion is of no greater weight than her task of carrying messages between Carr and Harris. Her expectation of being asked to participate in labor relations brainstorming with Cashion is particularly speculative, in view of Ferguson's strong involvement and position between Cashion and Sphuler.<sup>20</sup>

Neither the accounts payable specialist role nor the student programs specialist role has the necessary, regular and ongoing involvement in the employer's labor relations. See, City of Dupont, Decision 4959-B (PECB, 1995). Sphuler will be included in the proposed bargaining unit.

---

<sup>20</sup> Sphuler reports to Ferguson, and Cashion neither supervises nor evaluates Sphuler, in this position.

Office Specialist Rawline Taylor has worked in the employer's central office since 1991, and assumed her present position in January of 1996. Her job includes maintaining personnel records, posting job vacancies and processing applications, helping with certificated employee contracts, preparing computer reports and being trained as a backup person on finance and personnel work. As a result of the central office reorganization, she will now do the typing generated by Harris' finance work and backup clerical work for Carr, Hull, and Albertson. Taylor's job description makes no reference to any labor relations work, but Taylor testified that she would type memos containing McCurdy's input to Cole on grievances. As McCurdy's secretary, Taylor opens his mail unless it is marked "confidential".<sup>21</sup> At the direction of McCurdy and/or Cashion, she has typed proposals to be presented to the WEA on a problem that arose during the term of the current contract covering the certificated bargaining unit. There is a conflict in the record about Taylor's work for Albertson: Taylor predicted that she would be typing proposals for Albertson in the future; Albertson testified he had never needed secretarial help in his negotiations with the custodial unit, that his assignments to Taylor have not included anything relating to collective bargaining, and that Cole's office has prepared any documents related to bargaining for the custodial unit.

The WEA asserts that Taylor's duties as McCurdy's secretary and her responsibility to gather information for negotiations warrant exclusion of her position from the proposed unit as a "confidential employee". The employer now agrees, but initially listed Taylor as an eligible voter in this proceeding.

The heavy burden required for the employer and union to exclude Taylor from her statutory bargaining rights is not met on the basis

---

<sup>21</sup> Taylor testified she has seen "labor relations materials" from the WEA in McCurdy's mail.

of a record which is, at best, equivocal.<sup>22</sup> Taylor's actual duties as McCurdy's secretary do not necessarily imply involvement with labor relations activities. Labor relations materials could easily be shielded from exposure to Taylor, since she leaves mail marked "confidential" unopened. McCurdy can ask other employees, such as Cole's secretary, for help with preparing confidential documents. Thus, the record does not establish the necessity for having Taylor type proposals for McCurdy and Cashion.<sup>23</sup> Olympia School District, supra. The WEA materials seen by Taylor were no longer held in confidence by the time Taylor saw them, and are irrelevant to an exclusion designed to protect against unauthorized disclosure of employer strategy and proposals before they are given to a union. Taylor's work with personnel matters and certificated employee individual contracts certainly requires her to exercise discretion, but is not directly related to the employer's secret collective bargaining stance. See, Olympia School District, Decision 4763-A (PECB, 1994). With diversion of the occasional truly confidential work from Taylor to other employees whose positions have been excluded as "confidential", the office specialist position is eligible for inclusion in the proposed unit.

Receptionist/Clerk Laura Moody was hired after Sheryl Clark went on an unpaid leave of absence and tasks were reorganized, and so has worked in the central office only since January of 1996. The duties now assigned to Moody include answering the telephone, dealing with visitors, preparing outgoing mail, basic typing for the superintendent and his executive assistant, typing generated by Harris's food services work, and a variety of public relations and communications work with the technology coordinator. Although some

---

<sup>22</sup> Taylor responded affirmatively to the employer's leading questions about her labor relations duties; the WEA did not probe the conclusionary answers on cross-examination.

<sup>23</sup> The employer had concluded negotiations with PSE and WEA before Taylor assumed her present position, so there had been no occasion for such assignments in the past.

employer documents showed Moody doing occasional secretarial work for Albertson, she thought Taylor continues to perform that work. Moody has not participated in any of the employer's labor relations activities, and her job description does not suggest the employer expects her to perform labor relations functions in the future.

The WEA argues that Moody's position should be included in the proposed unit. The employer agrees that Moody's position lacks a labor relations nexus. The record clearly does not support an exclusion of Moody from the proposed bargaining unit as a "confidential employee" or as a "supervisor". Moody's inclusion in the petitioned-for unit would be a foregone conclusion, but for her location in the employer's central office and the arguments on "community of interest" discussed below.

#### Community of Interest

The duties performed by Sphuler, Taylor and Moody, as well as by all of the other employees in the proposed bargaining unit, are within the office-clerical generic occupational type. The pay rates for Sphuler, Taylor and Moody, as well as for all of the other employees in the proposed unit, appear on the employer's salary schedule for secretaries and support staff.

Approval of the unit description stipulated by the parties was withdrawn in this case, and the matter was remanded for hearing, based on indication the employer and WEA had agreed to fragment the office-clerical generic type according to work locations. Stating a concern that inclusion of Moody's position in the bargaining unit while excluding all other central office positions would disrupt the present close relationships and leave Moody isolated, the employer suggests that business necessity justifies excluding Moody from the proposed unit. Acknowledging that the Commission might conclude it has an unreasonable number of confidential employees for the size of its workforce, the employer alternatively suggests



it could redirect its confidential work away from Sphuler and Taylor, so that they would join Moody as eligible voters.<sup>24</sup>

Unit descriptions created under RCW 41.56.060 have long-term ramifications, because the exclusive bargaining representative of an appropriate bargaining unit has a right to protect the scope of work historically associated with (or properly accreted to) that bargaining unit.<sup>25</sup> Unit configurations which fore-ordain jurisdictional disputes between two or more separate bargaining units within the same occupational grouping have been rejected in decisions dating back to at least City of Seattle, Decision 781 (PECB, 1979). Where a school district and two unions artificially bifurcated that employer's office-clerical workforce into two bargaining units, both units were found inappropriate. South Kitsap School District, Decision 1541 (PECB, 1983). See, also, Wapato School District, Decision 2227 (PECB, 1985), where the agency looked behind the positions of the parties, and applied the statutory exclusions and precedents in establishing an office-clerical unit. It was also noted in Ephrata School District, Decision 4675 (PECB, 1994), that an exclusion based solely on work location would be improper.<sup>26</sup> Here, at least Sphuler previously worked in one of the employer's schools, which suggests that employees who seek advancement within the office-clerical occupation could be frustrated by a categorical exclusion of the central

---

<sup>24</sup> For reasons indicated above, that result is arrived at independently, by rejection of the parties' arguments that Sphuler and Taylor are "confidential employees".

<sup>25</sup> Numerous decisions beginning with South Kitsap School District, Decision 472 (PECB, 1978) have found employers guilty of unfair labor practices under RCW 41.56.140(4) for "skimming" or "contracting out" of bargaining unit work, without first giving notice and exhausting their bargaining obligations under RCW 41.56.030(4).

<sup>26</sup> This aspect of the Executive Director's decision was cited by the Commission, with approval, in Ephrata School District, Decision 4675-A (PECB, 1995).

office positions from the proposed bargaining unit. At the same time, employees who have promoted up from the schools would have a legitimate interest in protecting their job security by seeking to maintain reversion rights to the schools in the event of a layoff at the central office level.<sup>27</sup>

Between her two part-time assignments, Sphuler works eight hours per day on a "260 day" year. Taylor and Moody work eight-hour days on a "260 day" year. All of the other employees in the proposed office-clerical bargaining unit work eight-hour days, but their work years vary:

One works 260 days  
One works 206 days  
Six work 200 days  
Six work 190 days  
One works 180 days

Only employees working the "260 day" year receive paid holidays and vacation benefits. These disparities appear, however, to be typical of school district office-clerical workforces.

Office-clerical employees in the schools communicate frequently with Sphuler (e.g., about bills, building budgets, and expenditures to date) and Taylor (e.g., on various personnel issues). Most of that communication is by telephone at the present time, but the use of electronic mail is increasing. All positions require close working relationships with administrators or principals.

The record here does not support a conclusion that the disparities between office-clerical employees assigned to the central office and those assigned to the schools are any greater than encountered by the Commission in past cases concerning school district office-

---

<sup>27</sup> Indeed, it appears that Sphuler moved to the central office for a full-time job that has since been reduced to a half-time assignment.

clerical bargaining units.<sup>28</sup> The accounts payable specialist, student programs specialist, office specialist, and receptionist/clerk positions are appropriately included in the proposed unit with the employer's other office-clerical employees.

Disciplinary Assistants and Library Assistants

The Disciplinary Assistant Jobs -

Although details vary within the group, the disciplinary positions have many similarities.

Discipline Assistant Kathryn Link has worked for the employer since 1980. Her first position with the employer was as an instructional aide; she became a disciplinary assistant at the employer's junior high school in 1992 or 1993. Link works six and a half hours per day on discipline work such as monitoring students who are on discipline programs, observing student behavior and intervening as appropriate, coaching students in problem solving, notifying parents of their child's disciplinary problems, and a variety of record-keeping and report preparation functions. Link estimates her disciplinary work is equally divided between direct interaction and related clerical tasks.<sup>29</sup> Link's immediate supervisor for this disciplinary work is the discipline officer at the school, who is a certificated employee reporting to the school principal. Link's salary is funded through the student support services office, and her job description lists Michael Cashion second on her reporting relationships (between the discipline officer and school principal).<sup>30</sup> Link fills out her work day by spending one hour assisting the office manager at the school with typing, duplicating, filing, helping visitors, and filling in when the office manager or office

---

<sup>28</sup> See, Ephrata School District, supra.

<sup>29</sup> If Link's position did not exist, the certificated discipline officer would perform all of her work.

<sup>30</sup> She does not regard Cashion as her supervisor, however.

assistant is absent.<sup>31</sup> Link works a "190 days" year, although students are present only 180 of those days.<sup>32</sup> Link does not receive paid vacation leave or holidays. Link's pay rate appears on the secretaries and support staff pay plan.

High School Discipline Supervisor Albert MacDonald has held that position since 1987. He reports to the high school principal, and is responsible for developing and enforcing policies to ensure a safe environment in that school. His duties include monitoring student behavior, confronting students who violate expectations, communicating with violators' parents, preparing and monitoring contracts for improved behavior, documenting behavior and maintaining files, discussing behavior problems with teachers and staff, and overseeing building security. The recordkeeping aspect of his work takes approximately 15 percent of his time. His handwritten drafts of correspondence are typed by either the principal's administrative assistant or the financial secretary at the school. MacDonald works eight-hour days, 180 days per year. Although the employer's request to PSE in 1989 for exclusion of MacDonald from the aide/food unit cited "confidentiality", MacDonald confirmed that he has nothing to do with confidential labor relations information or materials.

PR Assistant/ASB Accountant Nellie Kerns has worked for the employer since 1982. Her first position was as an instructional assistant with additional recess and release time duties. She began working as a discipline assistant in 1984, but continued to have recess and release time duties. Since 1994, Kerns' position consists of: (1) Five and a half hours a day on discipline work such as teaching new behavior techniques, coaching in the class-

---

<sup>31</sup> Mavis Gibson functions as the head secretary at the school, and is included in the proposed unit.

<sup>32</sup> Gibson works 200 days per year.

room, and intervening on behavior issues when appropriate;<sup>33</sup> (2) One hour per day is spent supervising students during recess; and (3) One and a half hours of Kerns' work day is spent handling the Associated Student Body (ASB) funds for all three of the employer's elementary schools, including making deposits, maintaining accounts, preparing vouchers and purchase orders, and sending reports to the central office.<sup>34</sup> Kerns is paid on the secretarial and staff support salary schedule. Kerns believed she worked 180 days per year.

The Library Assistant Jobs -

Although details also vary within this group, the library positions have many similarities.

Library Assistant Joanne McConnell has worked for the employer since 1991 and attained her present position in 1992. She works at the employer's school for fifth and sixth grades, where she reports to the school principal and is responsible for the school's library and audio-visual (AV) equipment. McConnell works six and a half hours per day on a "190 days" year. She inventories books and AV equipment, checks books in and out for students, finds books for teachers and students, shelves and repairs books, repairs and orders parts for AV equipment. McConnell spends 40 minutes in the library each week with each of the school's 15 classes, during which she may read a story, teach library skills, or conduct a library game. About 10 minutes out of each such session is spent checking books in and out. Preparation for these classes takes McConnell about one hour a week. Students are permitted to use the library for 10 minutes before morning classes or any time in the afternoon, and McConnell regards assisting students at those times

---

<sup>33</sup> Kerns reports to a certificated behavior specialist for the disciplinary portion of her work. She estimates only 10 percent of this time is spent documenting student behavior and writing to parents.

<sup>34</sup> Kerns did not identify her supervisor for the ASB work.

as part of her instructional role. McConnell has contact with the school secretaries for office supplies and purchase orders. She talks to the disciplinary assistant about difficult students. Instructional aides from the Learning Support Center get books from McConnell for their students. Certificated teachers obtain books, AV equipment, and films or video materials from McConnell, and also decide whether books requested by McConnell should be purchased. McConnell has contact with the employer's two certificated librarians about work matters an average of once in a two week period.

Library Specialist Carol Bingman has worked for the employer for 23 years. For the past 15 years, she has been the library specialist at the employer's school for the second, third and fourth grades.<sup>35</sup> The school principal supervises her. Bingman spends six and a half hours daily on her library responsibilities, which include checking books in and out; helping students find books; inventorying all the school's equipment; checking out AV equipment to teachers, and ordering books.<sup>36</sup> She also spends 40 minutes each week with each of the school's classes, giving lessons, reading aloud to the students, or letting the students read to themselves for 30 minutes of this period and spending the remaining 10 minutes checking books in and out. She spends about one and a half hours a week preparing for these classes. Bingman's other duties include daily hall duty for 10 to 15 minutes at noon, bus duty for 10 to 15 minutes every two or three weeks,<sup>37</sup> calling homes about absent students when she has time available, and maintaining ASB accounts. For one and a half hours per day, Bingman works as a food service clerk,

---

<sup>35</sup> She previously taught Title I reading and math, worked as assistant to a certificated librarian, and was the secretary to a previous food service coordinator.

<sup>36</sup> A library committee exists, but has delegated this authority to her.

<sup>37</sup> Bingman shares this rotation with the school's certificated and secretarial employees.

collecting money and dealing with parents during breakfast and lunch periods, and then counting and depositing the money. Bingman works 190 days a year as library specialist, and thinks she works about 185 days a year as food service clerk. Her library hours are paid on the employer's secretarial and support staff salary schedule, and her food service hours on the food service schedule in the PSE contract for the aide/food unit. Bingman has a moderate amount of work interaction with the school's secretaries, including handling telephone calls and visitors for them in their absence or if they are overburdened, and substituting if one of them is absent. Bingman never substitutes for absent instructional aides. Bingman only calls one of the employer's certificated librarians if the computer is not working.

Media Specialist/Library Coordinator Margaret Kester has worked in the employer's libraries for more than 12 years, and attained her present position in 1994. Kester's immediate supervisor is the school principal. Kester spends six and a half hours a day processing books and media materials, maintaining an inventory of school equipment, checking books and materials out to teachers, helping students find books, and troubleshooting AV equipment. She spends 30 minutes a week with each of the school's 18 kindergarten, first, and second grade classes. During this time, Kester reads to students, teaches library skills, checks books in and out, and shows a film or video. She spends about one hour a week preparing these learning experiences for the children. Kester also spends 30 minutes a week walking students across the street to their buses.<sup>38</sup> Since 1989, Kester has spent one and a half hours a day as a food service clerk, checking students in for breakfast and lunch by means of computer cards. Kester works 190 days yearly as a librarian and about 185 days yearly as a food service clerk. Her librarian hours are paid on the employer's secretarial and support

---

<sup>38</sup> The physical education teacher, speech therapist and psychologist at the school perform similar duties.

staff schedule, while her food service hours are paid under the PSE contract for the aide/food unit. Kester works with certificated employees on ordering books, on the school's budget committee, at faculty meetings, and on school and district-wide technology committees. Kester works with the school secretaries on purchase orders, and occasionally records attendance for them if they are overburdened. She has very little work contact with instructional aides, and never substitutes for either aides or secretaries.

Parties' Positions on Disciplinary and Library Staff -

The WEA contends the disciplinary positions are not eligible for inclusion in its proposed unit, because the discipline-related work (including its recordkeeping component) supports the employer's instructional program.<sup>39</sup> The WEA notes, however, that two of the three persons holding discipline positions spend a portion of their work day on other duties. The WEA suggests Kerns' ASB accounting work is sufficiently similar to that performed by employees in its proposed unit that Kerns should be included in the proposed unit for the one and a half hours per day she spends on that function. The WEA took no position on the impact of Link's daily hour in the junior high school's office on her unit status. The WEA reasons that the work of the library assistants is more closely related to the employer's administrative function than to its instructional function, thus making the three positions eligible for inclusion in its proposed unit.<sup>40</sup> The WEA notes several distinctions between library and instructional aide positions: (1) Library assistants report to principals, while aides report to teachers; (2) library assistants work 190 days a year, while most aides work the 180 days a year students attend; (3) library assistants work six and a half

---

<sup>39</sup> The WEA suggests that the three discipline positions should be included in the aide/food unit.

<sup>40</sup> The WEA stated that the hours Kester and Bingman work as food service clerks are not at issue, implying it did not dispute the apparent inclusion of those positions in the aide/food unit represented by PSE.



hours a day, while aides work varying schedules up to six and a half hours daily; (4) qualifications required of library assistants are functionally oriented and similar to those of the office-clerical employees, while aide qualifications relate to instructional skills; (5) library assistants spend 35 percent or less of their library time instructing students, while aides focus all their attention on the students; (6) the two types of employees are paid on different salary schedules; (7) the library assistants interact more often with secretarial employees than with instructional aides.

The employer agrees that the disciplinary positions are instructional in nature, but differs from the WEA on the proper unit placement of the library assistants. The employer contends the library assistants engage in instruction every time they assist a student, not just when entire classes make their weekly visit, and that their other duties do not detract from the instructional character of their primary work. Differences between the library assistants and the office-clerical employees noted by the employer include: (1) Library assignments are for six and a half hours daily, while all secretaries work eight-hour days; (2) library assistants work only 190 days yearly, while most secretaries work more; (3) two of the library assistants also hold positions already included in the aide/food unit; and (4) the duties of library assistants are more similar to those of aides than to those of secretaries.

#### Conclusions on Disciplinary and Library Positions -

It is clear that the discipline assistants and library assistants are neither confidential nor supervisory, and that they could be included in some bargaining unit under Chapter 41.56 RCW.

The Commission has distinguished office-clerical employees from instructional aides on the basis of whether the particular position supports the employer's educational program or its administrative

function. Quincy School District, Decision 3962-A (PECB, 1993). Only employees who work in support of administrative functions are included in office-clerical bargaining units. In the absence of bargaining relationships (or bargaining unit work jurisdictions to observe) school districts sometimes mingle employee duties without regard for distinctions that would be applicable in an organized workforce, so the Commission has identified factors that should indicate the primary function of disputed positions:

- a. The amount or proportion of the employee's work time that is spent instructing or assisting students;
- b. Information concerning who supervises the disputed position, since the level of supervision may indicate the primary purpose served by that position in the employer's organizational structure;
- c. The length of the employee's work day and year, since the work period for instructional assistants is generally tied to the times when students attend school, while the schedules of office-clerical employees may be similar to those of administrators;
- d. Educational requirements to hold the position, which may indicate the basic nature of the contemplated role;
- e. The work location(s), since this may indicate the employer's perception of the primary function of the position;
- f. Interaction with other employees, since shared work duties may shed light on the predominant functions of a position;
- g. Wage and benefit data comparing the disputed position with other positions in the organization; and
- h. Relationships with positions whose unit status has been agreed upon by the parties.

Omak School District, Decision 3973-B (PECB, 1994).

The Omak case dealt with a library/media position. This appears to be the first occasion for the Commission to determine whether disciplinary positions further a school's educational or administrative function.<sup>41</sup>

The disciplinary assistants spend the greatest part of their work time, by far, on discipline and discipline-related activities that would otherwise be done by certificated teachers or principals. Each of the three regularly instructs students on more effective problem-solving methods and more appropriate behavior. Each of the three is immediately supervised by certificated employees. All three work fewer days per year than all but one of the office-clerical employees. Even when their time spent on miscellaneous duties is included, Kerns and Link work fewer hours than any office-clerical employee. Only MacDonald works the eight-hour day that is common for office-clerical employees. Although they perform some recordkeeping functions related to discipline matters, these employees are not required to meet a typing speed threshold as are all of the office-clerical employees. Application of the Omak factors indicates the disciplinary assistants should not be included in the proposed office-clerical unit.

The library assistants spend six and a half hours per day on those duties, working a "190 day" year. Both of those totals are at (but not beyond) the high end of the work schedules of the employer's instructional aides, but still fall far short of the "260 day" year worked by some of the office-clerical employees. The library assistant job descriptions have no educational or experience requirements comparable to the requirements which are imposed on office-clerical employees (e.g., high school graduation and training or prior experience with office skills). The library

---

<sup>41</sup> The issue in Oak Harbor School District, Decision 5132 (PECB, 1995), was whether positions responsible for student discipline should be included in a wall-to-wall unit of all non-certificated employees.

assistants appear to spend most of their work time in school libraries, not in administrative offices. Each library assistant has some work contact with the school secretaries, but they also have contact with teachers and instructional aides. The fact that library assistants are paid on the same pay plan as secretarial employees, which is substantially higher than the pay for the instructional aides, is not conclusive, because the employer has dealt with both groups as unrepresented employees.

The determinative issue for the library positions is the amount of time spent in direct contact with students.<sup>42</sup> The fact that the library assistants report to school principals, rather than to classroom teachers, does not diminish the fact that they spend a substantial portion of their time preparing for instruction or interacting directly with students. All three of the library assistants necessarily interact with students on library matters such as finding research materials, choosing books, and learning library skills. These interactions are instructional in nature, similar to those an aide has in helping a student learn to read or do mathematical calculations.

The presence of instructional duties prompted the continued inclusion of library aides in an "aide" bargaining unit in Puyallup School District, Decision 2738 (PECB, 1987).<sup>43</sup> The library

---

<sup>42</sup> The decisions in Omak School District, supra, demonstrate application of this principle on a position-by-position basis. One position in Omak spent less than 10 percent of her work time with students, because teachers or aides accompanied students to the library, and was included in the office-clerical bargaining unit. Two other employees spent 30 to 45 minutes per week with each class telling stories, overseeing individual reading and checking out books, and were included in the aide unit.

<sup>43</sup> The library aides, working under certificated librarians, supervised students using the library, assisted small groups of students, and checked in books as well as performing record-keeping duties.

assistant positions do not share a community of interest with the proposed unit and must be excluded from it.<sup>44</sup>

Supplemental duties performed by some of the disciplinary and library assistants require separate discussion. Under Longview School District, Decision 2551-A (PECB, 1987) and Longview School District, Decision 3109 (PECB, 1989), an employee who works in two or more different roles for an employer may properly be placed in the two or more bargaining units appropriate to those roles. The Commission has, however, discouraged the unnecessary creation of "dual status" situations. Ephrata School District, supra.

In this case, the employer has already broached the subject of "dual status" employees, by paying Library Assistant Bingman and Library Assistant Kester under the aide/food contract for the one and a half hours per day each spends as a food service clerk. It may be arguable that the recess duties assigned to Disciplinary Assistant Kerns and the hall and bus duties assigned to Bingman and Kester also fall within the scope of the aide/food unit.

Disciplinary Assistant Kerns and Library Assistant Bingman each have some responsibility for handling of ASB funds for certain of the employer's schools, but the record is equivocal on this issue as well. For Kerns, this is a regular duty performed for one and a half hours of her work day; for Bingman, there was only a loose reference to maintaining ASB accounts. The record does not detail who performs this function for other schools operated by the employer. Since it relates to "student" funds, rather than to the

---

<sup>44</sup> The question of whether it was (or continues to be) inappropriate to exclude the disciplinary assistants and/or library assistants from the aide/food unit remains an open issue which cannot be decided in this proceeding. PSE is no longer a party to this case, and that question is outside the proper scope of this representation case. For the purposes of this case, it suffices to say that they do not belong in the proposed office-clerical unit.

employer's budget and finances, there may even be some basis to allocate this work outside of the office-clerical force associated with administration of the school district. Given the noted ambiguity about this work and the fact that the primary duties of Kerns and Bingman are so clearly on the "educational" side of the Omak dichotomy, these minor assignments are not sufficient to warrant their inclusion in the office-clerical unit.

The WEA correctly notes that the work performed by Disciplinary Assistant Link in the school office for an hour each day is of an office-clerical nature, but the analysis cannot end there. Office-clerical tasks occupy less than one-sixth of Link's total work time, and much less than one-sixth of the work time of most of the office-clerical employees. In numerous cases dating back to Tacoma School District, Decision 655 (EDUC, 1979), the Commission has drawn a distinction between "regular part-time employees" and "casual" workers, when considering the bargaining unit status of persons working less than full-time. If the office-clerical work performed by Link was assigned to some other person working the same limited hours, a "casual" categorization would be appropriate for that person. Thus, while the employer may want to restructure its work assignments to reduce the potential for a "dual status" characterization in the future, and certainly will need to be mindful in the future of the work jurisdictions of the various bargaining units within its workforce, Link's past work of an office-clerical nature does not meet the one-sixth test applied by the Commission in a variety of industrial settings to determine "regular part-time" status.

#### FINDINGS OF FACT

1. Colville School District is a school district of the state of Washington operated pursuant to Title 28A RCW, and is a "public employer" within the meaning of RCW 41.56.030(1). As

superintendent, Richard Cole has responsibility for labor relations matters for the employer.

2. Washington Education Association (WEA), 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 with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of office-clerical employees of Colville School District.
3. Public School Employees of Washington (PSE), a "bargaining representative" within the meaning of RCW 41.56.030(3), is the incumbent exclusive bargaining representative of two units of Colville School District employees. The origin of a bargaining unit of custodial workers is not established in this record; the second bargaining unit, which consists of instructional aides and food service workers, was created by a Commission certification in 1989.
4. Shortly after the bargaining unit of instructional aides and food service workers was created in 1989, PSE agreed to exclude at least two disciplinary assistants from that bargaining unit. The record does not contain any evidence of a contemporaneous rejection by PSE of correspondence dating from September of 1989, in which an employer official stated an agreement of the employer and PSE to exclude office assistants, disciplinary assistants and library assistants from that bargaining unit.
5. During the year before the WEA filed the petition in the instant case, the employer and PSE had discussions concerning the inclusion of the disciplinary assistants and library assistants in the aide/food unit represented by PSE. Those parties failed to reach agreement on that matter and, on March

- 6, 1995, the employer and PSE jointly informed the disciplinary assistants and library assistants that their positions would continue to be excluded from the aide/food unit.
6. PSE moved to intervene in the present proceeding, claiming to be the incumbent exclusive bargaining representative of three disciplinary assistants and three library assistants.
  7. Frederick McCurdy has been the employer's finance director since 1993, and has been its personnel director since October of 1995. McCurdy prepares financial analyses of negotiation proposals from organizations representing bargaining units of Colville School District employees, and prepares proposals to be submitted to such organizations in collective bargaining. Superintendent Cole relies on McCurdy as a resource in negotiations with the employer's certificated employees. McCurdy shares responsibility with two other administrators for negotiating with PSE for its aide/food unit.
  8. Karen Harris has worked half-time as food services director since 1994. Harris shares responsibility with McCurdy and a third administrator for negotiating with PSE for the aide/food unit.
  9. Dean Albertson has been the maintenance director since 1990. After consulting with Cole, Albertson is responsible for negotiations with PSE concerning the custodial unit.
  10. Michael Swatzell is the employer's technology coordinator. The position requires, and he holds, a current Washington state teaching certificate.
  11. Michael Cashion has been the student support services director since 1987. He is responsible for special education, discipline, learning assistance, and other grant-funded programs.



With McCurdy and Harris, he is responsible for negotiations with PSE for the aide/food unit. Cashion also advises Cole during negotiations with the certificated unit on issues within Cashion's field.

12. Trudy Hull has provided secretarial support to the employer's superintendents since 1982. Her duties for Cole include opening all of his mail and typing his correspondence, attending some executive sessions of the school board, typing proposals and counterproposals for collective bargaining, and occasionally taking notes in the negotiations with the certificated unit. Hull is privy to the employer's bargaining policies and strategies.
13. Karen Harris works as finance assistant on a half-time basis. Her duties in this capacity include gathering and analyzing financial data for the use of employer officials in collective bargaining negotiations.
14. Sharon Carr has worked as payroll/insurance assistant since 1988. Carr processes payroll, benefit, personnel, and retirement matters, and has developed expertise in such matters that is possessed by no other employee of the employer. Her duties include computing personnel-related costs of proposals for use by employer officials in collective bargaining negotiations. Carr also participates in management caucuses during negotiations, and has participated in negotiations when issues within her expertise were discussed.
15. Carroll Ferguson has worked as student support services assistant since 1988. As Cashion's executive assistant, she handles issues during his frequent absences from the district. She also engages in brainstorming with Cashion on ideas that he is considering proposing to PSE in negotiations for the aide/food unit, types proposals for presentation to PSE in

negotiations for the aide/food unit, and participates in monthly labor-management meetings with PSE for the aide/food unit. Ferguson has a fiduciary relationship with Cole, through Cashion, which includes the employer's bargaining policies and strategies.

16. Robin Sphuler has worked as accounts payable specialist since 1992. She previously worked in one of the employer's schools, and was promoted to a full-time position in the employer's central office. When the accounts payable position was reduced to half-time in 1995, she was assigned to work half-time as student program specialist.
17. As accounts payable specialist, Sphuler approves purchase orders, processes warrants, and prepares monthly reports on expenditures of individual schools. Although she has been assigned by Harris to reduce ideas generated in negotiations between the employer and PSE for the aide/food unit to organized and typed form, such materials are no longer held in confidence by the time Sphuler works with them. Although she has been assigned by Harris to obtain bargaining information from Carr and convey it to Harris, the record does not indicate that such assignments are necessary or that the same information could not be conveyed by other persons or means.
18. As student programs specialist, Sphuler answers the telephone, maintains budgets for each school's grant-funded programs, prepares expenditure-to-date reports on each school, and files documents for Ferguson. She has not been made privy, in this capacity, to confidential information concerning the employer's labor relations policies or strategies.
19. Rawline Taylor has worked in the employer's central office since 1991, and has held the position of office specialist since January of 1996. As McCurdy's secretary, Taylor opens

mail unless it is marked "confidential", does typing, maintains personnel records, does the clerical work involved in hiring, and is being trained as backup on finance and personnel matters. Although she has been assigned occasionally to type bargaining materials, the record indicates that such assignments are normally directed to Hull, so that the record does not indicate that such assignments to Taylor are necessary or could not be directed to other persons.

20. Laura Moody has worked as receptionist/clerk in the employer's central office since January of 1996. Moody types various materials, answers the telephone, assists visitors, prepares outgoing mail, and assists with public relations matters. She is not privy to the employer's labor relations materials.
21. Kathryn Link has worked as a discipline assistant since 1992 or 1993. Link works six and a half hours per day, monitoring students on discipline programs, observing student behavior, intervening to correct inappropriate behavior, coaching students in problem-solving methods, and keeping records. Link works under the direction of a certificated discipline officer. Link also works one hour each day assisting the school's head secretary with various clerical tasks.
22. Albert MacDonald has worked as high school discipline supervisor since 1987. Reporting to the school principal, he monitors student behavior, confronts students who violate expectations, prepares and enforces contracts for more appropriate behavior, keeps records and communicates with parents, and develops policies. MacDonald's position was specifically exempted from the aide/food unit by PSE in 1989.
23. Nellie Kerns has worked as a discipline assistant since 1984. Kerns reports to a certificated behavior specialist for the 5.5 hours per day she spends doing discipline interventions,

teaching new behavior techniques, and coaching in the classroom. Kerns spends another one and a half hours per day keeping books for the Associated Student Body funds of all the employer's elementary schools. Kerns' position was specifically exempted from the aide/food unit by PSE, in 1989.

24. JoAnne McConnell has worked as a library assistant since 1992. Reporting to the school principal, she works six and a half hours each day maintaining an inventory of books and audio-visual equipment, checking books in and out for students, helping students find books on particular subjects, processing books for the library, and holding a weekly session with each of the school's classes. During these sessions McConnell works directly with the students, reading a story, teaching library skills, or conducting a library game.
25. Carol Bingman has worked as a library specialist since 1981. Bingman also reports to a principal. During the six and a half hours Bingman spends each day on library work, she orders and processes books, she maintains an inventory of all equipment, she helps students find books, and she has each class in the school for 40 minutes each week. During these sessions Bingman gives lessons, reads aloud or lets students read silently, and checks books in and out. Bingman also maintains the associated student body accounts for her school. Bingman spends another one and a half hours each day as a food service clerk in the aide/food unit.
26. Margaret Kester has worked in the employer's libraries since 1983, and has been its media specialist/library coordinator since 1994. Kester also reports to a principal. She spends six and a half hours daily processing books and media materials, inventorying and repairing audio-visual equipment, checking books and media equipment out to teachers, assisting students, and on 30 minute sessions with each class in the

school. These sessions involve reading to students, showing a film or video, teaching library skills, and checking books in or out. Kester also works one and a half hours daily as a food service clerk in the aide/food unit.

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. Public School Employees of Washington has not demonstrated it was the exclusive bargaining representative, during the year preceding the filing of the petition, of any part of the bargaining unit proposed herein and so is not entitled to intervene in this proceeding pursuant to WAC 391-25-170.
3. A bargaining unit described as:

All regular full-time and regular part-time office-clerical employees of the Colville School District, excluding confidential employees, supervisors, and all other employees of the employer

is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

4. The administrative positions of finance/personnel director, food service director, maintenance director, and student support services director are responsible for determining the employer's bargaining strategies and representing it in negotiations with the exclusive bargaining representatives of its employees, and so are "confidential employees" within the meaning of RCW 41.56.030(2).
5. The administrative position of technology coordinator requires a current Washington state teaching certificate, and is not

properly included in any bargaining unit created pursuant to Chapter 41.56 RCW.

6. The office-clerical employees in the positions of executive services assistant, finance assistant, payroll/insurance assistant, and student support services assistant necessarily and regularly assist administrators of the Colville School District in their responsibilities regarding collective negotiations, and are therefore "confidential employees" within the meaning of RCW 41.56.030(2)(c).
7. The office-clerical employees in the positions of accounts payable specialist, student programs specialist, office specialist and receptionist/clerk are not necessarily and regularly privy to confidential information concerning the employer's labor relations policies and strategies, and are "public employees" within the meaning of RCW 41.56.030(2).
8. The employees holding positions of disciplinary assistant and library assistant work in support of the employer's educational functions, rather than in support of the employer's administrative functions, and therefore do not share a community of interest with the proposed office-clerical bargaining unit under RCW 41.56.060.


#### DIRECTION OF ELECTION

1. A new 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 3 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 purposes of collective bargaining by the WASHINGTON EDUCATION ASSOCIATION or by NO REPRESENTATIVE.

2. In addition to the employees stipulated by the parties as eligible voters in this proceeding, employees holding the positions of accounts payable specialist, student programs specialist, office specialist, and receptionist/clerk are eligible voters in the election directed herein.

Issued at Olympia, Washington, the 14th day of May, 1996.

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.