

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON)	CASE 11899-E-95-1952
)	
Involving certain employees of:)	DECISION 5549 - PECB
)	
REARDAN-EDWALL SCHOOL DISTRICT)	
)	
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In the matter of the petition of:)	
)	
REARDAN-EDWALL CLASSIFIED)	
ASSOCIATION)	CASE 11937-E-95-1960
)	
Involving certain employees of:)	DECISION 5550 - PECB
)	
REARDAN-EDWALL SCHOOL DISTRICT)	DIRECTION OF ELECTIONS
)	
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Eric T. Nordlof, Staff Attorney, appeared on behalf of Public School Employees of Washington.

Esther Anyan, Representative, appeared on behalf of the Reardan-Edwall Classified Association.

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

On July 10, 1995, Public School Employees of Washington (PSE), filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of classified employees of the Reardan-Edwall School District. The petition indicated there were 24 employees in the proposed bargaining unit. (Case 11899-E-95-1952.)

On July 28, 1995, the Reardan-Edwall Classified Association (RECA) filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC,

seeking certification as exclusive bargaining representative of classified employees of the Reardan-Edwall School District which duplicated or at least overlapped the bargaining unit proposed by PSE. The RECA's petition indicated there were 33 employees in its proposed bargaining unit. (Case 11937-U-95-1960.)

Initial processing of the petition filed by PSE was routine, and the Commission determined that PSE's petition was supported by an adequate showing of interest. PSE amended its petition twice in August of 1995: First, to include only transportation and food service employees; and second, to seek a unit limited to school bus drivers and mechanics working in the employer's transportation operation.

The petition filed by the RECA was not accompanied by the required showing of interest, and that organization was given a deadline to file a showing of interest. The RECA both supplied a showing of interest and narrowed the scope of its proposed unit to seek a unit which included only those classified employees not sought by PSE. The Commission thereafter determined that the RECA's petition was supported by an adequate showing of interest.

A hearing was held on December 8, 1995, before Hearing Officer Paul T. Schwendiman. The employer and PSE filed post-hearing briefs.

BACKGROUND

The Reardan-Edwall School District operates common schools for approximately 630 students in a rural area approximately 20 miles west of Spokane, Washington. The employer has approximately 33 classified employees. The employer operates two school buildings which share a campus at Reardan, Washington. The main bus compound is located on another part of the same campus, and all of the bus drivers work out of that facility. Some bus drivers use an

employer-owned car to travel between Reardan and a satellite bus yard located in the north end of the area served.

From 1984 until June 23, 1994, the employer's classified employees were represented for the purposes of collective bargaining by an organization which is not a party to these proceedings.¹ In a representation election conducted by the Commission in June of 1994, a tie vote of the employees in that wall-to-wall unit resulted in a certification of "no representative".²

POSITIONS OF THE PARTIES

PSE contends that separate units of transportation employees have been found appropriate in other school districts, that the employees in its petitioned-for unit are similar to their counterparts in other school districts, and that the unit it now seeks is **an appropriate unit** under RCW 41.56.060. It argues that the wall-to-wall unit which formerly existed in this workforce generated a history of failure that should not prejudice PSE's current organizational effort. PSE points out that the transportation employees work out of facilities separate and apart from those where other employees are assigned, and urges that a separate bargaining unit would be appropriate. PSE seeks exclusion of the transportation supervisor from the bargaining unit.

The employer relies on the history of bargaining between 1984 and 1994, to contend that the **only appropriate unit** structure is a

¹ On September 10, 1984, the Classified Public Employees Association/WEA was certified as exclusive bargaining representative of "all full-time and regular part-time classified employees", following a representation election conducted by agreement of the parties. Reardan-Edwall School District, Decision 2005 (PECB, 1984).

² Reardan-Edwall School District, Decision 4754 (PECB, 1994).

wall-to-wall unit. The focus of the employer's brief is on how the various criteria for "severance" outlined by the Commission in Yelm School District, Decision 704-A (PECB, 1978) are not satisfied in this case. The employer would have the transportation supervisor included in the bargaining unit.

The RECA did not file a brief in this proceeding. At the hearing, it indicated a continuing interest in the "all except transportation" unit proposed in its amended petition.

DISCUSSION

Unit Determination Principles

The determination of bargaining units is a function delegated by the Legislature to the Commission. RCW 41.56.060 provides:

The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. 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. ...

It is important to consider the long-term implications of a unit description, because a certification issued under Chapter 391-25 WAC creates an ongoing relationship which often outlasts both the parties' representatives and the incumbents of bargaining unit positions. In a recent case, the Commission's role in the unit determination process was described in the following terms:

The Commission has described the purpose of the unit determination function as being:

[T]o group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. The statute does not require determination of the "most" appropriate bargaining unit. It is only necessary that the petitioned-for unit be an appropriate unit. Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require setting aside a unit determination.

City of Winslow, Decision 3520-A (PECB, 1990) [emphasis by underlining in original].

The Commission has found units consisting of "all employees of the employer" to be appropriate, [footnote omitted] but has also given general affirmation to the propriety of dividing an employer's workforce into two or more bargaining units:

Units smaller than employer-wide may also be appropriate, especially in larger work forces. 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.] Alternately, 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. ...

City of Centralia, Decision 3495-A (PECB, 1990) [emphasis by **bold** supplied].

The starting point for any unit determination analysis is the unit description sought by the petitioning union. ...

Spokane County, Decision 5019 (PECB, 1995).

The Commission is not bound to establishing the **most appropriate** bargaining unit; a proposed unit need only be **an appropriate unit**.

Quincy School District, Decision 3962 (PECB, 1992), affirmed 77 Wn.App.741 (1995).

One long-term concern in unit determination is the avoidance of "work jurisdiction" disputes at the borders between a bargaining unit and other bargaining units or unrepresented groups. Thus:

In a series of decisions over nearly the entire history of this agency, the Commission and its staff have dealt with difficult problems relating to work jurisdiction claims closely tied to the descriptions of appropriate bargaining units. The first of those cases, South Kitsap School District, Decision 472 (PECB, 1978), established the principle that an employer must give notice and provide opportunity for collective bargaining before transferring work historically performed within one bargaining unit to employees outside of that bargaining unit.^{15/} Hence, an employer and all unions representing its employees need to pay close attention to the work jurisdiction borderlines between bargaining units. [footnote omitted]

In a subsequent case, South Kitsap School District, Decision 1541 (PECB, 1983), a bargaining unit structure which bifurcated that employer's office-clerical workforce was found inappropriate, due to conflicting work jurisdiction claims which had arisen (and were likely to arise on an ongoing basis) in such an environment. Other unit configurations rejected on the basis of historical or potential fragmentation of work jurisdiction include City of Seattle, Decision 781 (PECB, 1979) and Skagit County, Decision 3828 (PECB, 1991), where separate units of part-time employees were found inappropriate because of conflicts with bargaining units of full-time employees performing similar work.

^{15/} The situation in South Kitsap has come to be called "skimming" of unit work. The interests and legal principles ... are fundamentally the same as when bargaining unit work is "contracted out" to employees of another employer. See, also, Fibreboard Paper Products, 379 U.S. 203 (1964).

Castle Rock School District, Decision 4722-B (EDUC, 1995).

There have been cases in which petitioned-for bargaining units have been rejected as inappropriate, particularly where they would have the effect of stranding employees in units too small for them to ever implement their statutory bargaining rights. In Port of Seattle, Decision 890 (PECB, 1980), a proposed bargaining unit structure which would have fragmented the employer's office-clerical workforce was rejected as inappropriate.

Applicability of "Severance" Precedents

The employer correctly notes that "severance" criteria set forth in Yelm School District, supra, make it somewhat more difficult for a petitioning organization to pull a particular group out of an existing bargaining unit than it would be for the same union to organize the same employees from scratch. The history of bargaining in the existing unit must be considered in evaluating the propriety of the proposed "severance". If it appears that a separate unit could be appropriate, based on the duties, skills and working conditions, history of bargaining and extent of organization, the Commission implements the "desires of employees" aspect of the statutory criteria by conducting a unit determination election in which the affected employees are given the opportunity to express their preference by secret ballot. See, Mukilteo School District, Decision 1008 (PECB, 1980). The employees in an otherwise appropriate separate unit can thus overrule their "history of bargaining" in the existing unit configuration, by voting for the separate unit.³

The key concept in the severance cases is "existing". Severance cases generally express concern about maintaining the stability of bargaining relationships. There is no need for concern about

³ If the unit determination election fails to validate the separate unit, the "severance" petition will be dismissed without a determination of a question concerning representation.

stability, however, if no bargaining relationship currently exists. In this workforce, the history of bargaining was truncated by the certification of "no representative" in 1994.

RCW 41.56.070 imposes a one-year "certification bar" following a certification or decertification. The employees involved in these cases have been without representation for more than a year, and are entitled to exercise their rights under Chapter 41.56 RCW. The "severance" criteria relied upon by the employer are inapposite to these cases.

Application of "Community of Interest" Principles

PSE correctly notes that separate bargaining units of school bus drivers and/or vehicle mechanics exist in various school districts around the state. Because school transportation operations are a sideline to the educational process, the school bus drivers and bus mechanics are typically the only employees performing work of that occupational type within the employer's workforce. Thus, such units can fairly be categorized as both "vertical" and "horizontal" in many situations.

In this case, the bus drivers and mechanics report to a transportation compound which is separate from the employer's school buildings. It appears the bus drivers and mechanics have relatively few contacts with other classified employees, and then only incidental to the transportation function. Contacts with school principals and teachers also appear to be incidental to the transportation function. It also appears that the bus drivers and mechanics are paid at rates substantially higher than those paid to classified employees in other assignments. These facts support a conclusion that a separate community of interest exists in the bargaining unit sought by PSE, under the "duties, skills and working conditions" aspect of the RCW 41.56.060 unit determination criteria.

Potential "Dual Status" Situations

Where an employee performs in two or more separate roles for the same employer, the employee may be categorized as a "dual status" employee with rights (and obligations) in two or more different bargaining units. See, Longview School District, Decision 2551, 2551-A (PECB, 1987) and Longview School District, Decision 3109 (PECB, 1989). Although such situations sometimes cannot be avoided, the Commission's decision in Ephrata School District, Decision 4675-A (PECB, 1995) suggests that they should be minimized, if possible.⁴

The Groundskeeping Assignments -

Clayton Kenney is the employer's head bus mechanic, and is also in charge of groundskeeping work. Kenney takes direction from the superintendent with regard to his groundskeeping functions. Kenney does very little groundskeeping during the winter months, but may spend more than half of his work time on groundskeeping tasks during autumn and spring sports seasons.

Scot Bird, the employer's assistant bus mechanic, also assists with groundskeeping tasks. The superintendent's use of the definite article ("the") in regard to Bird is interpreted as indicating he is the only regular employee who assists Kenney with groundskeeping work. The superintendent's testimony suggests that any other groundskeeping employees are summer help only.

The record in this case is skimpy, consisting entirely of the testimony of the superintendent and a few exhibits. The job

⁴ Ephrata was a true "severance" case, and is distinguishable from the instant case on that basis. Another union sought separate representation for office-clerical employees historically represented by PSE in an existing wall-to-wall unit in Ephrata. The potential creation of dual status situations was among the factors which led to the Commission's rejection of the severance in that case.

descriptions for the mechanic and groundskeeper classifications are independent of one another, but the logic for combining the two categories is understandable.⁵ Since the only regular employees who perform groundskeeping functions are within the bargaining unit sought by PSE, creation of "dual status" could be altogether avoided by allocating that work to the PSE unit.

Food Service Assignment -

Vicki Larson is a school bus driver, and also works as a dish washer in the employer's food service operation. If both of the units petitioned-for in these proceedings are approved, she would be a dual status employee with voting rights in both units.

The nature of school transportation operations is such that bus driving is almost invariably a part-time occupation. It is not surprising, therefore, to see bus drivers filling out their work time (and incomes) by working in other occupational fields of endeavor. In this instance, there is no factual or practical connection between the two part-time jobs which she happens to hold, any more than there would be if she was a school bus driver moonlighting as a dish washer at a union-represented restaurant. There is no claim or evidence that her present situation is an outgrowth of the past bargaining relationship, and it appears to be an isolated example which is insufficient to constitute a basis for rejecting the unit configurations sought by the petitioning unions.

Office-clerical Assignments -

Numerous Commission decisions dating back to Franklin Pierce School District, Decision 78-B (PECB, 1977) have identified a community of interest among employees performing office-clerical functions for

⁵ Somewhere between inference and speculation, it makes sense that persons with the mechanical skills needed to maintain and operate power equipment used in groundskeeping (e.g., lawnmowers, tractors, line trimmers, etc.) might be assigned to such tasks during summer months when bus usage and maintenance needs are reduced.

an employer. In Quincy School District, supra, the Commission used "working in support of the administrative functions of the school district" as a test for distinguishing office-clerical employees from others within a school district workforce.

Karen Stahl is both a bus driver/trainer and a secretarial aide in the transportation office. It appears that Stahl performs some bus driving work of the same type as other bus drivers within the bargaining unit sought by PSE.⁶ Stahl's other assignments appear, however, to be office-clerical tasks in support of the administrative functions of the school district. Although she performs those office-clerical tasks at the bus facility, that does not alter their nature. There is no claim or evidence that her present situation is an outgrowth of the past bargaining relationship, and nothing which suggests an inherent tie between being a bus driver and performing the office-clerical tasks. Again, an isolated example is insufficient to constitute a basis for rejecting the unit configurations sought by the petitioning unions.

Beverly Bucher is both the attendance clerk at the employer's high school and the "transportation supervisor". She is paid on the clerical wage scale for 60 percent of her work time, and on the transportation wage scale for 40 percent of her work time. Her work station for both functions is at the high school building. Bucher was excluded from the bargaining unit created in 1984, and the superintendent testified there had been no change of her duties. The employer and the former exclusive bargaining representative agreed to include Bucher's position in the wall-to-wall unit in connection with a unit clarification petition filed in 1993,⁷

⁶ Although there was some testimony that Stahl "evaluates" other bus drivers, neither party has requested her exclusion from the bargaining unit as a supervisor.

⁷ Case 10842-C-93-650. The petition filed by the exclusive bargaining representative on December 16, 1993 sought to add nine positions to the existing bargaining unit.

but that is not conclusive. The agreement was made in the context of the wall-to-wall unit then in existence and, in any case, the agreements made by parties on unit determination matters are not binding upon the Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). The superintendent testified that he does not consider Beverly Bucher to be a "supervisor", although he stated that she has "some supervisory responsibilities" and there is other evidence which tends to support a supervisory exclusion.⁸ Of greater significance, there is no testimony that she performs any work of the same type as the bus drivers and mechanics sought by PSE. An inference is thus available that her functions as "transportation supervisor" are exclusively concerned with the administrative tasks associated with the transportation function. As such, her community of interest would be with other office-clerical employees, rather than with the bus drivers and mechanics.

Substitute Employees

Long-standing Commission precedent accords bargaining unit status to "regular part-time employees", including school district substitute employees who have worked more than 30 days in a one-year period. See, Columbia School District, et al., Decision 1189-A (EDUC, 1981); Sedro-Woolley School District, Decision 1351-C (PECB, 1982). In the absence of anything to the contrary, it is presumed that PSE's request for inclusion of substitute bus drivers (who come mainly from among school district employees working in other capacities such as aides and secretaries) is subject to the 30-day standard established in past cases. Although the RECA stated a

⁸ The superintendent's unfamiliarity with the north end bus compound (at page 30 of transcript) suggests that Bucher is really running the bus operation. She makes recommendations on hiring, and assigns work to her subordinates. She "probably would not independently make firing recommendation", but signs the annual performance evaluations completed on the driver/trainer and the mechanics.

position that it did not desire to have substitutes included in the bargaining unit it seeks, no evidence or substantial argument was put forth as to why there should be a deviation from Commission precedent in this case.

Qualification of RECA for Certification

In decisions dating back to Franklin Pierce School District, Decision 78-B (PECB, 1977), Commission precedent has required that organizations seeking the statutory benefits of certification as an exclusive bargaining representative under RCW 41.56.080 must meet the requirements set forth in the definition of "bargaining representative" set forth in RCW 41.56.030(3), as follows:

41.56.030 Definitions. As used in this chapter:

... (3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

Those requirements are not difficult to meet,⁹ but they do include compliance with principles inherent in other provisions of Chapter 41.56 RCW.¹⁰ Where the qualification of an organization for status as an "exclusive bargaining representative" under RCW 41.56.080 is questioned in a representation proceeding, the hearing held by the Commission under RCW 41.56.060 is the last opportunity for the challenged organization to produce evidence about its formation as an organization or about its primary purposes.

⁹ See, Southwest Washington Health District, Decision 1304 (PECB, 1981).

¹⁰ See, Quillayute Valley School District, Decision 2809-A (PECB, 1988), where a committee called into existence by the employer was excluded from an election ballot as an employer-dominated organization disqualified under RCW 41.56.140(2).

The employer's reliance on International Association of Fire Fighters, Local 1052 v. PERC, 45 Wn.2d 686 (1986) is misplaced. That case had nothing to do with whether the organization involved could demonstrate how it was formed or that it had a primary purpose of collective bargaining. Rather, that controversy involved whether an existing labor organization which clearly met the requirements of RCW 41.56.030(3) and was already the representative of rank-and-file employees could also represent a bargaining unit of the supervisors who oversaw the existing unit. Thus, the court's holding that the Commission could not interfere with the employee's choice of a particular "bargaining representative" is inapposite to a controversy about whether a "bargaining representative" exists.

In the end, the question raised in this case can be disposed of on very practical grounds. At the outset of the hearing, the Hearing Officer recited stipulations made by the parties during pre-hearing conferences, including: "Each organization is qualified for certification as an exclusive bargaining representative." The employer and the RECA concurred, without reservation. Although PSE hesitated to enter into such a stipulation for its case, PSE's position is irrelevant. With the amendments to their respective petitions, neither of the unions involved here will be on the ballot as an intervenor in the case initiated by the other organization. No stipulation concerning RECA is needed for the purposes of the case filed by PSE, and PSE has no standing to take a position in the case filed by the RECA.

FINDINGS OF FACT

1. The Reardan-Edwall School District is organized and operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).

2. Public School Employees of Washington (PSE), 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, seeking certification as exclusive bargaining representative of all full-time and regular part-time school bus drivers and mechanics employed by the Reardan-Edwall School District.
3. Reardan-Edwall Classified Association (RECA), 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, seeking certification as exclusive bargaining representative of a unit comprised of all full-time and regular part-time employees of the Reardan-Edwall School District except the school bus drivers and mechanics sought by PSE.
4. The school bus drivers and bus mechanics employed by the Reardan-Edwall School District work out of facilities which are separate and apart from the school facilities where other classified employees are generally assigned, and contacts between the employees in the two bargaining units petitioned-for in these proceedings are generally only incidental to the transportation function. The school bus drivers and mechanics are paid at rates which are generally higher than the other classified employees. There is no evidence of any substantial difference between school bus drivers and mechanics in the Reardan-Edwall School District and similar personnel in other Washington school districts where separate units of school bus drivers and mechanics exist.
5. The school bus mechanics employed by the Reardan-Edwall School District have also been assigned responsibility for grounds-keeping functions at the employer's campus. Although they work directly under the direction of the superintendent with

respect to groundskeeping matters, there is indication of seasonal harmony between their mechanic and groundskeeping tasks. The mechanics are the only regular employees assigned to groundskeeping functions.

6. School bus drivers who also perform food service and office-clerical assignments are dual status employees with voting rights in both bargaining units, in the absence of any evidence which directly ties their diverse occupations and assignments to one another.
7. The employee designated as transportation supervisor spends a majority of her work time performing office-clerical duties as attendance clerk at the employer's high school. Although there is evidence that she performs tasks associated with the administration of the employer's transportation function, there is no evidence that she performs any school bus driving or mechanic work similar to the employees in the bargaining unit sought by PSE.
8. There is no evidence on which to base a ruling that substitute employees who have worked for 30 days in a one-year period are not "regular part-time" employees within the meaning of Commission precedent.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. Subject to the filing of a conforming amendment by PSE, a bargaining unit consisting of all full-time and regular part-time employees of the Reardan-Edwall School District performing school bus driving, groundskeeping and mechanic work, excluding the superintendent, confidential employees and all

other employees of the employer, would be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

3. A bargaining unit consisting of all full-time and regular part-time classified employees of the Reardan-Edwall School District, excluding the superintendent, confidential employees, school bus drivers, groundskeepers and mechanics would be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

DIRECTION OF ELECTIONS

1. Case 11899-E-95-1952 (Decision 5549 - PECB). The further processing of this case shall be as follows:
 - a. In the absence of filing, within 10 days following the date of this order, of an amendment as described in paragraph 2 of the foregoing conclusions of law, the petition shall be dismissed on the basis that it seeks an inappropriate bargaining unit.
 - b. In the event a timely amendment is filed under the preceding paragraph of this order, 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 2 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Public School Employees of Washington or by no representative.
2. Case 11937-E-95-1960 (Decision 5550 - PECB). 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 3 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Reardan-Edwall Classified Association or by no representative.

Issued at Olympia, Washington, on the 30th 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.