STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of: FRANKLIN PIERCE EDUCATIONAL SECRETARIES ORGANIZATION, Petitioner, and FRANKLIN PIERCE SCHOOL DISTRICT NO. 402, Employer	CASE NO. 235-DEW-147 DECISION and ORDER DECISION NO. 78-B PECB

Upon a petition filed under RCW 41.56.060 of the Public Employees' Collective Bargaining Act, herein called the Act, a hearing was held before the undersigned, a hearing officer for the Public Employment Relations Commission (PERC).

Upon the entire record in this case, the undersigned finds and concludes:

1. Franklin Pierce School District Number 402, herein called the Employer, is a public employer within the meaning of the Act.
2. The Public School Employees of Franklin Pierce School District, an affiliate of the Public School Employees of Washington, herein called the Intervenor, is a labor organization within the meaning of the Act.
3. At the hearing it was stipulated by all parties to the proceeding that Franklin Pierce Educational Secretaries Organization is a labor organization within the meaning of the Act and has been at least since May 11, 1976. A dispute exists as to whether it was a labor organization within the meaning of the Act prior to May 11, 1976. The Intervenor moved that Petitioner's petition be dismissed because Petitioner was not a lawful labor organization prior to filing the petition in this matter.

RCW 41.56.070 provides:

> "In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue..."

WAC 391-20-145 provides:

> "Any labor organization may timely file a petition to sever a unit of employees from an existing bargaining unit..." (emphasis supplied)

The first mention of the term Labor Organization in the Act is contained in the declaration of purpose (RCW 41.56.010):

> "The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organization in matters concerning their employment relations with public employers."

The Legislature defined "bargaining representative" in RCW 41.56.030 as "any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers."

An administrative rule of PERC (WAC 391-20-065) states as follows:

> "In order to qualify as Labor Organization as referred to in RCW 41.56.010, or Lawful Organization as referred to in RCW 41.56.030, any organization:
>
> (1) Upon request by the authorized agent, or any party of interest, must produce authentic records of how, when, and by whom the organization was formed.
> (2) Must have a constitution and/or bylaws which plainly show the purpose of the organization is consistent with the requirements of the Act and is available to all members.
> (3) The constitution and/or bylaws must provide:
>
> (a) An approved method of nomination and election of officers in accordance with parliamentary procedure, for terms not to exceed four years.
> (b) An approved method of financial record-keeping and a financial audit at least once a year, which is made available to all members.
> (c) That at least four regular meetings must be held each year with adequate notice of same to all members.
> (d) That a specific minimum number of members must be present to form a quorum before any organization business may be transacted."

The Petitioner was not in strict compliance with WAC 391-20-065 at the time that it filed its petition. The Petitioner points to the fact that prior to 1968 it was a labor organization with bylaws which may have met the requirements of the administrative rule. I find this to be

irrelevant to the issue at hand since this organization admittedly became defunct in 1968, when what are commonly referred to in the School District as the secretarial-clerical employees selected the Intervenor as their exclusive bargaining representative. In December 1973 certain of these employees filed with the Department of Labor and Industries a petition for an election to determine whether the secretarial-clerical employees wished to retain the Intervenor as their exclusive bargaining agent or whether to replace the Intervenor with an unaffiliated secretarial-clerical organization. That petition was dismissed by the Department of Labor and Industries because of the contract bar rule. It was pointed out to the then Petitioner that a petition could not be filed until April 1976, which month would correlate to the period 60 to 90 days prior to the termination date of the collective bargaining agreement between the Intervenor and the employer.

In March 1976 certain of the clerical and technical employees of the employer held a meeting and decided to again attempt to establish an unaffiliated organization to represent the secretarial-clerical employees in its dealing with the District.

Another meeting of this group of clerical and technical employees was held on April 21, 1976. At that meeting, 39 clerical and technical employees signed a petition for an election to determine whether the Intervenor or the newly formed secretarial-clerical organizaton, ie., the Petitioner, would be exclusive bargaining representative of the secretarial employees. According to a list submitted by the employer, there are 42 employees in the secretarial-clerical bargaining group. Also at that meeting bylaws for the organization were discussed, but not finalized. The petition was filed with PERC on April 23, 1976. It was rejected by an agent of PERC on that same date on the basis that the Petitioner did not meet the requirements of the administrative rule which required that signed bargaining authorization cards (rather than a series of signatures under a heading) accompany the petition. On April 27, 1976 the Petitioner submitted cards to PERC in support of its petition. By letter dated May 6, 1976 a PERC agent informed the Petitioner that PERC would need a current copy of the Petitioner's bylaws prior to further processing of the petition. On May 11, 1976 the Petitioner held a meeting of its supporters at which time those present voted to adopt the proposed bylaws and also elected officers. The Petitioner then forwarded a copy of these bylaws to PERC. The Intervenor admits, and I also find that on May 11, 1976 the Petitioner met the requirements of both the statutes and the rules.

It is recognized that a literal interpretation of PERC's rules might require that only an organization which met the requirements of WAC 391-20-65 could file a severance petition pursuant to WAC 391-20-145. However, such a literal interpretation of the rules in the instant case would subvert the purposes of the Act. The Act is intended to implement "The right of public employees to join labor organizations of their own choosing and to be represented by such organizations.."

The Act itself only requires that in order to qualify as a bargaining representative, an organization has a purpose to represent employees in their employment relations with employers. Further, the Act itself only requires that the petition be filed by a "prospective bargaining representative." RCW.41.56.070 (Emphasis supplied)

The Petitioner met the statutory requirements needed to file a petition. It was "a prospective bargaining representative" at the time it filed its petition. It became a bargaining representative, in fact, within the meaning of the Act and the administrative rules very shortly thereafter, within a time frame which did not unduly delay the scheduling of a representation hearing on certification. RCW 41.56.080.

It is noteworthy that WAC 391-20-135 permits a petitioner to amend his petition at any time prior to the issuance of a written notice of election at the discretion of the authorized agent. Similarly permitting the Petitioner to amend its bylaws within a reasonable period subsequent to the filing of its petition in order to comply with WAC 39 -20-065, would effectuate the policy of the Act to permit employees to select a bargaining representative of its own choosing. A different result would unduly penalize a group of employees attempting to form their own unaffiliated labor organization. Such a group at its inception would often not be able to afford the guidance of legal counsel.

The purpose of WAC 391-20-065 is apparently to protect the rights of a labor organization's members vis a vis the labor organization. Permitting a labor organization a short period subsequent to the filing of its petition, in order to comply with the above rule, would fulfill the purpose of this rule as well as the purpose of the Act.

For the above reasons, I reject the Intervenor's motion to dismiss.

4. The Petitioner seeks to carve out a portion of an existing bargaining unit. In such instances, RCW 41.56.060 requires consideration of:

> "...the duties, skills, and working conditions of the public employees, the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees..."

The supplementing rule, WAC 391-20-145 requires consideration of:

> "(1) whether the proposed unit consists of employees having a unique community of interest separate from employees in the existing unit;
> (2) whether the proposed unit consists of employees having a functionally distinct and separate identity from other employees in the existing unit;
> (3) whether a tradition of separate representation exists and, in addition,
> (4) whether severance would unduly disrupt the stability of labor relations with the employer."

The Petitioner requests that all secretarial-clerical employees employed by the Employer be deemed an appropriate bargaining unit, and severed from an existing bargaining unit which also includes maintenance, food-service, instructional assistants and service aid employees.

"Secretarial-clerical employees" is not an accurate title for all the classifications of employees that the Petitioner desires to be included in the unit. Such classifications as key punch operator, audio-visual technician, and printer are better described as technical employees.

The Intervenor contends that the unit sought by the Petitioner is inappropriate in that the existing unit should not be fragmented. The Employer takes no position on this question of unit.

It is evident that the duties and skills of clerical employees bear little, if any, similarity to those of maintenance and food service employees. The duties of instructional assistants and service aides do overlap to some extent with that of the clerical employees. Instructional assistants are engaged primarily in assisting certified teachers in the classroom, but as an adjunct of this function are required to perform clerical tasks. Service aids are assistants to the school nurses. They attend to ill or injured students, help with the screening and immunization program, and process student health records. At least some of the service aids are at times assigned to assist secretaries at secretarial type work.

Instructional aids are divided into four classifications. According to the published job descriptions, the positions of Instructional Assistants III and IV are required to have a college education as a qualification requirement. Instructional Assistants II require a high school

diploma plus a teacher aide course or equivalent training or experience. Instructional Assistant I requires a high school diploma plus a teacher aide course, or equivalent office training or experience. Only the category of Instructional Assistant I has, as a qualification, the use of office equipment. Service Aides have the qualification requirement of a high school diploma plus a current first aid card, as well as use of office equipment. The qualification requirements of the various clerical employees include more specific office skills such as secretarial or clerical experience, or ability to operate certain specified office machinery. None of the clerical employees are required to have a college education. Some are required to have a high school diploma, while some are not.

The working conditions of the clerical employees differ in varying degrees from the other classes of employees in the existing unit. The salary range of the groupings within the existing unit is as follows:

Secretarial-clerical	$3.84	- $5.13
Service Aides	3.54	4.03
Instructional Assistants	3.54	4.62
Food Service	3.17	5.02
Maintenance	4.50	6.25

The fringe benefits are generally uniform for all employees. There is a substantial difference between the clerical employees and the other employees in the unit with regard to hours of employment. The clerical employees work seven hours per day. Some work during the entire year, including school recesses (a total of 265 days). Other work ten months per year and do not work during school recesses (a total of 200 days). On the other hand instructional assistants and service aides work 3-6 hours per day during the school calendar year (a total of 180 days). Food service personnel usually work about 2½ hours per day during the school calendar year. While testimony at the hearing was to the effect that maintenance personnel work 8 hours per day during the entire year, according to the collective bargaining agreement seven hours is the standard workday.

With regard to the history of collective bargaining, the record reflects that prior to 1968 the clerical employees were a separate bargaining unit. They had an unaffiliated organization representing them. Since 1968, they have been part of the presently existing bargaining unit represented by the Intervenor. The proffered testimony indicated that in other school districts, clerical employees are sometimes a separate bargaining unit and sometimes are included within wider bargaining units.

Of the 42 employees described by the employer as included within the clerical grouping, a clear majority have indicated their preference for representation by the Petitioner, while the Intervenor has about ten members within this group.

In view of the Employer's lack of objection to bargain with a separate clerical unit and considering the size of the clerical compliment and their past dealings with the employer as a separate unit, I do not believe that severance would unduly disrupt the stability of labor relations with the employer. The clerical employees have a functionally distinct and separate identity and community of interest from the maintenance and food service employees. While I recognize that instructional assistants do at times perform clerical tasks, the thrust of their work is aimed directly at the instruction of students. This is reflected in their assigned hours and days of employment and their positions's required educational qualifications, which differ markedly from that of the clerical employees.

In view of the foregoing, I find that the clerical employees have a sufficiently distinct and separate identity from the instructional assistants to support their severance.

With regard to the service aides, at least some of the service aides spend a substantial amount of their time in directly assisting clerical employees. However, the primary function of the service aide is to assist the school nurse in caring for the health needs of the students. This function may be considered as related to the primary function of the instructional assistant, which involves dealing directly with students.

Having considered the foregoing, and the absence of any discernable interest by the service aides in being included in a unit with clerical employees, and also considering the service aides' hours of employment which more closely resemble that of the instructional assistant, I conclude that such employees should not be included in the same bargaining unit as the clerical employees. See California School Employees Assn. v Pittsfield Fed. of Teachers, 680 GERR F-3 (Cal. EERB Decision #3 1976).

There are only four technical employees employed by the Employer. One district printer maintains and operates the district office copier, duplicators and printing equipment. The District has one computor

operator. It also has two audio-visual technicians who maintain the audio-visual equipment and perform related clerical tasks. These technical employees are and have been grouped on the same salary schedule as the clerical employees. They work on similar days and hours as the clerical employees. Like the clerical employees, the thrust of their job responsibilities involves providing support services rather than direct dealings with the students. Three of these four employees have authorized the Petitioner to act as their bargaining representative. In view of the foregoing, I find that the technical employees share a community of interest with the clerical employees and should be included in the same unit as the clerical employees. See: Hunt & Mottet Co. 206 NLRB No 85 (1973).

5. Based upon the factors described above, I conclude that the clerical and technical employees employed by the Employer separately constitute a unit appropriate for collective bargaining purposes.

ORDER

It is hereby ordered that an election be held in the unit set forth above at a time and place to be determined by the undersigned hearing officer.

The payroll period for eligibility will be the payroll period immediately preceding the date below.

DATED this 26th day of April, 1977.

PUBLIC EMPLOYEMENT RELATIONS COMMISSION

Alan R. Krebs

ALAN R. KREBS, Hearing Officer

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