

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of)	
WHITE PASS SCHOOL DISTRICT NO. 303)	Case No. 1405-C-78-60
for clarification of an existing)	
bargaining unit of employees)	Decision No. 573-PECB
represented by)	
PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON)	ORDER CLARIFYING
)	BARGAINING UNIT

APPEARANCES:

Charles R. TenPas, Superintendent, for the employer. Brief filed by Perkins, Coie, Stone, Olsen & Williams, Attorneys at Law, by Lawrence B. Ransom.

Gail P. Sessions, General Counsel, for the union.

White Pass School District No. 303 (hereinafter the "employer" or "District") filed a petition with the Public Employment Relations Commission on February 23, 1978, wherein it sought to have two positions declared "confidential" within the meaning of RCW 41.56.030(2) and exempt from a bargaining unit in which Public School Employees of Washington (hereinafter "PSE") is recognized as exclusive bargaining representative. A hearing was held at Randle, Washington, on October 3, 1978 before Willard G. Olson, Hearing Officer. Briefs were mailed by both parties on November 30, 1978.

BACKGROUND

PSE and the District have a long history of collective bargaining covering the classified employees of the District. There are 40 classified employees in the District, with the Superintendent's secretary and the "fiscal officer" excluded from the bargaining unit. The July 1, 1977-June 30, 1979 collective bargaining agreement described the bargaining unit as follows:

"Article I-Recognition and Coverage of Agreement.

Section 1.1. The District hereby recognizes the Association as the exclusive bargaining representative of all employees in the bargaining unit described in Section 1.3, and the Association recognizes the responsibility of representing the interests of all such employees.

Section 1.2. Nothing contained herein shall be construed to include in the bargaining unit any persons whose duties as deputy, administrative assistant, or secretary necessarily imply a confidential relationship to the Board of Directors or Superintendent of the District pursuant to RCW 41.56.030(2).

Section 1.3. The bargaining unit to which this agreement is applicable is as follows: Any and all employees performing work as classified employees in any of the following subunits: Food Service, Custodial-Maintenance, Secretarial-Clerical, Transportation, Teaching Assistants."

An addendum to the agreement signed by the District on June 13, 1978 sets the wage rates for unit employees for 1978-79. The "Director of Transportation" position referred to in the petition and in this record is classified in the addendum as "Bus Mechanic/Director". The "Maintenance Supervisor" referred to in the petition and in this record is classified in the addendum as "Head Custodian/Maintenance". The record is not clear as to if, or when, the titles were formally changed.

Charles TenPas assumed the position of Superintendent of the District on July 1, 1977. Lloyd Blankenship assumed the head custodian duties as of the same date. Since that time, several administrative and organizational changes have been made, and the employer has developed a table of organization for the first time. There is reference in the record to the elimination of two certificated administrative positions. For the first time, an evaluation procedure has been adopted for classified employees. The positions in dispute have received some additional responsibilities in the course of this reorganization.

The "Director of Transportation" heads a school bus operation with 16 bus drivers and 1 mechanic. His duties include: training and evaluation of drivers, scheduling of routes, completion of state reports, inventory recordkeeping, budget input, adjustment of employee complaints or grievances, making effective recommendations on discharge of subordinates, purchasing of equipment and supplies, authorization of time off and overtime, and time sheet approval. He has budget responsibility for approximately \$45,000 of school funds. However, his administrative-supervisory duties take up no more than 50% of this time and he spends the remainder of his time performing mechanic work.

The "Maintenance Supervisor" has responsibility for custodial-maintenance operations and 9 employees in the employer's school buildings located at Randle, Glenoma and Packwood, Washington. He has administrative and supervisory duties generally similar to those described above for the "Director of Transportation", but the custodial-maintenance employees are also subject to the authority of the building principals of the schools to which they are assigned. His budget is slightly less than that of the Transportation budget, totalling approximately \$40,000. He, too, spends 50% of his time performing custodial-maintenance duties.

The District states, and the organizational chart (Exhibit No. 1) shows, that the "Director of Transportation" and the "Maintenance Supervisor" both report directly to the Superintendent of Schools. The record shows, however, that in actual practice both these employees report to the building principals before going to the Superintendent (Tr., p.15, li.7-17; p.31, li.3-11; p.33, li.13-20; p.43, li.18-25; p.44, li.1-6).

Both positions have been included in the PSE bargaining unit in the past and "Director of Transportation", Jim Brady, was a member of the PSE bargaining team in the latest round of negotiations between the parties.

POSITIONS OF THE PARTIES

In its petition and throughout the course of the hearing, the employer took the position that the "Director of Transportation" and the "Maintenance Supervisor" fall within the "confidential" exclusion of RCW 41.56.030(2)(c). In its brief, the employer cites the decisions in Tacoma-Pierce County Law Enforcement Support Agency, Decision 84-A (PECB, 1977) and City of Lacey, Decision 396 (PECB, 1978) as support for its claim that the two individuals in dispute have a "confidential" relationship with the Superintendent. The employer states that these individuals "would be utilized" for their input on negotiations for the District if they were to be excluded from the bargaining unit. In the alternative, the employer suggests for the first time in its brief that the disputed positions might be excluded from the bargaining unit as "supervisors" under the unit determination criteria of the statute and the decision of the Commission in City of Richland, Decision 279-A (PECB, 1978).

PSE denies that the disputed individuals have a "confidential" relationship with the Superintendent which is sufficient to exclude them from the coverage of the Act. The union describes the disputed individuals as "working foremen" and asserts that the situation at hand is "on all fours" with the situation which existed in City of Buckley, Decision 287-A (PECB, 1977). PSE volunteers argument that the situation at hand is distinguishable on its facts from the situation existing in City of Richland, supra.

DISCUSSION

The briefs of the parties were mailed on the same day as the issuance by our Supreme Court of a decision having a substantial bearing on this case. In Local Union No. 469, International Association of Fire Fighters, AFL-CIO, v. City of Yakima and the Department of Labor and Industries, Wn.2d _____ (1978); No. 44892, decided November 30, 1978, the Court interpreted RCW 41.56.-030(2)(c) in light of the precedents of the National Labor Relations Board,

in light of the definition of "confidential employee" contained in Chapter 41.59 RCW relating to school district certificated employees, and in light of the decision of this agency in Edmonds School District, Decision 231 (PECB, 1977). The Court cites Edmonds with approval, stating:

"...over the years the term confidential, when used with reference to employees, has become something of a term of art in the law which developed from that Act (the federal Labor-Management Relations Act). The meaning it has acquired in labor law, including public employment law, accords both with that given it by Washington's legislature in RCW 41.59.020(4)(c) and the interpretation we give to RCW 41.56.030(2)." IAFF v. City of Yakima, supra.

The Court goes on to hold that:

"...in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including the formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion." IAFF v. City of Yakima, supra. (emphasis supplied)

The exclusion is narrow. When the Supreme Court described in Yakima the type of information to be protected, it did so within the confines of its previous METRO decision:

"Unless the positions involved fall within one of these categories (deputy, administrative assistant, or secretary), the persons holding them are not excluded from the definition of "public employee" under the Act. Furthermore, even if they fit one or more of the categories named in the statute, the persons holding them are nevertheless public employees if their duties do not necessarily imply a confidential relationship..." METRO, 88 Wn.2d 925, 928. (1977) (emphasis supplied)

The "Director of Transportation" and "Maintenance Supervisor" clearly do not meet these tests for exclusion from the coverage of the statute. Fifteen pages into its brief, the employer raises for the first time the possibility that the disputed individuals should be excluded from this bargaining unit as "supervisors" under unit determination principles. While the union also addresses the application of unit determination principles in its brief, it could only have done so on the assumption that the Commission might turn on its own motion to RCW 41.56.060 after disposing of the employer's arguments under RCW 41.56.030. Supervisor units have been created, and supervisors have been excluded from rank and file employee units both before and since the Yakima decision, but there is no request here for the creation of a supervisory unit and the record was made in this case on the "confidential"

theory alone. It is impossible to know what other positions might be involved and what other testimony might be received in evidence in hearings where the appropriate unit issue was properly joined. As was the case before the Court in Yakima and, more recently, in Cowlitz County, Decision 564 (PECB, 1979), the decision herein will be confined to the "confidentiality" issue on which the petition was filed and the hearing held.

FINDINGS OF FACT

1. White Pass School District No. 303 is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Public School Employees of Washington is a "labor organization" within the meaning of RCW 41.56.010 and is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Public School Employees of Washington is the collective bargaining representative for all classified employees of White Pass School District No. 303 except the Superintendent's secretary and the "fiscal officer".
4. The "Director of Transportation" and the "Maintenance Supervisor" do not have an official intimate fiduciary relationship with the Superintendent or the Board of Directors of the District on matters concerning labor relations policies.

CONCLUSIONS OF LAW


1. No question concerning representation exists in the bargaining unit described in findings of fact, paragraph 3, and the Public Employment Relations Commission has jurisdiction in this matter to issue an order clarifying the bargaining unit.
2. The "Director of Transportation" and the "Maintenance Supervisor" of White Pass School District No. 303 are public employees within the meaning of RCW 41.56.030(2).

ORDER

The "Director of Transportation" and the "Maintenance Supervisor" of White Pass School District No. 303 shall continue to be included in the bargaining unit referred to in findings of fact, paragraph 3.

Dated in Olympia, Washington this 24th day of January, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director