

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
COLLEGE PLACE EDUCATION ASSOCIATION)	CASE NO. 1344-C-78-54
For clarification of an existing bargaining unit of employees of:)	DECISION NO. 795 EDUC
COLLEGE PLACE SCHOOL DISTRICT NO. 250)	ORDER CLARIFYING BARGAINING UNIT

Symone Scales, attorney at law, appeared on behalf of College Place Education Association.

John S. Biggs, attorney at law, appeared on behalf of College Place School District No. 250.

On January 18, 1978, College Place Education Association filed a petition with the Public Employment Relations Commission, wherein it requested a ruling as to whether the position of Title I, Migrant Tutor should be included in the bargaining unit of non-supervisory educational employees represented by the Association. A hearing was held in Walla Walla, Washington on May 19, 1978 before George G. Miller, Hearing Officer. The Association filed a post-hearing brief.

BACKGROUND

The College Place Education Association was certified by the Public Employment Relations Commission on May 12, 1977 as the exclusive bargaining representative of a unit described as:

"Included: All certificated employees.

Excluded: Daily substitutes, chief administrative officers, principals, assistant principals and all other employees of College Place School District No. 250."

On November 1, 1978, the parties ratified a collective bargaining agreement for the 1977-78 school year. Article I, Section I of that agreement reads:

"SECTION I: RECOGNITION

The Board hereby recognizes the Association as the exclusive bargaining representative, properly authorized under state law, for the duration of this Agreement, for all certificated employees employed by the Board under contract, excluding: the chief administrative officers of the Board, such as the Superintendent of the District, Deputy Superintendent, Admin-

istrative Assistant to the Superintendent, Assistant Superintendents, Business Manager, Personnel Officer, Principal, Vice-Principal, Assistant Principals, and all other employees including aides."

Pat Holmes was first employed by the employer in the position of Title I - Migrant Tutor on or about August 20, 1977. While there is some indication that a similar position existed previously, no individual was identified as such on the eligibility list submitted to the Commission in connection with a consent election agreement filed on April 19, 1977 in Case No. 855-E-77-163, the representation proceeding which led to the May 12, 1977 certification of the exclusive bargaining representative. (Decision 226, EDUC, 1977). On December 5, 1977, the Association, by letter, requested the District's position concerning the inclusion of the Title I - Migrant Tutor in the bargaining unit represented by the College Place Education Association. The parties were unable to agree, and this proceeding was commenced.

POSITIONS OF THE PARTIES

The Association contends that it petitioned for and was certified as the exclusive bargaining representative of all certificated employees of the district, that the subsequent collective bargaining agreement between the parties recognizes the Association as the Exclusive bargaining representative of all certificated employees, and that Pat Holmes, the holder of a teaching certificate, should be included in that bargaining unit.

The district contends that the position of Title I - Migrant Tutor was established as a classified position with wages, hours, terms and conditions of employment coming under the district's classified personnel policies. It argues that the incumbent's certification is secondary, unnecessary to the job description, and that she does not come within the provisions of Chapters 28A.58 and 28A.67 RCW.

DISCUSSION

In early examination of this case, the Executive Director concluded that the Association's "she has a certificate, ergo she is certificated" argument is unpersuasive. It is the position which must be examined. A decision based solely on the qualifications of an over-qualified incumbent would have the effect of boot-strapping the disputed position into a bargaining unit which has no appropriate claim to the work actually required and performed. The employer offered only minimal argument. Acknowledging that the Public Employment Relations Commission should tread lightly in an area where its jurisdiction touches or overlaps that of the superintendent of public instruction and the state board of education, the Executive Director has held the instant case in abeyance so that the legal question involved could be considered at the same time as the similar issue raised in Olympia School District, Decision 799 (EDUC, 1980) which is being issued simultaneously

with this decision. As it turns out, the facts of the two cases are so markedly different that different results are reached.

The Title I - Migrant Tutor in College Place presently performs, almost in toto, the same tasks which are required of, and compose the duties, skills and working conditions of, other certificated teachers in the district. She is assigned the task of teaching remedial skills in mathematics, English and oral expression to children of migrant workers. The district's superintendent indicated in testimony the comparability of the disputed position to other "Title I" teaching positions in the district. (TR.p.52). It becomes exceedingly difficult to know whether a "certificate" was a condition of employment, as the superintendent also testified that he knew without asking that disputed employee Holmes had a certificate before he interviewed her for employment. (TR.p.54). Nothing would have prevented the employer from setting the position up as a "certificated" position (TR.p.59) and it appears that the decision to call the position "classified" was based largely on the complications posed for the employer by employee coverage under the continuing contract law applicable to certificated employees. (TR.p.61).

Once on the job, the Title I - Migrant Tutor utilizes the same facilities as other Title I teachers in the district. She has, at each school, an aide who assists in classroom management. She evaluates the aide who assists her at one of the schools served. She is evaluated by a principal, using the evaluating form used for all other teachers. She is the only so-called "classified" employee of the district who has been required to attend teacher orientation meetings prior to the opening of school, teacher in-service during the school year and faculty meetings during the school year. She is required to prepare lesson plans similar to those prepared by all other certificated employees for review by their principals. She has been assigned to a learning objectives committee to develop, in conjunction with other teachers in the district, district-wide student learning objectives. She is replaced, when absent, by a certificated substitute teacher drawn from the pool of substitute teachers regularly maintained by the district to cover the absences of certificated teachers. In each instance, these facts are almost diametrically opposite those noted in Olympia, supra.

The Title I - Migrant Tutor in College Place was paid at a rate of \$55.00 per day during the 1977-78 school year. Since the incumbent worked the same 185 day work year as other certificated teachers, the salary compares to an annual salary of \$10,175. The salary schedule contained in the collective bargaining agreement for the same year establishes a pay range for teachers of \$10,100 to \$14,490. The salary arrangement for the disputed position is unique to that position, as no other "aide" is paid at a daily rate in excess of the minimum paid to teachers. Here, again, the facts of this case are different from those noted in Olympia, supra, where it was shown that the

disputed position had been consistently included in, and paid pursuant to a negotiated collective bargaining agreement applicable to, a separate bargaining unit of "aide" personnel.

FINDINGS OF FACT

1. College Place School District No. 250 is a school district and an employer within the meaning of RCW 41.59.020(5). Among other programs, the district operates and employs tutors in a "Title I - Migrant" program.

2. College Place Education Association is an employee organization within the meaning of RCW 41.59.020(1) which has been certificated as the exclusive bargaining representative of all non-supervisory educational employees of College Place School District No. 250.

3. Certification under the education laws of the State of Washington was not made an express condition of employment at the time Pat Holmes was hired by the district as Title I - Migrant Tutor; but Holmes held such certification at the time she was hired, and the district's superintendent was aware of her certification at the time she was interviewed and hired.

4. The duties, skills and working conditions of the Title I - Migrant Tutor position subsequent to the hiring of Holmes have been substantially identical to the duties, skills and working conditions of the certificated staff of the district in the areas of hours of work, length of work day and year, lesson planning, progress reporting, non-instructional duties, supervision and evaluation of the incumbent by the employer, supervision of subordinate "aide" personnel by the incumbent, reporting within the district, requested attendance at faculty meetings and replacement during absences.

5. The salary arrangements for the Title I - Migrant Tutor are different both from the salary arrangements applicable to certificated teachers employed by the district and other persons classified by the employer in the "aide" classification. Holmes' salary of \$55.00 per day during the 1977-78 school year was substantially above the rate paid to "aide" personnel and within the range of effective daily rates paid to certificated teachers under the collective bargaining agreement between the parties.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists, and the Public Employment Relations Commission has jurisdiction in this matter to determine a dispute, pursuant to WAC 391-30-300, et. seq., concerning the composition of an existing bargaining unit.

2. The position of Title I - Migrant Tutor has duties, skills and working conditions which are similar to those of educational employees of the employer, and the incumbent of the disputed position shares a community of interest with the employees in the bargaining unit referred to in

paragraph 2 of the foregoing findings of fact as an educational employee within the meaning of RCW 41.59.020(4).

ORDER

The collective bargaining unit referred to in paragraph 2 of the foregoing findings of fact is clarified to include the position of Title I - Migrant Tutor.

DATED at Olympia, Washington, this 3rd day of January, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director