

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
NORTHSHORE SCHOOL DISTRICT NO. 417	)	CASE NO. 3328-C-81-158
and	)	DECISION NO. 1375 - EDUC
NORTHSHORE EDUCATION ASSOCIATION	)	
For clarification of an existing bargaining unit.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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Sandra R. Driscoll, General Counsel, appeared on behalf of the employer.

Faith Hanna, General Counsel for the Washington Education Association, appeared on behalf of the union.

By a joint petition filed February 26, 1981, Northshore School District No. 417 (employer) and the Northshore Education Association (union) requested the Public Employment Relations Commission to clarify an existing bargaining unit with respect to positions titled vocational and career specialist and staff development specialist. A hearing was conducted on August 20, 1981 before Kenneth J. Latsch, Hearing Officer. At the outset of the hearing, the parties stipulated that the vocational and career specialist should be withdrawn from the petition because the position no longer exists. The hearing was limited to the bargaining unit status of the staff development specialist. The parties submitted post-hearing briefs.

BACKGROUND:

Northshore School District No. 417 operates two high schools, four junior high schools, and 13 elementary schools serving approximately 14,000 students in the northern King County area. The district's work force consists of approximately 350 classified employees and 750 certificated employees. Northshore Education Association represents certain certificated employees. That bargaining unit is described in the collective bargaining agreement in effect from August 1, 1979 through July 31, 1981 as:

"...all educational employees whether under contract or letter of intent, or on leave, or on hourly rate basis. Such representation shall exclude the Superintendent, Assistant Superintendents, District General Counsel, District Directors, Assistant Directors, Supervisors, Principals, Vice-Principals, Administrative Assistants to the Principal, Assistant Principals, and the District Librarian."

The bargaining unit includes certificated employees working as classroom teachers, resource teachers, special education teachers, counselors, coordinators and classroom teachers serving as department heads. Department heads, in addition to teaching assignments, help develop new courses, purchase materials, schedule classes, and prepare course descriptions for educational programs at the individual building level. Coordinators are responsible for coordinating curriculum on a district-wide basis including material purchases and facility schedules in addition to teaching duties.

The parties negotiated a revision of the collective bargaining agreement for the period August 1, 1981 through July 31, 1983. The recognition clause was not changed in the revision.

An elected Board of Directors establishes policy for the district. The district's superintendent and administrative staff are responsible for implementing board policy and daily management of district affairs. Superintendent Frank Love reorganized the administrative staff in May, 1981, changing lines of authority within the staff. Love also expanded the membership of the Executive Cabinet, an "on call" decision-making body used to address issues concerning the budget and collective bargaining as well as emergencies which may arise. Prior to the reorganization, the Executive Cabinet consisted of the superintendent and two assistant superintendents. Under Love's reorganization, the Executive Cabinet consisted of the superintendent, deputy superintendent (a new position created as part of the reorganization), and the administrative assistants to the superintendent. A second administrative group, the Cabinet, was modified in the reorganization by excluding several employees holding the position of Director. After the reorganization, the Cabinet consisted of the members of the Executive Cabinet, the general counsel, the directors of special education, instructional material/in-service, curriculum, vocational/career education, maintenance and operation, and facilities as well as one building principal representative each from the elementary, junior high and high school groups. The Cabinet meets on a weekly basis to discuss general operations in the district.<sup>1/</sup>

Collective bargaining policy is established by the Board of Directors. The superintendent is responsible for collective bargaining, and he delegates his authority to members of the administrative staff who conduct negotiations on behalf of the district. Traditionally, the district's bargaining team consisted of three or four members including the assistant superintendent for business, the administrative assistant to the superintendent and the personnel director. Love testified at the hearing that he intends to follow existing practice for future negotiations. Collective bargaining matters are discussed at Executive Cabinet and Cabinet

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1/ The reorganization also resulted in changing certain occupation titles in the administrative staff. Such changes are not in dispute in this proceeding.

meetings, and members of those two groups can make suggestions about negotiations. However, it appears that negotiating strategy is formulated only by the Executive Cabinet.

The position at issue in these proceedings was created during the 1980-1981 school year. Prior to the creation of the staff development specialist position, the district used specially trained classroom teachers to conduct inservice training for certificated employees. Finding that the program did not fulfill desired objectives, the district recruited a certificated employee to handle staff development on a full-time basis. The district posted position announcements in May, 1980 which specified that the staff development specialist would work a 226 day work year with a salary range between \$28,472 to \$30,572. Specific responsibilities were listed as:

Plan and conduct inservice sessions on instructional techniques for teachers and administration.

Assist in conducting inservice workshops and other staff development activities offered within the district.

Provide leadership in planning staff development programs.

Perform such other duties related to professional development as directed by the Assistant Superintendent in Charge of Instruction and in cooperation with the Director of Personnel.

The position was described as one in which "the person selected will assist teachers and administrators in learning, implementing and evaluating instructional techniques". As part of the minimum qualifications required, the announcement specified that the successful applicant needed proven ability as a classroom teacher, effective communications skills and demonstrated ability in the "supervision and evaluation of certificated personnel".

Marion Weldon was hired as staff development specialist in August, 1980. Weldon testified that she was told that the disputed position was administrative when she was interviewed. During the first ten months of her employment, Weldon was evaluated by Love and Russell Sage, who then held the position of supervisor of instructional materials. After the May, 1981 reorganization, Weldon reported only to Sage, who now holds the position of director of the instructional materials center and inservice. Weldon did not receive an official job description after she was hired. At the time of hearing, the district used Weldon's evaluation form, which contained her goals for the school year, as a job description. The goals included implementation of new inservice programs, coordination of inservice opportunities to make maximum use of inservice funds, and consideration of inservice programs for school board members and classified staff.

Weldon's office is located in the district administrative building. She has a full-time secretary assigned to her, and, Weldon can make assignments of

extra work to Sage's secretary. Weldon works an eight hour day, from 8:00 AM to 5:00 PM. Weldon's salary is set on the administrator's salary schedule, and she is expected to attend administrators' meetings. Weldon is evaluated on an administrator's evaluation form, separate from evaluation forms used for non-administrative certificated employees.

As part of her duties, Weldon was assigned to an inservice committee created by the collective bargaining agreement between the parties. The committee is made up of eight members, four each from the bargaining unit and the administrative staff. The committee is responsible for making recommendations about the use of \$50,000 which has been set aside for inservice programs. The committee is authorized to recommend expenditures for specific programs established for inservice training, and has recommended that the majority of funds be spent for individual building inservice programs and college courses available to improve teacher abilities in particular subjects. The committee's recommendations are submitted to Sage, who has final approval on budget expenditures. Sage testified that committee recommendations are normally followed. Sage also testified that Weldon is the "practical manager" of the budget as it relates to inservice provided for teachers, and that her suggestions on the budget are always followed.

Apart from her work with the inservice budget, Weldon coordinates inservice training for certificated employees, administrative staff members, secretaries, and bus drivers. Weldon recommends courses that probationary teachers may need to improve teaching technique. However, Weldon testified that she spends very little time with the individual certificated employees discussing deficiencies. Weldon estimated that well over half of her time is spent with members of the administrative staff, including building principals, informing them of available training and receiving information used to develop a district inservice policy. Weldon does not have any classroom duties apart from occasional demonstration of teaching technique used to aid a classroom teacher in overcoming a deficiency in his or her curriculum. In this regard, Weldon has assumed responsibility for an administrative staff conference held before the start of the school year. In planning the conference, Weldon makes a needs assessment by asking all administrators what they wanted in the way of inservice training. The assessment was presented to the Executive Cabinet for approval, and Weldon was responsible for the program to be presented. The Board of Directors was invited to the conference, and Weldon coordinated the directors' participation in the program. Weldon dealt directly with the directors who participated in the program, informing them of the topics to be discussed and the times for the meetings. Weldon has also helped board members prepare for speeches and has met with parent groups to discuss training provided to classroom teachers.

Weldon also monitors district compliance with regulations concerning "mainstreaming" special education students into regular classes and

bilingual classes. The record does not indicate how many inservice programs have been established for bus drivers and secretaries.

Weldon regularly attends Executive Cabinet and Cabinet meetings although she is not an official member of either group. Weldon reports on the status of inservice programs as well as district compliance with state and federal regulations on mainstreaming and bilingual programs. In her meetings with the two decision-making groups, Weldon participates in formulating programs to be offered on an inservice day provided through provisions of the collective bargaining agreement. However, Weldon did not participate in negotiations which established the in-service day, nor has she taken part in any collective bargaining on behalf of the district.

Since Weldon assumed the position of Staff Development Specialist, she has never evaluated any certificated employee, nor is she expected to participate in grievance procedures on behalf of the district. Weldon has never belonged to the bargaining unit of certificated employees represented by the Northshore Education Association, nor has she ever received any publications regularly sent to bargaining unit members.

#### POSITIONS OF THE PARTIES:

The employer argues that the staff development specialist position is confidential within the meaning of RCW 41.59.020(3) and should, therefore, be excluded from the bargaining unit of certificated employees represented by the Northshore Education Association. The employer contends that the employee holding the disputed position, Marion Weldon, is in a close fiduciary relationship with the district's administrative staff, and she participates in all areas of policy making, including labor relations. The employer further asserts that unit membership would create a conflict of interest for Weldon because of the nature of her duties.

The union does not dispute that Weldon holds an administrative position in the district, but argues that Weldon's duties do not imply a confidential relationship requiring exclusion from the certificated bargaining unit. The union asserts that the confidential exclusion must be narrowly construed and that Weldon's position does not fit within the exclusion.

#### DISCUSSION:

Although the employer contends that the staff development specialist should be excluded on the basis of confidentiality, the employer's closing brief emphasizes the disputed employee's duties, skills and working conditions as an administrator. It is undisputed that the employer intended that the staff development specialist was to be administrative when the position was

created. However, the title "administrator" is not, by itself, determinative in unit clarification matters.

RCW 41.59.080(1) requires inclusion of all non-supervisory educational employees in a single bargaining unit. "educational employee" is defined in RCW 41.59.020(4) which provides:

The terms "employee" and "educational employee" means any certificated employee of a school district except:

- (a) The chief executive officer of the employer.
- (b) The chief administrative officers of the employer, which shall mean the superintendent of the district, deputy superintendents, administrative assistants to the superintendent, assistant superintendents, and business manager....

It is evident that the staff development specialist is not a chief administrative officer of the Northshore School District. For the first year of employment, the staff development specialist did not have a formal job description and the employer used a work evaluation form to define the employee's duties. The affected employee serves as a support person in the district's administrative staff, but nothing in the record suggests that the staff development specialist has any responsibilities associated with those of a "chief" administrative officer for the district. The Public Employment Relations Commission has addressed similar situations in numerous other cases involving the bargaining unit status of administrative personnel in school districts. The Commission has repeatedly held that administrative employees whose duties are routinely clerical or ministerial in nature, and who serve as resource personnel in support of the educational program, should be included in non-supervisory educational employee bargaining units. See: Renton School District No. 403, Decision No. 951 (EDUC, 1980), and Grandview School District No. 116-200, Decision No. 1140 (EDUC, 1981). It has been held repeatedly that the absence of teaching duties is not a sure indicator of bargaining unit status, nor is compensation on an "administrative" salary schedule determinative. See: Clover Park School District No. 400, Decision No. 376 (EDUC, 1978) and Tacoma School District No. 10, Decision No. 652-A (EDUC, 1979).

The staff development specialist coordinates educational programs offered to certificated employees. The specialist, Marion Weldon, does not evaluate certificated employees nor does she evaluate educational programs in such a manner that could be characterized as a method of evaluating the certificated employees within the programs. Rather, Weldon's duties more closely resemble those of the Title I coordinator, and elementary specialist discussed in Clover Park, supra, and coordinator of self contained programs discussed in Spokane School District No. 81, Decision No. 1095 (EDUC, 1981). Those employees were found to serve as support personnel who should be included in the existing bargaining unit of non-supervisory certificated employees. Weldon's duties as staff development specialist do not require exclusion as an administrative employee.

The employer's contention that Weldon should be excluded as a confidential employee is not supported by the record. RCW 41.59.020(4)(c) defines a confidential employee as:

- (i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and
- (ii) Any person who assists and acts in a confidential capacity to such person."

While Superintendent Love's testimony indicates a high degree of trust in Weldon, the record does not support a claim that Weldon has any part in labor relations matters. Weldon participates in groups, such as the inservice committee, formed by terms of the collective bargaining agreement. However, she did not have any part in creation of the committee, nor does she have independent authority over the committee's decisions. Weldon helps establish programs for the inservice day set by the parties through collective bargaining, but she does not have any part in the negotiations which led to the creation of the inservice day. Weldon merely administers inservice training opportunities provided to certificated employees through the collective bargaining agreement. Although Weldon works extensively with the district's administrative staff, such contact cannot be considered confidential. It is appropriate to include the position of staff development specialist in the existing bargaining unit of non-supervisory certificated employees represented by the Northshore Education Association.

#### FINDINGS OF FACT

1. Northshore School District No. 417 is an "employer" within the meaning of RCW 41.59.020(5).
2. Northshore Education Association is an "exclusive bargaining representative" within the meaning of RCW 41.59.020(6), which represents a bargaining unit of certain certificated employees employed by the district.
3. The union and the employer were parties to a collective bargaining agreement in effect from August 1, 1979 through July 31, 1981 which described the bargaining unit as:

"...all educational employees whether under contract or letter of intent, or on leave, or on hourly rate basis. Such representation shall exclude the Superintendent, Assistant Superintendents, District General Counsel,

District Directors, Assistant Directors, Supervisors, Principals, Vice-Principals, Administrative Assistants to the Principal, Assistant Principals, and the District Librarian."

4. During the 1980-1981 school year, the district created a new position, the staff development specialist, to coordinate inservice training programs on a district-wide basis. Marion Weldon applied for the position in August, 1980, and assumed her duties shortly thereafter.

5. As staff development specialist, Weldon initially reported to Frank Love, then assistant superintendent. Love became superintendent and reorganized the district administrative staff in May, 1981. After reorganization, Weldon reported to Russell Sage, Director of the Instructional Materials Center and Inservice. Weldon is evaluated in the same form used for members of the district's administrative staff. Weldon works 226 days a year. Her salary has heretofore been established on the district's administrative salary schedule.

6. Weldon coordinates inservice training for members of the certificated bargaining unit, members of the administrative staff, as well as classified employees working as bus drivers and secretaries. Weldon monitors district compliance with federal and state programs, and she participates in an inservice committee created by the collective bargaining agreement. The committee, composed of administrators and bargaining unit members, makes suggestions on how \$50,000 set aside for inservice training should be spent. Suggestions must be submitted to Russell Sage, who has full authority over expenditures.

7. Weldon has attended meetings of the Cabinet and Executive Cabinet, two administrative groups used to establish district policy. Labor relations matters have been discussed in both groups, but Weldon has never participated in discussions relation to labor relations policy or collective bargaining.

8. Weldon has never participated in collective bargaining on behalf of the district, nor is she privy to confidential information concerning the labor relations strategies and policies of the employer.

#### CONCLUSIONS OF LAW

1. No question concerning representation presently exists and the Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.59 and Chapter 391-35 WAC to issue an order clarifying the bargaining unit.



2. The staff development specialist is a non-supervisory educational employee of the district within the meaning of RCW 41.59.020(4) and (8).

ORDER CLARIFYING BARGAINING UNIT

The existing bargaining unit described in Finding of Fact 3 is clarified to include the position of staff development specialist.

DATED at Olympia, Washington this 6th day of April, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director