

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
PUBLIC SCHOOL EMPLOYEES OF	)	CASE NO. 3135-C-80-145
WENATCHEE	)	
For clarification of an existing	)	DECISION NO. 1197 - PECB
bargaining unit of employees of:	)	
WENATCHEE SCHOOL DISTRICT NO. 246	)	ORDER CLARIFYING
	)	BARGAINING UNIT

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Edward A. Hemphill, Attorney at Law, appeared on behalf of Public School Employees of Wenatchee.

Donald I. Richards, Labor Relations Director, appeared on behalf of Wenatchee School District No. 246.

Public School Employees of Wenatchee (hereinafter, PSE) filed a petition on October 30, 1980, wherein it requested a ruling with respect to whether the position of serviceman/driver should be included in or excluded from the bargaining unit of employees of Wenatchee School District No. 246 (hereinafter, the district) represented by PSE. A hearing was held on April 22, 1981, in Wenatchee, Washington before Ronald L. Meeker, Hearing Officer. PSE submitted a post-hearing brief.

POSITION OF THE PARTIES:

PSE contends the serviceman/driver should be included in the bargaining unit of school bus drivers represented by PSE or, in the alternative, that the driver portion of the classification should be included in the existing unit as a regular part-time driver.

The district contends the serviceman/driver is two employees working under a dual classification, that this classification should not be added to the bargaining unit, and that the Public Employment Relations Commission does not have the authority to break the classification apart into two classifications of "serviceman" and "driver" so as to include the employees in the bargaining unit for part of their work.

BACKGROUND:

On October 4, 1974, PSE was certified by the Washington State Department of Labor and Industries as the exclusive collective bargaining representative of:

INCLUDED: All full and regular part-time school bus drivers employed by the Wenatchee School District No. 246.

EXCLUDED: All other employees of Wenatchee School District No. 246. (See Exhibit E-4).

The certification was based on a cross-check of authorization cards against a list of eighteen employees which the district submitted. That list included the names of the two employees who occupied the disputed classification of "serviceman/driver" in 1974.

The district and PSE have had a continuous bargaining relationship since 1974. Correspondence dating from March, 1975, indicates that the district continued to consider eighteen employees as bargaining unit members covered by a collective bargaining agreement signed at that time. At the present time, their labor agreement contains the following recognition clause:

"Recognition

Section 1.1 The District recognizes the association as the exclusive bargaining representative of all classified employees whose job description is defined as full-time and regular part-time school bus drivers employed by the district.

Section 1.2 Upon request the district shall provide job descriptions to the association for the employees that the association represents. The district will notify the association of significant modification of existing positions."

It is undisputed that PSE has not represented, and does not now claim to represent, persons employed by the district as "mechanic". None of the early documents make specific reference to the disputed serviceman/driver classification.

DISCUSSION:

Dealing with the District's Motion to Adjourn the Hearing

A petition for unit clarification may be filed at any time a disagreement exists concerning unit definition in the absence of a question concerning representation. City of Richland, Decision 279-A (PECB, 1979). In Union Electric Company, 217 NLRB 666 (1975) the NLRB set forth and applied its policies on unit clarification:

"Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the placement of individuals who, for example, come within a newly established classification of disputed unit

placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category - excluded or included - that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent." (Emphasis supplied).

Adopting its policies on the subject, the Public Employment Relations Commission stated:

"Absent a change of circumstance warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed. However, both accretions and exclusions can be accomplished through unit clarification in appropriate circumstances. If, as contended by the employer and found by the authorized agent, the agreed unit is found by intervening decisions of the Commission or the Courts to be inappropriate, it may be clarified at any time."

City of Richland, Decision 279-A (PECB, 1978); aff. Benton Co. Superior Court, (1978); aff., Court of Appeals, (Div 3, 1981); cert den., Washington Supreme Court (1981).

The uncontroverted testimony of William Dorsett shows there has been no change in circumstances. He and David Holcomb were in the position of serviceman/driver in 1974 and are occupying the same positions at present. Both serviceman/driver employees were included on the list of bus drivers submitted by the district for the card check; both are on the yearly seniority list of drivers compiled by the district; both are permitted to bid along with the other drivers for the bus runs of their choice; and both are assigned regular morning and afternoon bus runs. It is clear from this testimony and supporting exhibits that the two disputed positions are and always have been regular school bus drivers included in the bargaining unit represented by PSE.

The foregoing is sufficient to form the basis for an order clarifying the bargaining unit; but does not dispose of the primary argument advanced by PSE in this case. PSE seeks an order putting the "serviceman" aspects of the "serviceman/driver" classification within the work jurisdiction of its bargaining unit. To do so, it would be necessary to give a liberal reading

to the "full-time...school bus drivers" language of the certification so as to conclude that the "serviceman" tasks performed by the disputed individuals fell within the meaning of "school bus driver", and then to conclude that there has been no modification of the bargaining unit since its inception. The facts in the record uniformly suggest an opposite result.

There is no evidence that PSE has ever bargained with the employer concerning the wages, hours and working conditions of the disputed individuals with respect to their "serviceman" assignments. The employer has established annual salary levels for the serviceman/driver and mechanic classifications. PSE has never challenged that process or the rates paid to the serviceman/drivers, evidently because the effective joint hourly rate paid to the disputed individuals for their year-around employment is higher than specified in the PSE contract for bus drivers. Similarly, the employer provides the disputed individuals with holiday and vacation benefits usually associated with year-around employment which are above and beyond the 180 day bus driver work year and the school year orientation of the PSE contract. At least one other case is noted where mechanical personnel of a school transportation function were not included in a "driver" unit. See: Yelm School District, Decision 704, 704-A (PECB, 1979).

Whether intentionally or by happenstance, it appears that the parties, by their conduct at the time of the original certification and by their history of bargaining, have created a class of dual-function employees. See: Clover Park School District, Decision 683 (PECB, 1979); Pacific County, Decision 861 (PECB, 1979); Berea Publishing Company, 140 NLRB 516 (1963). Even if the employer contemplated that the serviceman/driver employees were to be fully within the bargaining unit at the time of the cross-check, the serviceman aspects of the job have been so completely omitted from the subsequent dealings of the parties as to suggest waiver by the union of any bargaining rights it ever had. Absent some provision of the statute, or some change of factual circumstances, which would require a conclusion that the continued omission of the "serviceman" work from the driver unit makes the driver bargaining unit inappropriate, there is no basis on which to undo the unit structure implemented continuously since 1974. Further, if we are dealing with dual-function employees, the question is NOT whether they are organized in both of their dual capacities (as is suggested by the union), but whether they have the right to organize. As was the case in Clover Park and Berea, supra, these dual-function employees have independent organizational rights in each of their capacities. The right to organize includes the concomitant rights of majority choice of organizations or of no organization, and the existence of that right of employee free choice gives rise to a question concerning representation which cannot be disposed of in a unit clarification proceeding.

FINDINGS OF FACT

1. Wenatchee School District No. 246 is a school district organized under Title 28-A RCW and is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Wenatchee, a labor organization and bargaining representative within the meaning of RCW 41.56 is the certified exclusive bargaining representative of all full time and regular part-time school bus drivers employed by Wenatchee School District No. 246.
3. A dispute has arisen concerning the unit status of serviceman/driver.
4. Incumbents of the serviceman/driver classification were included on the list of school bus drivers submitted by the district for the cross-check of authorization cards which resulted in PSE being certified as the exclusive bargaining representative.
5. The serviceman/drivers are included by the district on the school bus drivers seniority list, are allowed to bid with the other drivers for the bus runs of their choice, and are assigned by the district to regular morning and afternoon bus runs.
6. Public school Employees has not represented incumbents of the serviceman/driver classification with respect to their wages, hours or working conditions other than as to the bus driver aspects of their employment. The employer has, without objection from the union, established wages and benefits for said employees for their activities outside of bus driving.

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 391-35, et. seq. concerning the composition of an existing bargaining unit.
2. The serviceman/driver employees are within the scope of the existing bargaining unit with respect to their bus driver assignments.
3. The serviceman/driver employees have not been included in the existing bargaining unit or represented by the petitioner as to their wages, hours and working conditions with respect to their serviceman assignments, and a question concerning representation would arise as to employees performing serviceman work.

ORDER

The bargaining unit described in Findings of Fact No. 4, above, is clarified to include the classification serviceman/driver as to bus driver activities and assignments.

DATED at Olympia, Washington this 24th day of November, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", written in dark ink.

MARVIN L. SCHURKE, Executive Director