

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  BETHEL SCHOOL DISTRICT NO. 403 )  For clarification of an existing ) bargaining unit of employees ) represented by: )  PUBLIC SCHOOL EMPLOYEES OF ) BETHEL )	CASE NO. 1398-C-78-59  DECISION NO. 882-PECB  ORDER CLARIFYING BARGAINING UNIT
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Craig W. Hanson, attorney at law, appeared on behalf of the employer.

G. P. Sessions, attorney at law, appeared on behalf of the exclusive bargaining representative.

By petition filed February 16, 1978, Bethel School District No. 403 (hereinafter called employer) requested the Public Employment Relations Commission to clarify an existing bargaining unit with respect to the positions "Secretary to the Administrative Assistant" (Director of Personnel) and "Secretary to the Assistant Superintendent". On July 6, 1978, Public School Employees of Bethel (hereinafter called union) filed a cross-petition proposing that the existing bargaining unit be clarified to include "all classified employees except the Secretary to the Superintendent". A pre-hearing conference was held on December 20, 1978. A formal hearing was conducted before Jack T. Cowan, Hearing Officer, on May 17, 1979.

The parties stipulated that the position "Secretary to the Administrative Assistant" (Director of Personnel) was confidential within the meaning of RCW 41.56.030(2) and was, therefore, exempt from the coverage of RCW 41.56. By preliminary motion, the employer amended its petition to no longer seek clarification of the "Secretary to the Assistant Superintendent" position. Because of the amendment and stipulation, the employer's petition for clarification was no longer at issue. The union amended its cross-petition for clarification proposing that the bargaining unit should be composed of "all classified employees except Supervisors of Transportation, Food Services, Maintenance and Accounting Services and the Secretary to the Superintendent and the Secretary to the Director of Personnel". As a result of the union's amendment, the hearing was conducted with respect to clarification of the positions "Assistant Supervisors of Maintenance" and "Assistant Supervisor of Food Services". The parties submitted post-hearing briefs.

POSITIONS OF THE PARTIES

The employer argues that the "assistant supervisor" positions must be excluded from the existing bargaining unit. The employer points to a history of bargaining between the parties which has excluded supervisory personnel. The assistant supervisors' duties and conditions of employment are claimed to indicate that assistant supervisors hold true supervisory positions, and the employer contends that they do not share a community of interest with classified employees in the bargaining unit.

The union argues that the newly created assistant supervisor positions do not fall within the criteria for the exclusion of supervisors established by the Public Employment Relations Commission, and that the assistant supervisors do not share a community of interests with excluded supervisors. The union contends that assistant supervisors share certain duties with bargaining unit employees, and that creation of a separate unit of assistant supervisors would needlessly fragment the collective bargaining process.

BACKGROUND

In June, 1969, Bethel School District No. 403 voluntarily recognized Public School Employees of Bethel as exclusive bargaining representative of a bargaining unit composed of secretarial/clericals, teacher's aides, custodial/maintenance, food service employees and mechanics, excluding a school board clerk whose duties implied a confidential position. Bus drivers were added to the bargaining unit during the 1970-1972 period, and the 1972-1975 collective bargaining agreement described the unit as "all classified employees except the Food Services Supervisor, Maintenance Supervisor, Transportation Supervisor and Secretary to the Superintendent." A similar unit definition appeared in the 1975-1977 collective bargaining agreement with an additional exclusion provided for the Supervisor of Accounting Services. The collective bargaining agreement for 1977-1980 defines the bargaining unit as "all classified employees except Supervisors of Transportation, Food Services, Maintenance and Accounting Services and the Secretary to the Superintendent."

To meet an expected six to seven percent annual increase from a current student population of approximately 8700, the district has undertaken a \$30 million building program. The district has 12 school buildings, three of which are under construction, with a thirteenth in the planning stage. Since the ratification of the 1977-1980 collective bargaining agreement, the district hired a Director of Facilities to manage the building program and created the "assistant supervisor" positions at issue in these proceedings.

Assistant Supervisor of Food Services

In 1969 the district established a central kitchen to prepare food served in four "satellite" kitchens located in district schools. The central kitchen's daily operation is supervised by a Cook Manager, who is assisted by an Assistant Cook Manager. Cooks are responsible for food preparation, and Helpers perform various jobs associated with food preparation and transportation. Satellite kitchens have smaller staffs composed of Cooks and Helpers. Apart from the central and satellite kitchens, three schools have self-contained kitchens with kitchen staffs similar to that found in the central kitchen. At the time of hearing, the district employed 41 service employees in the various kitchens.

The Supervisor of Food Services manages the district's food service program and reports to the Deputy Superintendent for Administrative Services. The supervisor is responsible for budget concerns such as purchasing, inventory and storage of food stuffs. In addition, the supervisor directs menu planning and assists the Director of Personnel in recruitment, selection and assignment of food service employees.

The "Assistant Supervisor of Food Services" position has existed for approximately two years. The present assistant supervisor originally worked as a Cook Manager in the central kitchen, but was displaced from that position as a result of an arbitration award which ordered the district to reinstate a grievant as a Cook Manager. Shortly after the reinstatement, the Supervisor of Food Services had to be placed on limited duty because of failing health. At that time, the district created the assistant supervisor position and filled it with the displaced Cook Manager. The assistant supervisor works a six and one-half hour day and receives an annual salary based on a 230 day work year under an employment contract which is negotiated directly with the Assistant Superintendent for Administrative Services. Visiting each kitchen about twice weekly, the assistant supervisor instructs food service employees in meal preparation and evaluates the performance of kitchen staffs. While instructing food service employees, the assistant supervisor works as a member of the kitchen staff in the preparation of meals. With the concurrence of the Cook Manager, the assistant supervisor can assign food service employees to particular jobs within the kitchen. The assistant supervisor can also recommend transfer of employees from one kitchen to another. Before any action can be taken, the recommendation is submitted to the Supervisor of Food Services who reviews the matter with the district's Personnel Department. The assistant supervisor's recommendations about disciplinary action and hiring new employees must also be submitted to the Supervisor of Food Services and the Personnel Department. In emergencies, the assistant supervisor is expected to assume the responsibilities of absent food service employees and may temporarily fill

any position from Supervisor of Food Services to kitchen helper. Considered to be part of the district's supervisory staff, the assistant supervisor is on call 24 hours a day. The assistant supervisor attends management meetings, and, with the Supervisor of Food Services, takes part in discussion with bargaining unit employees working in food services. The assistant supervisor does not participate in collective bargaining negotiations or grievance administration.

#### Assistant Supervisor of Maintenance

The district's maintenance staff is composed of 16 skilled maintenance and 31 custodial employees who work under the general direction of the Supervisor of Maintenance. The supervisor reports to the Director of Facilities and is responsible for the daily operation of the district's physical facilities. The supervisor also evaluates cost estimates for maintenance projects and routinely inspects facilities to insure that they are in proper condition. At the time of hearing, maintenance employees reported directly to the Supervisor of Maintenance. However, the district was in the process of hiring an assistant supervisor to assume responsibilities over skilled maintenance employees. Presently, the district employs an Assistant Supervisor of Maintenance who is in charge of custodial employees. The assistant supervisor evaluates the performance of custodial employees and selects the supplies to be used for particular jobs. With the approval of the Supervisor of Maintenance and the Personnel Department, the assistant supervisor can recommend assignment of custodians to specific jobs. The assistant supervisor calls periodic meetings of custodial employees for training purposes and performs general maintenance duties as time allows.

The assistant supervisor is on call 24 hours a day and can assume the responsibilities of the Supervisor of Maintenance in emergencies. As with the Assistant Supervisor of Food Services, the Assistant Supervisor of Maintenance negotiates an employment contract with the Assistant Superintendent for Administrative Services and receives an annual salary based on a 230 day work year. The assistant supervisor aids in the preparation of fiscal analyses of custodial services and participates in meetings with bargaining unit representatives as part of the district's management staff.

#### DISCUSSION

The "assistant supervisor" positions at issue in these proceedings were created after the ratification of the existing collective bargaining agreement. The district interposed the positions within the existing supervisory staff and specified certain duties which would tend to indicate that the employees are supervisors in the traditional sense of the term. However, the manner in which the assistant supervisors are expected to carry out

their duties indicates that the employees are not supervisors and should, therefore, be included in the existing bargaining unit. The assistant supervisors receive a higher rate of compensation than do bargaining unit employees, and the assistant supervisors do take part in some management meetings. However, such secondary indices of supervisory status cannot justify exclusion from a bargaining unit if the duties performed by the employees in question do not clearly indicate that they act in a supervisory capacity.

The assistant supervisors work with the employees in the Food Services Program and the Maintenance Department, and they are expected to perform bargaining unit work as part of their normal responsibilities. The assistant supervisors can make recommendations about the operation of the departments; but before any action can be taken, the Supervisor of Maintenance or the Supervisor of Food Services must agree with the recommendation, and then the matter is submitted to the Personnel Department for final approval. In the case of the Assistant Supervisor of Food Services, even recommended assignments of bargaining unit employees to particular jobs in the kitchen cannot be undertaken without the approval of the Cook Manager, a bargaining unit employee. Such recommendation may have some bearing on the operation of the particular department, but it cannot be said that the assistant supervisors "effectively" recommend any action pertaining to the assignment, promotion, transfer or discharge of bargaining unit employees in the Food Services or Maintenance Departments. The record does not indicate that they have any authority to adjust the grievances of their subordinates.

The assistant supervisors' roles do not conflict with the community of interest of bargaining unit employees so as to require exclusion from the bargaining unit. While the assistant supervisors possess limited authority relating to purchasing supplies and take part in management meetings, they spend a majority of their time with the bargaining unit employees. The assistant supervisors are primarily lead workers, quality control inspectors, utility workers and/or on-the-job training instructors. See City of Buckley, Decision 287-A (PECB, 1977) and City of Issaquah, Decision 395 (PECB, 1978).

Inclusion of assistant supervisors would not disrupt the district's supervisory capabilities. "Working foremen" who perform the same work as other bargaining unit employees have been excluded from the bargaining unit where inclusion would destroy the only layer of supervision between the employees and the employer's management personnel. Luke's Supermarket, Inc., 228 NLRB 91 (1977). However, even if assistant supervisors are included in the existing bargaining unit in this case, the district can still rely on the Supervisor of Food Services and the Supervisor of Maintenance to provide general supervision over the respective departments.

FINDINGS OF FACT

1. Bethel School District No. 403 is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Public School Employees of Bethel, an affiliate of Public School Employees of Washington, is a labor organization within the meaning of RCW 41.56.010 and a bargaining representative within the meaning of RCW 41.56.030(3).
3. Public School Employees of Bethel has been recognized as the exclusive bargaining representative of classified employees of Bethel School District No. 403 excluding the Supervisors of Transportation, Food Services, Maintenance and Accounting Services and the Secretary to the Superintendent. The parties have agreed that the Secretary to the Administrative Assistant (Director of Personnel) is a confidential employee within the meaning of RCW 41.56.030(2) and is exempt from coverage of RCW 41.56. A dispute has arisen as to whether the assistant supervisor of food Services and the assistant supervisors of maintenance should be excluded from the existing bargaining unit.
4. The assistant supervisor of food services and the assistant supervisors of maintenance work under job descriptions which have been in effect only after the ratification of the 1977-1980 collective bargaining agreement. The disputed individuals do not possess authority to effectively recommend action on hiring, discharge, evaluation, assignment and grievance disposition.
5. The record in the proceeding does not disclose that the disputed individuals necessarily have an intimate fiduciary relationship with the superintendent of school of the employer on matters involving the labor relations policies of the employer.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists in the bargaining unit described in paragraph 3 above, and the Public Employment Relations Commission has jurisdiction to issue an order in this matter clarifying the existing bargaining unit.
2. The Secretary to the Administrative Assistant (Director of Personnel) is a confidential employee and is exempt from coverage of RCW 41.56.

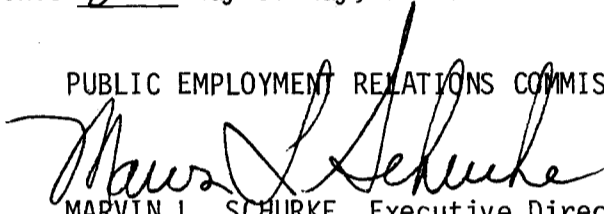
3. The assistant supervisor of food services and the assistant supervisors of maintenance are non-supervisory public employees who, despite their titles, function as lead workers or working foremen.

ORDER

The bargaining unit described in paragraph 3 of the foregoing findings of fact is clarified to include the positions assistant supervisor of food services and assistant supervisors of maintenance.

DATED at Olympia, Washington, this 8th day of May, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director