

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CONCRETE SCHOOL DISTRICT NO. 11)	CASE NO. 3990-C-82-193
and)	DECISION NO. 1485 - PECB
PUBLIC SCHOOL EMPLOYEES OF)	
CONCRETE SCHOOL DISTRICT NO. 11)	
For clarification of an existing)	ORDER CLARIFYING
bargaining unit of employees.)	BARGAINING UNIT
<hr/>		

Edward A. Hemphill, Attorney at Law, appeared on behalf of the union.

Chuck Foster, Labor Relations Specialist, appeared on behalf of the employer.

Concrete School district No. 11 (hereinafter District) and Public School Employees of Concrete (hereinafter PSE) filed a joint petition on March 4, 1982, wherein they requested a ruling with respect to whether the positions of Transportation Supervisor and Maintenance/Custodial Supervisor should be included in or excluded from the bargaining unit of the District's employees represented by PSE. A hearing was held on May 19, 1982 in Concrete, Washington before Ronald L. Meeker, Hearing Officer. Post-hearing briefs were filed by the parties.

POSITIONS OF THE PARTIES:

The District contends the positions in question are both supervisory. At the hearing the District stipulated that neither of these positions were confidential.

The union contends the two positions in question share a substantial community of interest with employees in the bargaining unit and cites the Commission's decision in City of Hoquiam, Decision 880 (PECB, 1980). PSE further contends the Commission's decision in Wilbur School District, Decision 1374 (PECB, 1982) as being an exact parallel to this case and should be controlling.

BACKGROUND:

The parties have had a bargaining relationship for a number of years. The current job descriptions for the two disputed positions have been in effect for at least four years prior to the hearing. The job descriptions were last modified July 11, 1978. The current labor agreement was signed on July 23, 1980 and effective for the period September 1, 1980 to August 31, 1983. That agreement contains the following language:

RECOGNITION AND COVERAGE OF AGREEMENT

Section 1.1. The District hereby recognizes the Association as the exclusive representative of all employees in the bargaining unit described in Section 1.4, 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 person 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. Descriptions for all positions subject to this Agreement shall be as specified in Section 1.3.1 and shall remain in effect during the term of this Agreement. Modification of existing positions or the creation of new positions, shall require consultation pursuant to Article V and mandatory salary negotiation pursuant to Article XVII, Section 17.3.

Section 1.3.1. Current position descriptions shall be identified by Schedule A title, School Board of Directors Policy number and date of adoption, and shall be as specified on Schedule B, attached hereto and by this reference incorporated herein.

Section 1.4. The bargaining unit to which this Agreement is applicable shall consist of all classified employees in the following general job classifications: Custodial, Maintenance, Food Service, Transportation, Secretarial and Aides. EXCEPT: The Superintendent's Secretary and the Business Manager.

That agreement provided for annual "wage reopeners" and was reopened for negotiations for 1981-82. A letter of agreement dated March 20, 1981 was signed by the parties on March 23, 1981 which specifically established the wage rates for the disputed positions.

The District has twenty-three classified and twenty-six certificated employees. There are two buildings plus a maintenance shop. Of the classified employees, seven are bus drivers who are directly supervised by the Transportation Supervisor. The Maintenance/Custodial Supervisor directly supervises six custodial employees. Both supervisors report directly to the superintendent of the district.

The record shows that in July of 1981, Mr. Carl Shaff became the superintendent of the Concrete School District. Shortly after his arrival, the Transportation Supervisor met with him to discuss the supervisor's responsibilities in the event of a strike by the classified employees. As a result of this meeting, indirectly at least, the parties jointly filed the instant petition seeking a unit clarification.

DISCUSSION:

There may be little question from this record that the Transportation Supervisor and the Maintenance/Custodial Supervisor are now and for some time have been "supervisors" within the meaning of Section 2(11) of the National Labor Relations Act. They are involved in hiring, evaluation, discharge, assignment, transfer and grievance administration. However they have been included in the PSE bargaining unit for the past four or more years by the negotiated agreements of the parties. In Toppenish School District, Decision 1143-A (PECB, 1981), the Public Employment Relations Commission announced its policy concerning the availability of unit clarification procedures during the life of a collective bargaining agreement covering the position, as follows:

A mid-term unit clarification is available to exclude individuals from a bargaining unit covered by an existing collective bargaining agreement if:

- a) The petitioner can offer specific evidence of substantial changed circumstances that would warrant such an exclusion,

or

- b) The petitioner can demonstrate that, although it signed a collective bargaining agreement covering the disputed position, it put the other party on notice that it would contest the inclusion via the unit clarification procedure and file a petition for unit clarification with the Commission prior to the conclusion of negotiations.

The evidence shows no change in duties and responsibilities of the positions in the past four years.

FINDINGS OF FACT

1. Concrete School District No. 11 is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Public School Employees of Concrete, 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 Concrete has been recognized as the exclusive bargaining representative of all classified employees of Concrete School District No. 11 in the following general job classifications: Custodial, Maintenance, Food Service, Transportation, Secretarial and Aides. EXCEPT: The Superintendent's Secretary and the Business Manager. The Transportation Supervisor and the Maintenance/Custodial Supervisor were included in the bargaining unit and covered by the provisions of a collective bargaining agreement signed by the parties on March 23, 1981 and effective through August 31, 1983.
4. The Transportation Supervisor and the Maintenance/Custodial Supervisor each work under job descriptions which are and have been in effect for a substantial period of time without change. The individuals holding these positions have authority in the interest of the employer to act or effectively recommend action on hiring, discharge, evaluation, assignment and grievance disposition. There has been no change of circumstances since the current collective bargaining agreement was signed.
5. The parties stipulated on record in this proceeding that the disputed positions are not "confidential" within the meaning of RCW 41.56.030(2)(c).

CONCLUSIONS OF LAW

1. No question concerning representation presently exists in the bargaining unit described in paragraph 3 of the foregoing findings of fact, and the Public Employment Relations Commission has jurisdiction in this matter to issue an order clarifying the bargaining unit.
2. The Transportation Supervisor and the Maintenance/Custodial Supervisor are public employees within the meaning of RCW 41.56.030(2).
3. The Transportation Supervisor and the Maintenance/Custodial Supervisor have been included in the existing bargaining unit by agreement of the parties and no change of circumstances has been shown which warrants a conclusion that their continued inclusion in that unit at this time is inappropriate.

ORDER

The bargaining unit described in paragraph 3 of the foregoing findings of fact is clarified to continue the inclusion of the Transportation Supervisor and the Maintenance/Custodial Supervisor.

DATED at Olympia, Washington this 23rd day of November, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marvin L. Schurke", is written over the printed name.

MARVIN L. SCHURKE, Executive Director