STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
TOPPENISH SCHOOL DISTRICT	CASE NO. 2165-C-79-99
For clarification of an existing bargaining unit of its employees represented by:	DECISION NO. 1143 - PECB
PUBLIC SCHOOL EMPLOYEES OF WASHINGTON	ORDER CLARIFYING BARGAINING UNIT

Robert Schwerdtfeger, Labor Consultant, Washington State School Directors' Association, appeared on behalf of the employer.

G. P. Sessions, Attorney at Law, appeared on behalf of the union.

On July 9, 1979, Toppenish School District No. 202 filed a petition with the Public Employment Relations Commission seeking clarification of an existing bargaining unit with respect to the positions of transportation supervisor, food service supervisor and maintenance-custodial supervisor. A hearing was held at Yakima, Washington on June 3, 1980 before James N. Leibold, Hearing Officer.

BACKGROUND:

The parties have a collective bargaining relationship which dates to some time prior to July 1, 1976. On March 17, 1977, they executed a letter of agreement amending an existing contract in certain respects. There is no reference to supervisors in that document.

On January 18, 1979, they executed a collective bargaining agreement covering the period from September 1, 1978 through August 31, 1981. That agreement contains the following:

> "Recognition and Coverage of Agreement
>
> Section 1.1 The School Board and the Superintendent of School District Number 202 recognize the Local Organization of Public School Employees of District Number 202, an affiliate of the Public School Employees Organization of Washington, as the

> exclusive bargaining representative of all the employees of the following units: Food Service, Transportation, Custodial-Maintenance, Teachers' Aides, and Secretaries for the purpose of consulting and negotiating on appropriate matters applicable to any and all employees in the units. Excluded: Secretary to the Superintendent, Secretary to the Assistant Superintendent, and Secretary to the Business Manager."

Specific provision is made in the wage schedule of that agreement for rates of pay for supervisors of transportation, food service and custodial-maintenance. Letters of agreement executed by the parties after the filing of the petition continued to make provision for wage rates for the supervisors.

POSITIONS OF THE PARTIES:

The district contends that, in connection with an administrative reorganization begun in 1977, the three positions called into issue in these proceedings have been given supervisory duties, including authority concerning hiring and termination of employees, which precludes their continued inclusion in the same bargaining unit with the employees they supervise. It indicates that it has pursued this petition, at least in part, in response to concerns expressed by the incumbents of the disputed positions.

The union commences its argument from the premise the "supervisors" are public employees within the meaning of RCW 41.56. It goes on to indicate its fundamental disagreement with the unit determination policies followed by the Public Employment Relations Commission since 1977, contending that the Commission has improperly imposed a "supervisor" definition and exclusion policy on cases arising under RCW 41.56. Finally, the union contends that the disputed individuals are not supervisors, but working foremen or leadmen who have been voluntarily included in a bargaining unit and should, under Commission precedent, remain in the bargaining unit.

DISCUSSION:

We have in this case an example of a type of problem which has been repeated so often in cases before the Commission as to be a classic situation: A public employer has disseminated small amounts of management authority to each of several so-titled "supervisors" in the name of establishing a "management team"; but has failed in the process to create positions which will be viewed and respected as an arm of

management. Put another way, cases such as this would likely not be litigated if public managements vested their agents with substantial authority and simultaneously removed them from the work claimed by rank-and-file employees as their own.

The record made by the parties leaves much to be desired. The entire transcript of the hearing fills only 39 pages. The employer came to the hearing unprepared to respond to requirements stated in the notice of hearing. The employer produced only one witness, the Superintendent of Schools, who was unable to testify from personal knowledge as to the details of the work of the disputed individuals and their subordinates. The union called no witnesses. Three stipulated exhibits, constituting job descriptions of the disputed positions which were developed by the employer in preparation for the hearing, rise to an inordinate weight in this record.

The legal arguments advanced by the union concerning the "supervisor" policies of the Commission have been rejected before and are not persuasive here. The predecessor to the Commission, the Washington State Department of Labor and Industries, had sought for some time to exclude "supervisors" from the coverage of RCW 41.56. In its first opportunity to do so, the Commission held in a case involving a separate unit of supervisors that supervisors were employees within the meaning of the RCW 41.56. City of Tacoma, Decision 95-A (PECB, 1977). Reversing the Department of Labor and Industries, our Supreme Court reached the Tacoma result in Municipality of Metropolitan Seattle v. L & I, 88 Wn.2d 930 (1977), relying on Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947), which in turn called for placement of supervisors into separate units of supervisors. These principles are now well established.

The job descriptions indicate that the disputed individuals have authority to engage in "recruiting", "termination of ... personnel", "to hear and rule on grievances", "establish priorities" and "assign ... duties". Those duties place them in a position of potential conflict with those they supervise. Having virtually abdicated its responsibilities at the hearing, the union is hardly in a position to seriously oppose a finding, based on the uncontested evidence of record, that the disputed individuals are now supervisors.

A more difficult question remains. Although the employer indicates that the supervisors have indicated an interest in separation, this matter is not before the Commission on a petition of the supervisors seeking creation of a separate unit of supervisors. The decisions of the Commission require that there be some change of circumstances to warrant a change by unit clarification of bargaining unit status. City of Richland, Decision 279-A (PECB, 1978). Supervisors voluntarily included in a bargaining unit with rank-and-file employees by agreement of the parties will not be removed from the bargaining unit merely

because the management has a change of heart or finds it more convenient to have them excluded. City of Buckley, Decision 287-A (PECB, 1977); Camas School District, Decision 790 (PECB, 1979). The employer adduced the uncontroverted testimony of its Superintendent, to the effect that he came to the District in July, 1977, and immediately implemented a number of management changes, including the delegation of increased authority to the three supervisors in question. Those facts tend to invoke White Pass School District, Decision 573-A (PECB, 1979) and City of Seattle, Decision 689-A (PECB, 1979), where the Commission has indicated its willingness to recognize the effects of a new broom wielded by a new manager and to give deference to the right of managements to reorganize their management structures. However, so far as it appears from this record, there was no immediate effort to have these positions excluded from the bargaining unit. On the contrary, there is specific reference to the supervisors in the complete collective bargaining agreement signed by the parties a year and a half after arrival of the new superintendent. The reference to the supervisors in the contract tends to confirm that some changes had taken place which called for special treatment of the parties. The reference to the supervisors in the contract also confirms, without any doubt, that the parties negotiated about the supervisors as part of the bargaining unit six months prior to the filing of this petition. The facts of this case thus distinguish it from both Richland, supra, and White Pass, supra, where unit clarification petitions were on file prior to the signing of collective bargaining agreements covering the disputed positions. The changes occurred in July and August, 1977. The employer has not shown any change of circumstances occurring between the time the contract was signed and the time the petition was filed or heard. It thus appears that the union's reliance on City of Buckley and Camas School District is well placed.

FINDINGS OF FACT

1. Toppenish School District No. 202 is a public employer within the meaning of RCW 41.56.030(1).

2. Local Organization of Public School Employees of District No. 202, an affiliate of Public School Employees of Washington, is a bargaining representative within the meaning of RCW 41.56.030(3).

3. The collective bargaining agreement between the parties for the period September 1, 1978 through August 31, 1981 recognizes the Local Organization of Public School Employees of District No. 202 as the exclusive bargaining representative of all food service, transportation, custodial-maintenance, teacher aide and secretarial employees of the district, excluding the secretaries to the superintendent, assistant superintendent, and business manager. Said agreement makes specific

provision for supervisors as members of the bargaining unit. A dispute has arisen as to whether the transportation supervisor, food service supervisor, and maintenance-custodial supervisor should be excluded from the bargaining unit.

4. Job descriptions for the disputed positions indicate that the disputed individuals have authority regarding recruiting, termination of personnel, hearing and ruling on grievances, and establishing priorities and assigning duties of subordinates. Delegation of such authority to the disputed positions took place beginning approximately July, 1977, when a new superintendent took office in the district.

5. No evidence was adduced showing any change of circumstances of the disputed positions after approximately July - August, 1977 and, particularly no change has been shown after the date on which the parties executed the agreement referred to in paragraph number 3 of these findings of fact.

CONCLUSIONS OF LAW

1. No question concerning representation currently exists in the bargaining unit described in Finding of Fact number 3, and the Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.060 and Chapter 391-35 WAC.

2. The transportation, food service, and maintenance-custodial supervisors have been included in the existing bargaining unit by agreement of the parties. No change of circumstances has been shown which warrants their exclusion at this time.

ORDER

The transportation supervisor, food service supervisor, and maintenance-custodial supervisor shall continue to be included in the bargaining unit described in the foregoing findings of fact.

DATED at Olympia, Washington this 29th day of April, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director