

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of)	
LAKE WASHINGTON EDUCATION)	CASE NO. 4200-C-82-207
ASSOCIATION)	
For clarification of an existing)	DECISION NO. 1816 - EDUC
bargaining unit of employees of)	
LAKE WASHINGTON SCHOOL DISTRICT)	ORDER CLARIFYING
NO. 414)	BARGAINING UNIT

Symone B. Scales, attorney at law, appeared on behalf of the Lake Washington Education Association.

Livengood, Silvernale, Carter and Tjossem, by Robert P. Tjossem, attorney at law, appeared on behalf of Lake Washington School District No. 414.

On August 27, 1982, Lake Washington Education Association (association) filed a petition with the Public Employment Relations Commission seeking clarification of an existing bargaining unit. At issue are three persons employed by Lake Washington School District No. 414 (district) holding newly created positions titled "Dean of Students" at the district's senior high schools. A hearing was held on February 2, 1983 before Katrina I. Boedecker, Hearing Officer. At the outset of the hearing, the parties agreed to dismissal of a related unfair labor practice case (Case No. 4113-U-82-659) which had been set to be heard at the same time, and to proceed with the instant case. The parties submitted post-hearing briefs.

BACKGROUND

Lake Washington School District serves approximately 18,000 students, operating approximately 30 elementary and secondary school buildings as well as a vocational-technical institute. The district extended voluntary recognition to the association for the certificated non-supervisory bargaining unit during or about the year 1976. The collective bargaining agreement in effect at the time of the filing of this unit clarification petition was effective from September 1, 1980 through August 31, 1983.

In the district's senior high school buildings, the present management team is composed of a principal, an associate principal, an administrative assistant responsible for student activities and other administrative

functions as assigned by the principal, the disputed dean of students, and a data processing manager/registrar. In March, 1982, the school district advertised nationally seeking applicants for the newly created position of "Dean of Students". In the initial announcement, either counselor or administrative credentials were sufficient but, following objections raised by the association, the district amended the announcement to require eligibility for a Washington principal's certificate. Three people were hired to fill the positions at Lake Washington High School, Juanita High School and Redmond High School.

There are no major differences between the overall duties of the three deans. The district's position description provides that:

The Dean of Students is an administrator and supervisor of the school to which he/she is assigned and has full responsibility and authority for the day-to-day control and management of the school in all its operation within the school district policy. He/she is directly responsible to the associate principal.

The primary areas of responsibility assigned to the deans of students are administration of student attendance programs, maintenance of proper pupil behavior, evaluation and supervision of certain certificated and classified staff, supervision of school building facilities and student activities, and program development.

Administration of the student attendance program, including program development and enforcement, consumes approximately 60% to 65% of a dean's time. In the past, these responsibilities were normally delegated to an assistant (or vice-) principal. Although persons holding "principal" titles also have responsibility for maintaining proper student behavior, the deans of students are the usual officials to impose disciplinary sanctions on students if a situation warrants. Approximately 10% to 15% of a dean's time is spent attending to pupil personnel services such as maintaining district procedures relating to students who drop out of school, maintaining student records, recording and reporting pupil progress, and scheduling and coordination of student activities, fund raising and extra curricular activities (including recruitment and/or assignment of appropriate personnel to provide adequate supervision for all student activities). The deans of students are assigned as the administrative staff monitor for such student activities as yearbook, student newspaper and various student clubs. Each such activity has an employee from the non-supervisory certificated bargaining unit assigned to work directly with the students in the activity as "advisor". The deans' duties involve budget management, requisitions

approval and distribution of funds. These were handled in the past by a "vice-principal" or person of similar title. The deans of students act as liaison between the school and community agencies, courts and police authorities. These functions consume approximately 15% of a dean's time.

Each high school has counselors who are members of the certificated non-supervisory bargaining unit. Counselors deal with attendance-related matters primarily from a remedial standpoint. A counselor would typically spend six to seven hours per day conferring with students on a one-on-one basis, discussing academic standing and providing career counseling and crisis intervention. While each of the deans of students works closely with the counselors, they are distinguished from the counselors by the circumstance that none of the deans carry a regular counseling load of assigned students. The deans of students have no classroom teaching responsibilities or academic pupil contact. Instead, the deans of students deal with pupils regarding nonacademic problems that may interfere with the student's progress in the educational process. The two jobs are fundamentally different. A counselor's role is that of a friend, a supporter of the pupil, someone the student can talk to when in need. Such a role is different from and inconsistent with the duties of the dean, which include the imposition of discipline for engaging in misbehavior.

Each dean of students is directly involved in program development projects. At the time of the hearing, one of the deans was working through a transition program with regard to re-examining the job description of counselors and planning for short and long-term needs. Another of the deans was developing an alcoholic prevention program. The remaining dean of students developed a remediation program team.

Each of the deans of students has specific assigned responsibility as the supervisor and evaluator of record for certain certificated and classified employees of the district. The dean at Juanita High School supervises and evaluates the attendance secretary, the counseling center secretary, the vocational information specialist secretary, three certificated counselors, three special education teachers, a vocational information specialist and a learning specialist teacher. Formal evaluations are conducted at least two times per year. No other employer official is directly involved in those evaluations. The evaluations of certificated staff are discussed with the building principal, and the dean makes recommendations to the principal regarding adverse action to be taken with regard to the employees she evaluates, including probation and disciplinary action. The dean of students at Redmond High School directly supervises and evaluates three counselors, but the position description for that position also provides, in part, that the dean of students recommends assignment, reassignment and

contract (job) termination for all building staff. The dean of students at Lake Washington High School evaluates three counselors and the entire English department (which consists of eight certificated employees), but is also empowered to recommend assignment, reassignment, probation or contract termination for all building staff. Article XXIX, Section 29.1.1, of the collective bargaining agreement between the employer and the association recognizes that any principal or other supervisor may designate other certificated staff members to assist in the observation and evaluation process, provided that such staff members are not members of the bargaining unit represented by the association.

Details concerning other supervisory authority vary among the deans. In conjunction with the establishment of the remediation program at Redmond High School, the dean has requisitioned the hiring of a certificated employee. With the assistance of the associate principal, the same dean works toward meeting district goals in hiring handicapped and minority staff. It is undisputed that at least the dean of students at Juanita High School represents the employer in the first step of processing certificated bargaining unit members' grievances. That same individual estimated that she spends approximately 5% of her time engaged in exclusively supervisory activities.

Each dean has a 224 day (full year) contract, as compared to the 184 to 187 days of work annually provided to the teachers and counselors under their supervision. The deans are paid under a district salary plan that is the same as prescribed for the position of high school vice-principal or administrative assistant.

POSITIONS OF THE PARTIES

The association claims that the dean of students position is preponderantly non-supervisory, in support of the district's educational program. As such, the association contends that the disputed positions should be included in the association's bargaining unit along with other non-supervisory certificated employees of the district. Further, the association argues that the duties and functions of the new position are or have been performed by bargaining unit members, i.e. the counselors, who are educational employees and part of the bargaining unit.

The employer contends that the duties and functions of the dean of students position are clearly managerial, administrative and supervisory, and that the position is synonymous with that of a vice-principal. The district emphasizes that one of the primary functions of the position has been to administer the attendance program, which has always been considered to be a

duty of a vice-principal under RCW 28A.58.160. Moreover, the district argues the deans of students supervise, evaluate and manage the counselor programs and certain teachers and support personnel. The employer contends that the deans of students have the authority to effectively recommend assignment, promotion, transfer, layoff, recall, suspension, discipline or other appropriate action with respect to district employees and to adjust their grievances at the initial step. Therefore, the district argues the position falls within the supervisory exception set forth in RCW 41.59.020(4)(d).

DISCUSSION

It appears that the non-supervisory employees and their exclusive bargaining representative have been successful on a number of fronts in obtaining what they want with respect to limiting the tasks to be imposed on non-supervisory certificated employees of the district. The testimony of the counselors indicates that the counselors did not want to tarnish their relationships with students by acting in the role of disciplinarian. The deans of students at issue in this case are the disciplinarians set in place by the employer. The collective bargaining agreement between the parties provides for a duty-free lunch period, limits the number of assignments to be made to non-supervisory certificated employees and limits the assignment of "non-professional duties" to "a minimum whenever possible". The deans of students at issue in this case are included in the rotation of administrative personnel who are assigned by the employer to patrol the halls and lunchrooms of the schools, from which it is inferred that the "non-professional" work shunned by the bargaining unit employees has been "kicked upstairs" to the administration. The association protested when the employer initially advertised for the disputed positions with alternative qualifications which partially duplicated the qualifications of bargaining unit employees, so the employer retrenched to limit the recruitment to persons eligible for principal's credentials. The collective bargaining agreement between the parties acknowledges that some evaluation of bargaining unit employees will be done by designees of the principal in charge of the school, but precludes the employer's use of professional employees from within the bargaining unit to evaluate other professional employees within the bargaining unit. The deans of students have been given and have exercised authority on behalf of the employer as the evaluators of record of bargaining unit employees, thus performing a clearly supervisory and managerial task which, under the terms of the same collective bargaining agreement, must be performed. Having virtually forced the employer into the posture of hiring somebody outside of the bargaining unit to perform these tasks, the association is hardly in a position to object that those tasks are now being performed by a person excluded from that unit.

RCW 41.59.020(4)(e) excludes "principals and assistant principals" from the definition of "employee" unless such persons are included within a bargaining unit pursuant to RCW 41.59.080. The record does not indicate that principals have exercised their right to organize either a separate unit of principals or a mixed unit with either or both the supervisors or non-supervisory certificated employees of the district. The record discloses that the "vice-principal" title disappeared from the administrative structure of at least one of the district's high schools during the year immediately preceding the creation of the disputed dean of students positions. Had the district both required that applicants possess administrative credentials and perpetuated the use of the "principal" title, there would be little basis for the association to assert a claim to the position, since principals are excluded, as a class, from non-supervisory educational employee bargaining units. After being pressured by the association to do so, the district limited the applications to those eligible for the administrative credential and, when it came time to hire, the district in at least one of the cases hired an individual who in fact held the principal credential. RCW 28A.58.160 provides for the appointment and authority of school principals:

28A.58.160 Principals and vice principals---Employment of---Qualifications---Duties. School districts may employ public school principals and/or vice principals to supervise the operation and management of the school to which they are assigned. Such persons shall hold valid teacher and administrative certificates. In addition to such other duties as shall be prescribed by law and by the job description adopted by the board of directors, each principal shall:

- (1) Assume administrative authority, responsibility and instructional leadership, under the supervision of the school district superintendent, and in accordance with the policies of the school district board of directors, for the planning, management, supervision and evaluation of the educational program of the attendance area for which he or she is responsible.
- (2) Submit recommendations to the school district superintendent regarding appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the attendance area for which he or she is responsible.
- (3) Submit recommendations to the school district superintendent regarding the fiscal needs to maintain and improve the instructional program of the attendance area for which he or she is responsible.
- (4) Assume administrative authority and responsibility for the supervision, counseling and discipline of pupils in the attendance area for which he or she is responsible. (1977 ex.s. c 272 sec 1.)

The statute codifies the very traditional authority of persons holding the "principal" title to act as the chief student disciplinarian within the school building. RCW 28A.67.065 places the responsibility for evaluation of non-supervisory certificated employees on "a principal or his or her designee", and then switches terminology to "evaluator".

College Place School District, Decision 795 (PECB, 1979) reminds that the Commission will look to substance, rather than to form alone, in making unit determination decisions. Accordingly, in dealing with various ambiguous job titles created by inventive minds for use in school district administrative structures, the Commission has distinguished between bargaining unit and non-bargaining unit positions partly on a functional test evaluating whether the questioned position advances the administrative function of the school district (and therefore would be excluded from the bargaining unit) or whether it advances the educational program of the district (and therefore included in the bargaining unit). Renton School District, Decision 951 (EDUC, 1980). This dispute would likely have been avoided if the employer had resisted the temptation to innovate when it coined a fancy new title for a traditional old school function. The evidence overwhelmingly indicates that the deans of students are qualified to and authorized to and, in fact, do perform duties of the type usually assigned to persons holding "principal" titles. To rely on the "dean of students" title alone in making a unit determination, rather than on the duties, skills and working conditions of the deans of students, would be to exalt form over substance.

The labor policy considerations on which the separation between "supervisors" and their subordinates is founded have been discussed in a series of cases arising under Chapter 41.56 RCW. The fundamental concern is that co-mingling of supervisors and their subordinates in the same bargaining unit will create the potential for conflicts of interest within that unit or within the employee organization. See: City of Richland, Decision 279, 279-A (PECB, 1978); aff. 29 Wn. App. 599 (Division III, 1981); cert. den., 96 Wa. 2d 1004 (1981), and City of Richland, Decision 1519, 1519-A (PECB, 1983). The term "supervisor" is defined in RCW 41.59, as follows:

41.59.020 Definitions. As used in this chapter:

(4) The term "employee" and "educational employee" means any certified employee of a school district except:

(d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which means any employee having authority, in the interest of the employer, to hire, assign, promote, transfer, layoff, recall,

suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

The percentage of time spent in supervisory work is not the sole or conclusive indicator of "supervisor" status. One who has substantial supervisory authority over subordinate employees need not exercise that authority very often to create the potential for conflicts of interest within the bargaining unit or within the employee organization. In the public sector, the authority to recommend adverse action against an employee is of paramount importance in considering the supervisory status of the challenged position. In Clover Park School District, Decision No. 376 (EDUC, 1978), it was noted that:

Discipline, discharge, suspension, and evaluation of certificated employees are the subject of specific statutes which affect the distribution of authority within the management structure. The authority to recommend action take on greater significance in the public sector than is common in the private sector. Both section 2(11) of the NLRA and RCW 41.59.020(4)(d) clearly reference the authority to recommend action as an alternative to the direct exercise of the traditional indicia of supervision. The difference is merely one of emphasis,

The deans of students handle first-step grievances filed by non-supervisory bargaining unit members and also serve as the evaluator of record of non-supervisory bargaining unit members, which may lead to suspension, discipline, discharge, layoff, recall or transfer. The record also supports the conclusion that the deans of students have a substantial role in the hiring and assignment of employees. They are supervisors.

FINDINGS OF FACT

1. Lake Washington School District No. 414 is a school district organized under Title 28A RCW and is an employer within the meaning of RCW 41.59.020(5).
2. Lake Washington Education Association is an employee organization within the meaning of RCW 41.59.020(1) which has been recognized as the exclusive bargaining representative of nonsupervisory certificated employees of Lake Washington School District No. 414.

3. The district and the association were parties to a collective bargaining agreement in effect from September 1, 1980 until August 31, 1983 which described the bargaining unit as:

Recognition

Section 1.1 The District recognizes the Association as the exclusive bargaining representative with respect to wages, hours and terms and conditions of employment for all educational employees of the District, whether under contract or on leave. Such representation shall also cover all educational employees assigned to reinstated or newly created positions, unless the parties agree in advance that such positions are principally supervisory or administrative. Should the parties fail to agree, then either side may appeal to the Public Employment Relations Commission.

Section 1.2 Representation by the Association shall exclude the Superintendent, Deputy Superintendent, Directors, Administrator for Employee Relations, Principals, Assistant Principals, Supervisory Employees and all classified employees of the District.

4. Commencing with the 1982-1983 school year, the district created the new position of dean of students to administer pupil personnel services including attendance, to provide supervision of designated staff and to participate in various program development. The duties of the deans of students are primarily administrative, nonacademic, and noneducational in nature.
5. Prior to the creation of the position of dean of students, administration and enforcement of the attendance program, evaluation and supervision of staff, and handling student behavioral and discipline matters were performed by the building principal or delegated to an assistant principal.
6. The dean of students have authority in the interest of the employer to evaluate employees and to effectively recommend hiring, assignment, promotion, transfer, layoff, recall, suspension, discipline, and discharge of employees and to adjust their grievances.

CONCLUSIONS OF LAW

1. 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 deans of students at the senior high schools operated by Lake Washington School District No. 414 are supervisors within the meaning of RCW 41.59020(4)(d).

ORDER

The existing bargaining unit described in paragraph 3 of the foregoing Findings of Fact is clarified to exclude the position of dean of students.

DATED at Olympia, Washington, this 29th day of February, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MARVIN L. SCHURKE, Executive Director