

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-A PECB

DECISION OF COMMISSION

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.

Since the petition of Bethel School District No. 403 for clarification of the bargaining unit was resolved by agreement in a manner not inconsistent with RCW 41.56, the only issues before us arise out of the cross-petition for clarification filed by Public School Employees of Bethel, PSEW, the union.

The existing bargaining unit is described in the current contract as:

All classified employees, except supervisors of transportation, food services, maintenance, and accounting services, and the secretary to the Superintendent.

The term of the contract is September 1, 1977, to August 31, 1980.

During the term of this contract the school district has been expanding. The number of pupils has increased and substantial increase in numbers of pupils is expected to continue until 1990. To meet this increase the district has undertaken a \$30,000,000 building program and reorganized and increased its administrative staff.

The former assistant superintendent, Mr. Baker, has become deputy superintendent for administrative services. Reporting to him is a director of facilities to whom the maintenance supervisor now reports. Two newly created assistant supervisors of maintenance now report to the maintenance supervisor. The supervisory status of these officials is at issue in this case.

Reporting to the deputy superintendent for administrative services is the supervisor of food services. Reporting to her is the assistant supervisor whose status is at issue.

The school district claims these three "assistant supervisors" are supervisors and, therefore, must be excluded from the bargaining unit. The union disagrees and wants them included in the unit it represents.

Under the National Labor Relations Act supervisors are not employees and for that reason are outside rank and file units. Under RCW 41.56.030 they are employees and are entitled to all the benefits of that chapter, but as a matter of policy we exclude them from rank and file units. The intention of the legislature in enacting RCW 41.56.030 was not the same as that of Congress in enacting section 2 (2) of the federal act.

We have given great weight to bona fide changes in administrative structure, White Pass School Dist., Decision 573, (PECB, 1978). The deputy superintendent identified a table of organization and testified with respect to it:

"This particular organizational chart is a part of a total chart which was new last year. The basic structure of this segment of that organizational chart has been fundamentally the same since 1968."

We attach no importance to the fact that the assistant supervisor for food services may have been available for that appointment by reason of the reinstatement of a grievant. We have no evidence before us from which we could infer that the position was created as a haven. The question is her authority. The evidence is equivocal.

The deputy superintendent testified that she assigned as needed the kitchen personnel in a particular kitchen, working with the cook manager of that kitchen. He later testified that the assistant supervisor evaluated the performance of kitchen staffs along with the cook managers, not only in one kitchen but in all kitchens, and that she could recommend transfers of cooks and helpers from one kitchen to another if it happened that an employee was not "compatible in that environment". To recommend effectively transfer between buildings is authority which seems inconsistent with community of interest with the employees for collective bargaining. However, her recommendations are made to the supervisor of food services who, in turn, makes recommendations to the director of personnel who decides whether or not to implement them. In this matter the organization chart is less than clear, but the testimony of the deputy superintendent is explicit.

The Executive Director found that while instructing food service employees the assistant supervisor of food services works as a member of the kitchen staff in the preparation of meals; however, the uncontradicted testimony is that not more than 2 percent of her time is so spent.

Comparative rates of pay are certainly not conclusive but are often instructive as to what an employer is presumably paying for. The deputy superintendent

disdained to speak of hourly rates, saying that he dealt in millions of dollars and did not worry about hourly rates. A calculator can be helpful here. The supervisor of food services works 180 seven-hour days for an annual salary of \$13,753. This works out to \$10.91 per hour. The assistant supervisor of food services works 230 six-and-one-half-hour days for an annual salary of \$9,863. Her hourly rate is \$6.59. Her recommendations are subject to two reviews before being implemented and there is no evidence of authority in core supervisory areas such as discipline and discharge. The top hourly rate of a bargaining unit food services employee is \$5.29.

The assistant supervisor of food services would probably be a supervisor under the National Labor Relations Act. She is more than a lead person. But she is not so remote from the rank and file and so closely allied with management as to require her exclusion from the bargaining unit.

The supervisor of maintenance is supposed to be a graduate engineer and is paid \$20,919 for 230 days work, \$90.95 per day. The assistants are supposed to be high school graduates. As to maintenance work with the tools the record is ambiguous. The deputy superintendent testified that the assistant supervisors worked with the tools rarely and then only for emergencies or instruction. Yet the assistant supervisors' job description includes as item 13: "Perform general maintenance duties as time permits". They have authority to recommend transfers of their subordinates from one building to another, but they are farther down the line of command than the assistant supervisor of food services. They are paid \$15,496 per year for 230 days work, or \$67.37 per day. We have no testimony on the length of their work days, but, if we assume an eight-hour day, their hourly rate would be \$8.42. The top hourly rate of their subordinates is \$6.76.

While their authority to evaluate subordinates and to recommend transfers between buildings certainly looks supervisory, their positions in the line of organization, salaries and qualifications seem to identify them more with bargaining unit employees than with management.

The findings of fact, conclusions of law and order of the Executive Director are affirmed.

DATED this 11th day of July, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
 MARY ELLEN KRUG, Chairman

Robert J. Williams
 ROBERT J. WILLIAMS, Commissioner

John H. Leinen
 JOHN H. LEINEN, Commissioner