

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
PUBLIC SCHOOL EMPLOYEES OF )  
WASHINGTON ) CASE 10117-C-92-589  
 )  
For clarification of an existing ) DECISION 5053 - PECB  
bargaining unit of employees of: )  
 )  
PUYALLUP SCHOOL DISTRICT 3 ) ORDER CLARIFYING  
 ) BARGAINING UNIT  
 )  
 )  
\_\_\_\_\_ )

Lawrence Carney, Executive Director for Business and Financial Services, appeared on behalf of the employer.

Eric Nordlof, Attorney at Law, appeared for the Public School Employees of Washington.

Faith Hanna, Attorney at Law, appeared on behalf of the Classified Public Employees Association / WEA.

On November 13, 1992, Public School Employees of Washington (PSE) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission. PSE seeks the reallocation of certain "health assistant" positions from a bargaining unit of Puyallup School District employees represented by the Classified Public Employees Association / WEA (CPEA) to an existing bargaining unit of office-clerical employees represented by PSE. CPEA was granted intervention in the proceedings. A hearing was held on October 18, 1994, before Hearing Officer Rex L. Lacy. PSE and CPEA filed briefs by January 6, 1995.

BACKGROUND

The Puyallup School District has approximately 16,125 full-time equivalent students attending 2 high schools, 1 alternative school, 6 junior high schools, and 20 elementary schools.

Additionally, the employer operates a special services program that has approximately 1900 special education students. The employer has collective bargaining relationships with organizations representing seven classified employee bargaining units and two certificated employee bargaining units.

The Puyallup Association of Educational Office Personnel, an affiliate of PSE, has been the exclusive bargaining representative of office-clerical employees in the Puyallup School District since 1971.<sup>1</sup> PSE and the employer have been parties to a series of collective bargaining agreements.

The Puyallup Paraprofessional Association was certified in 1979 as the exclusive bargaining representative of instructional aides in the Puyallup School District.<sup>2</sup> That organization merged with the CPEA in 1986. CPEA and the employer have also been parties to a series of collective bargaining agreements.<sup>3</sup>

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<sup>1</sup> The bargaining unit was described in the September 1, 1992 to August 31, 1995 collective bargaining agreement between those parties as:

Section 1.1. The District hereby recognizes the Association as the exclusive representative of all employees in the secretarial/clerical general job classification, excluding [seven exclusions by title omitted] ...

<sup>2</sup> Puyallup School District, Decision 637 (PECB, 1979).

<sup>3</sup> The bargaining unit was described in the September 1, 1992 to August 31, 1995 collective bargaining agreement between those parties as:

Recognition. The Puyallup School District ... recognizes the Puyallup Paraprofessional Association ... as the exclusive bargaining representative for all employees designated as assistants and/or paraprofessionals, excluding bus attendants, vocational rehabilitation placements, school management assistants and patrol or security aides. ...

The employer's certificated workforce includes nurses, whose primary job function is to provide health screening and first aid to students. The nurses hold ESA (educational support associate) certificates issued by the state Superintendent of Public Instruction, and are thus members of a bargaining unit of the employer's non-supervisory certificated employees organized under Chapter 41.59 RCW.

Since 1990, the employer's non-certificated workforce has included the "health assistant" classification at issue in this case. The primary function of the four health assistants is to assist the certificated nurses in health screening and first aid. Each health assistant works at more than one school facility.<sup>4</sup> They are supervised by the school nurses assigned to the respective school buildings, and work 180 days annually matching the period of student attendance.

The qualifications, duties, and responsibilities for the health assistants are detailed in a job description created in 1990 and amended in 1992, as follows:

MINIMUM QUALIFICATION:

Education and Experience

High school graduation or equivalent.

Must have completed an approved first aid course and possess appropriate documentation.

Experience in dealing with students desirable.

Required Knowledge, Skills and Abilities

Ability to deal with students in a caring and confident manner.

Ability to take directions, respond positively to constructive criticism, and be regular and punctual in attendance.

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<sup>4</sup> The health assistants are assigned to work at the employer's junior high school and elementary schools.

Ability to work under pressure and be entrusted with confidential and sensitive information.

Effective oral and written communication skills; ability to communicate easily in person, on the telephone and in writing.

Ability to administer minor first aid.

Ability to type accurately and carry out basic clerical skills.

Ability to establish and maintain positive, effective working relationships with a variety of others.

Licenses/Special Requirements

None

RESPONSIBILITIES AND DUTIES:

This list of essential functions is not exhaustive and may be supplemented as necessary.

1. Maintain health office files and supplies.
2. Organize health cards and other files as directed.
3. Assist with screening and record screening results.
4. Prepare written notices to parents as directed and approved by the building principal.
5. Check and maintain first aid kits for elementary classroom teachers.
6. Staff health center in nurse's absence.
7. Administer minor first aid.
8. Conduct preliminary evaluation of an ill child according to policy and refer to school nurse or parent.
9. Replace supplies used from the first aid classroom.
10. Assist nurse in checking children for head lice.
11. Assist nurse in health related screening and/or staff health center while nurse is screening.
12. Assist with bulletin boards and preparation of audio visual materials as directed.
13. Order and return audio visual materials.
14. Attend nursing staff meetings held during duty hours, and approved by the building principal.
15. Assist nurse with follow-up of incomplete immunization forms.

- a. Review forms for completion. File completed forms.
  - b. Notify parents by phone or written notice if information is incomplete or vaccines are needed.
  - c. Update immunization forms, according to established procedures, with information obtained.
  - d. Follow up with additional phone calls and written notices for children whose parents fail to respond to original notices.
  - e. Provide information to parents regarding immunization clinic resources.
16. May assist with catheterization duties.
  17. Perform other related duties as assigned by the school nurse.

The health assistants are responsible for maintaining and updating student health records, maintaining first aid kits and administering minor first aid, ordering and returning audio-visual equipment, assisting the nurses with follow-up of incomplete immunization forms, staffing the health center when the nurse is absent, conducting preliminary evaluations of ill children pursuant to school policy, and assisting nurses with catheterization duties.

Both the school nurses and the health assistants are supervised by Nursing Coordinator Audrie Shagren.

Upon its creation in 1990, the health assistant classification was assigned by the employer to the bargaining unit represented by CPEA. For its part, PSE apparently made no objection to the unit placement of the health assistant classification at that time. The health assistants have been compensated since 1990 under the wage schedule set forth in the collective bargaining agreement between CPEA and the employer. The first indication of any question about their unit placement was raised by this case late in 1992.

POSITIONS OF THE PARTIES

PSE contends that health assistants were improperly placed in the CPEA unit in 1990, that the health assistants share a community of interest with the employees in the office-clerical bargaining unit represented by PSE, and that its petition in this case should not be dismissed on the basis of a procedural defect.

The Puyallup School District took no position on the question of unit placement of the "health assistant" classification.

CPEA contends that the health assistants were properly included within the bargaining unit that it represents, that the health assistants share a community of interest with the other paraprofessional employees in that unit, and that PSE failed to meet procedural requirements under WAC 391-35-020.

DISCUSSIONJurisdiction of the Commission

The statutory authority and responsibility to determine disputes of this nature is set forth in RCW 41.56.060:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT--BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. ...

The Commission makes unit determination rulings in the context of Chapter 391-25 WAC, which deals generally with the determination of questions concerning representation. The Commission has also adopted Chapter 391-35 WAC as a streamlined set of rules for "modifying" bargaining units where no question concerning representation exists.

In the context of the public sector, where there is no grant or protection of a right to strike, the Commission has exercised a firm hand in resolving disputes concerning the allocation of employees to bargaining units. It was noted in City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), that unit determination is not a subject for bargaining in the usual "mandatory/permissive/ illegal" sense. Spokane School District, Decision 718 (EDUC, 1979), stands for the proposition that either an employer or an exclusive bargaining representative commits an unfair labor practice by insisting to impasse on concessions regarding a unit issue. The policy on "deferral to arbitration" set forth by the Commission in City of Yakima, Decision 3564-A (PECB, 1991), does not extend to unit and representation issues.

In Camas School District, Decision 790 (PECB, 1979), and Toppenish School District, Decision 1189-A (PECB, 1981), the Commission rejected attempts to remove positions from a bargaining unit mid-term in a collective bargaining agreement, absent a showing of changed circumstances. The policy announced in the Toppenish case was then codified in WAC 391-35-020:

WAC 391-35-020 PETITION--TIME FOR FILING. (1) Disputes concerning status as a "confidential employee" may be filed at any time.

(2) Except as provided in subsection (1) of this section, where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the

covered bargaining unit will be considered timely only if:

(a) The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective bargaining agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or

(b) The petitioner can demonstrate that, although it signed the current collective bargaining agreement covering the position or class at issue in the unit clarification proceedings, (i) it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure, and (ii) it filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.

By its terms, that rule does not cover disputes between two unions concerning the unit assignment of particular positions or classifications. Even if each such organization has a collective bargaining agreement in effect with the employer, there is no contractual relationship to be protected between the two unions. The Hearing Officer properly denied the motion for dismissal made by CPEA in this case.

#### Distinguishing Between Communities of Interest

A distinction between "office-clerical" employees and other school district classified employees has been the subject of a number of decisions, including Longview School District, Decision 2551-A (PECB, 1987). While all school district classified work in support of the primary educational functions of their employer, the role of office-clerical employees is distinguished by their focus on support for the administrative functions of the corporate entity. In essence, it is recognized that two separate communities of interest can exist.



In an era where computers are used by employees in all sorts of applications, the fact of typing on a keyboard is no longer a sure indicator that the work being performed is within the "office-clerical" generic. For example: Recordkeeping responsibilities fall to classroom teachers, and to the instructional aides which support them, yet neither of those groups is deemed to be "office-clerical". Looked at in that perspective, it is apparent that the health assistants at issue in this proceeding work exclusively in support of the employer's instructional program, rather than its administration.

The health assistants have been fully integrated into the employer's educational program, and they perform "clerical" tasks only as part of the routine normally associated with the operation of a public school health program. They assist the nurses, and provide health care for students above and beyond that provided by the employer's certificated employees. As such, they were properly allocated to the existing "paraprofessional" bargaining unit.

#### Absence of Changed Circumstances

An additional reason to preserve the status quo is the absence of any evidence of changed circumstances. Under Richland, supra, the bargaining unit status of a position is not to be lightly disturbed. Similarly, in "severance" cases under Yelm School District, Decision 704-A (PECB, 1980), the burden is on the party seeking to disturb a history of bargaining to show the viability of a proposed severance.

In this case, there is no evidence that PSE objected when the health assistants were placed in the paraprofessional bargaining unit in 1990. Two years passed before PSE filed its petition to initiate this proceeding, but there is no evidence of any change of the health assistant classification during that period. The

bargaining unit work that existed at the time of their inclusion in the CPEA unit even remained unchanged up to the date of the hearing in this matter. The purpose for the creation of the classification remains unchanged: The mission of health assistants was, and is, the enhancement of the educational program. The duties, skills and working conditions of the health assistants are such that they share a community of interest with all other assistants and paraprofessional employees of the district.

#### Desires of the Employees

The crux of this matter may well be an indicated desire of some or all of the employees in the health assistant classification to be included in the bargaining unit that PSE represents. They evidently compare themselves to the office-clerical employees, who are not at issue in this proceeding.

While the "desires of the employees" can be a factor in determining appropriate bargaining units, the Commission has held that it is not a controlling or overriding factor. Bremerton School District, Decision 527 (PECB, 1978). Where any of two or more bargaining unit configurations could be appropriate, as in Tumwater School District, Decision 1388 (PECB, 1982), a secret-ballot unit determination election can be used to determine the desires of employees in a non-coercive manner. No such procedure is available, however, where one of the choices would be an inappropriate unit. Clark County, Decision 290-A (PECB, 1977). Further, no unit determination election can be conducted in a unit clarification proceeding under Chapter 391-35 WAC.

Even if PSE had filed this dispute as a representation case under Chapter 391-25 WAC, there would be no basis to direct a unit determination election. The health assistants at issue in this matter do not qualify as a "craft" group under Yelm, supra.

Moreover, they do not constitute a functionally distinct group of employees for which a history of separate representation or separate identity exists. Based on their duties, skills and working conditions, their severance from the assistants and paraprofessional unit would disrupt the purpose for which that unit was created.

#### FINDINGS OF FACT

1. Puyallup School District 3 is organized and operated pursuant to Chapter 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).
2. Classified Public Employees Association/WEA, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of assistants and paraprofessional employees working in support of the educational functions of the Puyallup School District.
3. Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of office-clerical employees working in support of the administrative functions of the Puyallup School District.
4. The "health assistant" classification was created in 1990. The primary responsibility of health assistants is to provide for the health of students in the Puyallup School District, under the direction of nurses who are non-supervisory certificated employees of the employer. The health assistants perform recordkeeping tasks associated with the maintenance of medical records on students of the various schools where they are assigned to work. Their duties,

skills and working conditions are similar to employees in the bargaining unit of assistants and paraprofessional employees represented by the CPEA.

5. The health assistants were assigned to the bargaining unit of assistants and paraprofessional employees in 1990, without any objection from PSE. They have been covered by collective bargaining agreements between the employer and CPEA since that time. There have been no significant changes of circumstances since the health assistant classification was created. CPEA continues to be a viable organization, and indicates an on-going desire to represent the health assistant classification.
6. The health assistants are not a distinct and homogenous group of skilled craft employees. The employees in the bargaining unit of assistants and paraprofessional employees constitute an integrated support operation essential to the discharge by the school district of its primary educational function.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC, and no question concerning representation presently exists in the bargaining units involved.
2. Based on their duties, skills and working conditions and their history of collective bargaining, the health assistants working for the Puyallup School District were, and are, properly allocated under RCW 41.56.060 to the existing bargaining unit of assistants and paraprofessional employees currently represented by the CPEA.

ORDER

The health assistant job classification shall continue to be included in the bargaining unit of assistants and paraprofessional employees represented by Classified Public Employees Association.

DATED at Olympia, Washington, this 10th day of April, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.