

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
MUKILTEO ASSOCIATION OF CLASSIFIED) CASE 12334-C-96-772
PERSONNEL, an affiliate of Public)
School Employees of Washington)
) DECISION 5896 - PECB
For clarification of an existing)
bargaining unit of employees of:)
)
MUKILTEO SCHOOL DISTRICT) ORDER CLARIFYING
) BARGAINING UNIT
)
)
_____)

David G. Fleming, Attorney at Law, appeared on behalf of the union.

Montgomery Purdue, by Christopher L. Hirst, Attorney at Law, appeared on behalf of the employer.

On February 20, 1996, the Mukilteo Association of Classified Personnel, an affiliate of Public School Employees of Washington, filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC, seeking a determination on the status of a Mukilteo School District employee titled "dispatcher/route supervisor". A hearing was held on October 23, 1996, before Hearing Officer Frederick J. Rosenberry. The parties submitted post-hearing briefs.

BACKGROUND

The Mukilteo School District (employer) provides public education in a portion of Snohomish County, for approximately 12,000 students

in kindergarten through 12th grade. Daily transportation is provided for about one-half of the student body, and the employer's Transportation Services Department maintains a fleet of 87 school buses which are operated by about 70 regular drivers and about 20 substitute drivers. Since September of 1996, the transportation function has been under the direction of Steve Winecoff.¹ Diane Bailey is the assistant transportation supervisor and supervising driver trainer. Winecoff and Bailey are not included in any bargaining unit.

The Mukilteo Association of Classified Personnel (MACP or union) has been the exclusive bargaining representative, since about 1969, of a bargaining unit which includes several categories of classified employees of the Mukilteo School District.² Employees in the Transportation Services Department are included in that unit.

The employer and union have had a series of collective bargaining agreements, and presently are parties to a contract covering the period from September 1, 1995 to August 31, 1998.

The Disputed Position

For an unspecified number of years, the employer maintained two transportation dispatcher positions within its workforce, both of which were included in the MACP bargaining unit. During the negotiations on the parties' 1992-1995 collective bargaining agreement in 1992, the employer notified the union that it desired to

¹ Winecoff replaced Tom Hingson, who had filled the position since 1992.

² This bargaining unit was the subject of a "severance" petition filed in 1979, but eventually remained intact. See Mukilteo School District, Decisions 1008 and 1008-A (PECB, 1980).

exclude the "dispatcher / route supervisor" position from the bargaining unit as a supervisory position.³ There was no request to remove the second dispatcher position from the bargaining unit, and the union granted the employer's request. The parties executed a letter of agreement, dated on November 4, 1992, which cited a contract provision which addresses circumstances in which the contract can be reopened mid-term, and stated:

The purpose of this Letter of Agreement is to set forth the following Agreement between the Mukilteo Association of Classified Employees and the Mukilteo School District. This Agreement is entered into pursuant to Article XVIII, Section 18.3 of the current Collective Bargaining Agreement.

1. That due to the inclusion of supervisory **duties such as evaluation, hiring/firing and grievance adjustment** in the job requirements for the position of Dispatcher, the parties hereby agree to exclude said position from the MACP bargaining unit.

This Letter of Agreement shall become effective September 1, 1992; shall remain in effect until August 31, 1995; and shall be attached to the current Collective Bargaining Agreement
...

[Emphasis by **bold** supplied.]

Although the parties' letter of agreement identified the position as "dispatcher", the record fairly reflects that the reference is to the "dispatcher / route supervisor" position which is at issue in this proceeding. The incumbent dispatcher at that time was Kathy Nixon, who had been hired and placed in the position in February of 1992.

³ The position has full-time employment for the entire year and paid leaves (e.g., vacation, holidays).

During negotiations for a successor agreement in 1995, the union proposed that the excluded dispatcher position, which was still filled by Nixon, be restored to the bargaining unit.⁴ The employer declined the union's request, and the union then initiated this unit clarification proceeding before the Commission.

POSITIONS OF THE PARTIES

The union claims that the duties of the dispatcher / route supervisor do not warrant an exclusion of the position from the bargaining unit as a supervisor, and that it should be allowed to withdraw from its previous agreement to exclude the position. It contends that the circumstances warranting the exclusion in 1992 either never developed or have changed. The union asserts that the exclusion agreement was for a limited period of time, and that it now desires to invoke that termination date to protect the integrity of the bargaining unit.

The employer maintains that the exclusion of the dispatcher / route supervisor position was appropriate in 1992. According to the employer, the disputed position still warrants exclusion from the bargaining unit because of the supervisory nature of duties which include developing and adjusting transportation routes, dispatching drivers, covering passenger overloads, scheduling substitute drivers, assisting in training, overseeing payroll, authorizing overtime, and providing input regarding the transportation program, hiring, and employee evaluations. The employer further maintains that the petition is untimely, in the absence of any substantive change of circumstances affecting the disputed position.

⁴ The assistant dispatcher has historically been included in the bargaining unit, apparently without dispute.

DISCUSSIONThe Employer's Procedural Arguments

The employer maintains that the union has failed to meet a "changed circumstances" requirement for unit clarification proceedings. Those arguments are not persuasive, however.

The Cited Rule -

The employer relies upon the portion of WAC 391-35-020 which states:

WAC 391-35-020 Petition--Time for Filing.

...

(2) Where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit filed by a party to the collective bargaining agreement 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 ...

The employer's focus on WAC 391-35-020(2)(a) is too narrow, however. The cited rule continues:

(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.

[Emphasis by **bold** supplied.]

WAC 391-35-020(2) is a codification of the policy announced in Toppenish School District, Decision 1143-A (PECB, 1981), where the Commission rejected an employer's attempt to upset an agreed-upon bargaining unit configuration mid-term in a collective bargaining agreement. Conversely, the decision in Sedro Woolley School District, Decision 1351 (PECB, 1982) rejected a union's attempt to upset the agreed-upon bargaining unit configuration mid-term in a collective bargaining agreement. Underlying both the rule and the precedents it codified is a concern for the stability of bargaining relationships, and a concern that the Commission's processes should not be used avoid commitments which are expressly or impliedly made during the formation of a collective bargaining agreement.

The disputed employee is, at most, a supervisor. In Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), citing City of Tacoma, Decision 95-A (PECB, 1977), the Supreme Court of the State of Washington ruled that supervisors are public employees within the meaning and coverage of Chapter 41.56 RCW. Different from issues concerning "confidential employees", which are jurisdictional and can be raised at any time under WAC 391-35-020(1), the Commission has been generally content to leave issues involving persons who are "public employees" first and "supervisors" second for the next round of bargaining. The separation of supervisors from their rank-and-file subordinates is a unit determination policy exercised by the Commission in City of Richland, Decision 279-A (PECB, 1978), affirmed, 29 Wn.App. 599 (Division III, 1981), review denied 96

Wn.2d 1004 (1981) and subsequent cases under RCW 41.56.060, to avoid a potential for conflicts of interest within bargaining units.⁵ The union has, in this case, complied with the "notify and file" requirements of WAC 391-35-020(2)(b).

The (1992) Agreement to Exclude -

The present "excluded" status of the position at issue in this case is by agreement of the parties, made during or soon following their contract negotiations in 1992. The employer points to Olympia School District, Decision 4736-A (PECB, 1995), where a successor union was held to the agreements made by its predecessor on eligibility matters in the absence of changed circumstances, and to City of Dupont, Decision 4959 (PECB, 1995), where an employer was held to its stipulations in a representation case in the absence of changed circumstances. The propriety of the agreement made by these parties in 1992 is, however, called into question by the union in this case.

The determination of bargaining units under Chapter 41.56 RCW, is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060. Although the Commission encourages parties to resolve eligibility issues, unit determination is not a subject of bargaining in the traditional mandatory/permissive/illegal sense. Thus, the agreements made by parties on unit matters neither bind the Commission, nor assure that the unit agreed upon is or will continue to be appropriate. City of Richland, supra. Such agreements will particularly be disregarded

⁵ Persons who are excluded, as supervisors, from a bargaining unit which includes their subordinates may nevertheless join with other supervisors to establish a separate bargaining unit of supervisors. Both Tacoma and METRO involved separate units of supervisors, so this precise question did not arise in those cases.

if they are abhorrent to Commission policy. Seattle School District, Decision 5220 (PECB, 1995); Olympia School District, supra. In Colville School District, Decision 5318-A (PECB, 1996), the Commission found it necessary to reject the parties' stipulation regarding unit structure and set it aside.⁶

The general rule, also set forth by the Commission in Richland, is that the unit status of individuals or classifications previously included in or excluded from a bargaining unit will not be changed absent a change of circumstances.⁷ Complete and accurate information is essential to any decision making process. Where a party relies to its detriment on incorrect advice or implied approval from the agency or its staff, the Commission has waived its rules. City of Tukwila, Decision 2434-A, (PECB, 1987). Where a party's claims are based on their own incorrect information or interpretations, however, they will be rejected. North Thurston School District, Decision 2433 (EDUC, 1986).⁸ In a unit clarification

⁶ Employers and unions are actually affecting the statutory rights of others (i.e., the employees themselves) when agreeing on representation and unit matters, and a further limitation on their actions lies in the ability of individual employees to file unfair labor practice charges alleging that they have been wrongfully deprived of their rights under Chapter 41.56 RCW by an agreed exclusion from a bargaining unit. See, Shoreline School District, Decisions 5560 and 5560-A (PECB, 1996).

⁷ As noted by the employer, the Commission has generally required a demonstrated change of circumstances to avoid the res judicata effect of the parties' stipulation of the unit status of a position. Exceptions are possible, however, for good cause shown. Community College District 5, Decision 448 (CCOL, 1978); Pike Place Market, Decision 3989 (PECB, 1992).

⁸ See, also, State of Washington, Decision 3746-A (PECB, 1991).

setting, an exclusion from a bargaining unit cannot be justified or continued on the basis of incorrect information.

A party that finds it relied to its detriment upon incomplete or inaccurate information, or upon predictions that fail to materialize, is in a position to have the unit determination issue revisited. If the duties of the disputed position were not as claimed by the employer in 1992, or did not change as predicted by the employer in 1992, then there was no "change of circumstances" sufficient to justify the parties' agreement to exclude the position from the bargaining unit at that time. The union's claims, which were assumed to have been made in good faith, were sufficient to warrant a hearing in this case.

Changes During the 1992-1995 Contract -

If a change of duties predicted by the employer for the disputed position in 1992 failed to materialize during the life of the 1992-1995 contract, or was made and then reversed, that would itself be a change of circumstances warranting a hearing and a possible change of unit status at this time. Assuming, again, that the union's claims were made in good faith, they were sufficient to warrant a hearing in this case.

Standards for "Supervisor" Exclusions

Because Chapter 41.56 RCW does not contain a definition of the term "supervisor", the Commission has looked to the definition found in the Educational Employment Relations Act, at RCW 41.59.020(4)(d), as indicating the types of authority which are of concern in the "conflicts of interest" analysis of Richland and its progeny:

[S]upervisor ... 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 consistent exercise of independent judgement.

Although there are some general characteristics of supervisory status, a separate analysis of the functions and responsibilities of each position is required: It is necessary to determine whether the disputed position truly has independent authority to act or to effectively recommend personnel actions on behalf of the employer. Thurston County, Decision 1064 (PECB, 1980). In Morton General Hospital, Decision 3521-B (PECB, 1991), the Commission went on to observe:

A distinction has been drawn between individuals with sufficient authority to qualify as "supervisors" and those with authority akin to working foremen. The latter have authority to direct subordinates in their job assignments, without possessing authority to make meaningful changes in the employment relationship.

Where an individual has limited authority to act in the name of the employer on personnel matters, or where the authority exercised is the ministerial regulation of programs or functions, there is little potential for conflicts of interest within a bargaining unit. Exclusion from the bargaining unit which contains their subordinates is not then warranted. Federal Way Water and Sewer District, Decision 3794 (PECB, 1991). Similarly having discretionary authority in administrative matters or "professional" status does not warrant exclusion from a bargaining unit as a "supervisor". See discussion of human services administrators in Island County, Decisions 5147 and 5147-D (PECB, 1996).

The titles and characterizations applied by the parties are not controlling. The Commission held in City of Gig Harbor, Decision 4020-A (PECB, 1992) that persons with titles as lofty as "public works supervisor" and "treatment plant supervisor" should be included in a bargaining unit in the absence of a demonstrated potential for conflicts of interest. The Commission has described persons who have "authority to direct subordinates in their daily job assignments, without possessing authority to make meaningful changes in the employment relationship" as lead workers, and has declined to exclude them from bargaining units on that basis. City of Aberdeen, Decision 4174 (PECB, 1992).

Exclusion is not warranted where an individual is called upon to make recommendations in a highly-structured environment that uses predetermined rating systems and criteria based on objective standards, or where the actual decisionmaking authority is vested at a higher level in the organization. Clallam County Transit System, Decision 1079-A (PECB) 1981. Similarly, the act of having evaluations made by higher-ranking employees (who are in the best position to observe the evaluatee's performance) does not necessarily pose sufficient conflict of interest to warrant a "supervisor" exclusion. King County Fire District 24, Decision 2279 (PECB, 1986); Snohomish Health District, Decision 4735 (PECB, 1994).

Application of Precedent

The employer's formal job description for the disputed position states:

REPORTS TO: Director of Transportation

JOB SUMMARY:

Schedules drivers, buses, and routes for transporting students to and from school and for other activities.

PREFERRED QUALIFICATIONS:

1. High school graduation or its equivalent.
2. Valid Washington Drivers's License, including Commercial Driver's License (CDL) and certification by the State of Washington as an authorized school bus driver.
3. Five years' [sic] of bus driving experience.
4. Knowledge of and familiarity with transportation operations, dispatch functions, and computers.
5. Demonstrated ability to work with bus drivers, transportation personnel, students, staff, parents, and general public under pressure while maintaining composure.

TYPICAL DUTIES:

1. Develop bus routes and schedules to equalize loads and to insure safety and provide the most efficient methods of transporting students to and from assigned school within prescribed time limits, including routing/stop review.
2. Assign regular scheduled runs and extra trips to appropriate bus drivers. Coordinate student transportation activities with school personnel.
3. Secure and assign substitute bus drivers as needed.
4. Answer phones and monitor radio; respond to inquires from bus drivers, school personnel, parents, and general public; direct inquiries to appropriate personnel if needed. Communicate with bus drivers, school staff, parents, transportation personnel, and general public as needed.
5. Investigate complaints; identify and follow-up on safety hazards to secure corrections and authorize changes in schedules to adjust to special circumstances and events.
6. Maintain appropriate records, enter data into Edulog system, and prepare reports as required.
7. Operate equipment, which may include: telephone, radio, word processor, typewriter, calculator, school bus.

8. Perform related duties as required or assigned to include, but not limited to, acting relief driver as required.

Job descriptions are by no means conclusive evidence of the proper categorization of classifications or individual employees, but the employer's written summary of the disputed position is generally consistent with the duties described in the testimony.⁹ The dispatcher / route supervisor is at the hub of the employer's transportation operation: Nixon advises drivers of road closures and detour routes; she is involved in training drivers regarding the safe transportation of special education students, including the proper installation of car seats and securing of wheel chair passengers for travel;¹⁰ she instructs regular drivers on how to set up route books so that a substitute driver can replace them when they are absent; she is responsible for ensuring that drivers maintain accurate records on their work time; she processes time off requests, and resolves scheduling, overloads, and other staffing, route and schedule matters; she is involved in the handling of some, but not all, complaints.¹¹ Importantly, the

⁹ The record reflects that the employer does not actually use the Edulog system mentioned in the job description.

¹⁰ This "training" function is not exclusive, however. The record reflects that several drivers who are bargaining unit members also serve as trainers for regular and special transportation needs.

¹¹ Complaints are handled by the excluded transportation supervisor and his assistant, by the disputed employee, or by the dispatcher who is included in the bargaining unit. The transportation supervisor usually investigates complaints between drivers, the mechanics, etc. Most student discipline complaints go to the assistant supervisor. The disputed individual usually takes care of special education complaints, by contacting the driver and getting back to the complaining parent.

duties outlined in the job description and the duties described in the evidence appear to fall short of the level of authority claimed or predicted by the employer and reflected in the letter of agreement signed by the parties in 1992.

Authority to Hire or Promote -

Most bus drivers are initially hired as substitutes, and regular bus drivers are usually recruited from the ranks of the substitute drivers.

- Applicants for substitute work are interviewed by a team composed of the transportation supervisor, the assistant transportation supervisor, and the director of personnel. The disputed dispatcher is normally not involved.
- The selection process for regular drivers begins with an interview conducted by a team composed of the transportation supervisor, the assistant transportation supervisor, and the disputed dispatcher. The team members use a rating system and tally scores after the interview. The team's recommendation on whether to hire an applicant is passed on to a higher level in the employer's organizational structure.

The disputed dispatcher is included on the interview teams for regular drivers because of her familiarity with the punctuality and reliability of the applicants when working as substitutes, and with their ability to follow a route book. There is a reasonable inference available, however, that the screening committee process severely dilutes the authority and influence of the individual committee members. There is certainly no evidence that the disputed dispatcher has hiring authority at her level in the organizational structure. Being in a position to report observations and express opinions to higher managerial authority who make

the operative promotion decision falls short of the degree of authority which warrants exclusion from the bargaining unit.

Authority to Assign Work -

The disputed dispatcher is directly involved in the assignment of drivers to cover the employer's transportation needs, but the parties' collective bargaining agreement appears to preempt any individual discretion by requiring that all work be assigned on the basis of seniority.¹² Scheduling exceptions for vacations and holidays are of little consequence, because the drivers are not provided vacation or holiday time off on days when students are in attendance. The absence of a regular driver is covered by the assignment of a driver from a roster of substitutes. Only in the event that no substitute is available, can the disputed dispatcher authorize a regular driver to work overtime.

Most forms of leave, including sick leave and bereavement leave, are controlled by the parties' collective bargaining agreement.¹³ Leaves not addressed by the collective bargaining agreement are addressed by district policy, so that there is little discretionary authority in this area. Even as to special requests, which are directed by drivers to either the assistant supervisor or the disputed dispatcher, such requests are usually granted.

¹² This includes the assignment to regular bus routes, extra trips, and overtime. The parties' collective bargaining agreement, which was placed in evidence, does not appear to contain any exceptions to the exercise of "pure" seniority for driver work assignments.

¹³ Sick leave is granted routinely, with few requests denied. Nixon recalled denying three leave requests in the recent past: One involved bereavement leave for a friend, a circumstance not addressed in the parties' collective bargaining agreement or district policy; two were leave requests for doctor appointments that were denied because of lack of staff to provide coverage.

Authority to Transfer, Lay-off, or Recall Employees -

There is no evidence that the disputed dispatcher has ever been involved in any personnel action regarding the transfer, layoff or recall of employees. As with the assignment of work, layoff and recall are addressed by the parties' collective bargaining agreement. Accordingly there is little or no room left for discretionary authority exercised by the disputed individual.

Authority to Adjust Grievances -

The disputed dispatcher is not involved in the adjustment of employee grievances.

Other Personnel Authority -

The disputed dispatcher has no authority to make substantive decisions regarding personnel matters such as rates of pay, levels of benefits, hours of work, or other conditions of employment of the bus drivers. Additionally, such matters are largely specified by the terms of the parties' collective bargaining agreement, which sets standards for vacations, holidays, leaves, wage rates, and other matters routine to employment. There is little or no discretionary authority involved.

Evaluations -

The employer conducts annual performance evaluations on its bus drivers. Most driver evaluations have been conducted by the transportation supervisor and the assistant supervisor. Normally, the assistant supervisor accompanies drivers on a check ride. The assistant supervisor also conducts check rides with drivers if they are involved in an accident, to ensure that they remain qualified to serve as a driver. The record does fairly reflect that the disputed dispatcher has been a "resource" for a portion of driver evaluations, by occasionally providing information when requested to do so by a supervisor. The information provided is in regard to

how well specific drivers have maintained their route books, their ability to maintain passenger discipline, and the drivers attendance record.¹⁴ Both the duration of this practice and the utilization of the information provided is unclear, however.¹⁵ Aside from serving as an occasional resource for information that may be relevant to performance evaluations, there is no evidence that the disputed dispatcher is or ever has been routinely and directly involved in the evaluation of all of the drivers, or that she has or exercises any substantive authority to rate an employees' performance.

Authority to Discipline Employees -

The incumbent dispatcher has occasionally been called upon to accompany the transportation supervisor and/or the assistant supervisor at investigatory conferences that could result in the discipline of transportation department employees. The supervi-

¹⁴ The parties collective bargaining agreement addresses student behavior and driver evaluation at Section 7.6.13, stating in relevant part:

The primary reasons the district has chosen to use video cameras on school buses is to improve student behavior, minimize damage to the buses and overall provide for a safer pupil transportation program. It should be noted that while a driver's action as heard or seen on the video may be a part of determining why a student(s) action(s) occurred, the video is not a replacement for the normal driver evaluation procedure. Drivers will be encouraged to use video(s) as a tool of self-evaluation and improvement.

¹⁵ Nixon testified that this practice started in the spring of 1996. She later expanded the period to include 1995 and 1996, and recalled there having been about 12 such requests from a supervisor in 1995 and 1996. An average of six inputs per year for a workforce of 90 drivers is hardly significant. Additionally, Nixon testified that she does not know what the supervisor does with the information that she provides.

sors have also requested the dispatcher's opinion regarding employees' explanations of their conduct that led to the investigatory interview. The record is less than clear, however, as to how frequently this has occurred. With questionable certainty, the disputed dispatcher recalled having sat in on at least two such investigatory conferences.¹⁶ Importantly, however, the record does not indicate that the disputed dispatcher had a meaningful role in making any resulting decisions on discipline.

It is clear that the assistant transportation supervisor counsels drivers when they have student management problems. While the disputed dispatcher is expected to chide drivers if they are tardy and reiterate the importance of punctuality, there is no evidence that the dispatcher has any independent, discretionary authority to impose discipline on employees.

Authority to Discharge Employees -

The record reflects that the parties have been fortunate to the extent that few, if any, situations have resulted in discharge. According to the disputed dispatcher, she has never had a role in the discharge of a driver. The record fairly reflects that, even if a discharge was being considered, the disputed dispatcher would have no involvement in making or imposing the discharge. Such matters would be handled by the transportation supervisor, and are ultimately determined by the employer's board of directors. Although she may be contacted as a resource for information on an employee's performance, there is no evidence that Nixon has ever taken steps to initiate, or has effectively recommended, the discharge of an employee.

¹⁶ At one point she testified that she sat in on one in 1995 and one in the spring of 1996. She later recalled sitting in on three such conferences, one in the fall of 1994, and two in the spring of 1996.

Conclusions

Notwithstanding the employer's arguments, the disputed dispatcher has limited authority to act in the name of the employer. Most of her duties regarding personnel matters are ministerial, and are tightly controlled by the terms of the parties' collective bargaining agreement or the employer's policies. The role of the dispatcher as a source for information to be used by other management officials is remote from the actual exercise of authority. The dispatcher's role is tantamount to that of a lead person who has limited flexibility to make schedule adjustments within the defined predictability imposed by the collective bargaining agreement and department policy. Such ministerial assignments do not warrant her exclusion as a "supervisor".

It is clear that the disputed dispatcher is not performing the scope of supervisory activity suggested in the parties' letter of agreement dated November 4, 1992, which was the basis for exclusion. If what now exists is all that existed in 1992, the position should never have been excluded from the bargaining unit and continued exclusion from the bargaining unit of subordinates is not warranted. If more substantial authority not reflected in this record ever existed, it has ceased to be operative and that is tantamount to a change of circumstances. It does not appear that the restoration of the dispatcher / route supervisor position to the bargaining unit would present the types of potential for conflicts of interest found inappropriate by the Commission.

FINDINGS OF FACT

1. Mukilteo School District is operated under Title 28A RCW, and is a public employer with the meaning of RCW 41.56.030(1).

2. The Mukilteo Association of Classified Personnel, an affiliate of Public School Employees of Washington and a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain full-time and regular part-time classified employees of Mukilteo School District, including employees working the employer's transportation function.
3. The employer and union were parties to a collective bargaining agreement for the period from September 1, 1992 to August 31, 1995. While negotiating that agreement, the employer proposed that a dispatcher / route supervisor position be excluded from the bargaining unit on the basis that it was a supervisory position. Based on the employer's assertions as to the duties of the position, the union agreed to the exclusion proposed by the employer. The parties executed a letter of agreement which specifically mentioned "duties such as evaluation, hiring/firing and grievance adjustment" as the basis for excluding the position from the bargaining unit.
4. There is no evidence in this record that the dispatcher / route supervisor was ever involved in the evaluation process prior to being asked by senior managers in 1995 and/or 1996 for information to be used by them in their evaluations of employees.
5. There is no evidence in this record that the dispatcher / route supervisor has ever been involved in the initial hiring of school bus drivers, and the incumbent of the disputed position has had only limited involvement, as a member of an interview team, in the promotion of drivers from "substitute" to "regular" status.

6. There is no evidence in this record that the dispatcher / route supervisor has ever been involved in the firing of any employee, and the incumbent of the disputed position had no more than a limited involvement in 1994, as an information resource to senior managers making the decision, in the discipline of an employee.
7. There is no evidence in this record that the dispatcher / route supervisor has ever had authority to adjust the grievances of bargaining unit employees.
8. While negotiating their 1995-97 collective bargaining agreement in 1995, the union asserted that the actual duties of the dispatcher / route supervisor position were not sufficient to warrant the continued exclusion of the position from the bargaining unit, and requested that it be returned to the unit. The parties did not agree on the matter, and the union timely filed a petition under WAC 391-35-020(2)(b).
9. The dispatcher / route supervisor does not have authority to hire, promote, transfer, lay off, recall, discipline or discharge employees, or to adjust their grievances. The authority of the disputed individual to assign work and pass along the directives of senior managers is exercised under detailed limitations imposed by the parties' collective bargaining agreement and department policy.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in the matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.


2. The union has implemented the procedure established in WAC 391-35-020(2)(b), so that a question concerning the bargaining unit status of the dispatcher / route supervisor is properly before the Commission in this proceeding.
3. As described in the record in this proceeding, the duties of the dispatcher / route supervisor present only a limited potential for conflicts of interest with the other employees of the employer's transportation function, and do not warrant her exclusion from the bargaining unit under RCW 41.56.060.

ORDER CLARIFYING BARGAINING UNIT

The dispatcher / route supervisor shall be, and hereby is, included in the existing bargaining unit represented by the Mukilteo Association of Classified Personnel.

Issued at Olympia, Washington, on the 10th day of April, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.