

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	CASE NO. 5296-E-84-959
CLASSIFIED PUBLIC EMPLOYEES)	
ASSOCIATION, WEA/NEA)	DECISION NO. 2084 - PECB
Involving certain employees of:)	FINDINGS OF FACT,
SHELTON SCHOOL DISTRICT NO. 309)	CONCLUSIONS OF LAW
)	AND ORDER

Randy Bohannon, Assistant Executive Director, Washington State School Directors Association, appeared on behalf of the employer.

Faith Hanna, Staff Attorney, Washington Education Association, appeared on behalf of the petitioner.

Owen Linch, Business Agent, appeared on behalf of the intervenor, General Teamsters, Local 378.

On June 6, 1984, the Classified Public Employees Association, WEA/NEA (CPEA or petitioner) filed a petition with the Public Employment Relations Commission (PERC) for investigation of a question concerning representation of certain employees of Shelton School District No. 309. CPEA seeks to represent teaching aides and para-professional employees. A pre-hearing conference was held on July 13, 1984, at which time General Teamsters Union, Local 378 (hereinafter Teamsters or incumbent) was granted intervention as the incumbent exclusive bargaining representative for the aides and para-professionals. At the pre-hearing conference, an issue was framed as to whether the petitioned-for bargaining unit is appropriate. A hearing was held on August 7, 1984, before Martha M. Nicoloff, Hearing Officer. Post-hearing briefs were allowed on September 11, 1984 and reply briefs on September 25, 1984.

BACKGROUND

Shelton School District presently has employees represented in four separate bargaining units. Non-supervisory certificated employees of the district are represented under Chapter 41.59 RCW by the Shelton Education Association, WEA/NEA. The remaining organized employees, and this dispute, are to be found among the classified employees of the district.

Teamsters Local 378 is the exclusive bargaining representative of a separate bargaining unit of school district transportation employees. Notice is

taken of the docket records of the Commission, which indicate that this separate unit has existed since 1975, when the union was certified by the Washington State Department of Labor and Industries (which then administered Chapter 41.56 RCW) in its Case No. 0-1966.

Beginning as early as 1970, the maintenance, custodial, aide and office-clerical employees of the district were represented in a combined bargaining unit by an affiliate of Public School Employees of Washington (PSE). The docket records of the Commission disclose that PSE was certified in 1977 as the exclusive bargaining representative of food service employees of the district. Shelton School District, Decision 183 (PECB, 1977). On September 14, 1979, Teamsters Local 378 was certified, following an election conducted pursuant to consent procedures, as exclusive bargaining representative of a unit including all maintenance, custodial, cafeteria, secretary and teacher aide employees. Shelton School District, Decision 714 (PECB, 1979). The bus drivers were specifically excluded from the combined bargaining unit at that time, and they continued to be dealt with as a separate unit.

On January 21, 1983, during a hiatus between contracts, CPEA filed a petition with the Commission seeking certification as the exclusive bargaining representative of all of the employees in the combined maintenance, custodial, cafeteria, secretary and aide unit. CPEA later amended its petition to claim a separate unit limited to secretarial, clerical and payroll employees of the district. Teamsters Local 378 thereupon disclaimed interest in representing the employees sought by CPEA. Based on a conclusion that the only remaining issues pertained to the eligibility of certain individuals for inclusion in an appropriate office-clerical bargaining unit, an order was issued on March 31, 1983, directing that an election be conducted among the employees in a bargaining unit described as:

All full time and regular part time office-clerical employees of Shelton School District No. 309, excluding confidential employees, supervisors, certificated employees and all other classified employees.

Shelton School District, Decision 1609 (PECB, 1983)

CPEA prevailed in the election, and no objections were filed by any party. An interim certification was issued on May 9, 1983, certifying CPEA as exclusive bargaining representative for the office-clerical employees. Shelton School District, Decision 1609-A (PECB, 1983). Those proceedings were held open for the purpose of resolving issues as to three positions claimed as "confidential" and one claimed as properly allocated to the office-clerical unit rather than as an aide. The eligibility issues were determined in Shelton School District, Decision 1609-B (PECB, 1984).

Since winning certification as exclusive bargaining representative of the office-clerical employees of the district, CPEA has negotiated a collective

bargaining agreement with the district covering the office-clericals. That contract is effective for the period September 1, 1983 through August 31, 1985. At the time of the hearing in this case, the parties were engaged in negotiations on a limited wage and benefit reopener for 1984.

POSITIONS OF THE PARTIES

On June 6, 1984 the CPEA filed the instant petition, seeking to sever the teacher aides and other para-professional employees from the remaining combined "all maintenance, custodial, cafeteria and teacher aides" unit represented by the Teamsters. The principal issue presented for decision is whether the teaching aides can appropriately be severed from their current bargaining unit. The CPEA first argues that the aides should be placed in the same bargaining unit as the office-clericals, because the aides also perform clerical duties. In the alternative, the CPEA contends the aides should be granted a separate bargaining unit, because of the nature of their duties, degree of integration, history of bargaining and because the CPEA specializes in representing school employees.

The district participated in the hearing but took no position in this matter.

Teamsters Local 378 opposes the severance of teaching aides from the historical combined unit, because it would unduly fragment the labor relations structure.

DISCUSSION

The determination of bargaining units and conduct of representation proceedings are matters delegated to the Public Employment Relations Commission by statute, RCW 41.56.060; RCW 41.56.070; City of Richland, Decision 279-A (PECB, 1979). In the absence of substantial written or oral argument presented by either the employer or the incumbent exclusive bargaining representative, the arguments advanced by CPEA must nevertheless be evaluated against the applicable statutes and Commission precedent.

Expansion of the Office Clerical Bargaining Unit

CPEA contends that the aides and office-clericals share a substantial community of interest and, therefore, that the most appropriate bargaining unit would be one which combined those two groups. Assuming, for the purposes of this discussion, that the premise is true, the CPEA nevertheless faces some practical problems getting from the premise to the desired conclusion.

The "aide" classifications involved in the instant case existed at the time the separate office-clerical bargaining unit was created. In fact, the "aide" classifications were within the original scope of the petition in the proceedings which led to the certification of the office-clerical bargaining unit. At a later point in those proceedings, after backing away from its attempt to replace Teamsters Local 378 as exclusive bargaining representative for the entire maintenance, custodial, cafeteria, secretary and aide unit, CPEA argued at hearing and in briefs on the eligibility issues that there was a substantial and identifiable difference between the "aide" and "office-clerical" employee types. These circumstances dictate a conclusion that the "aide" classifications could not be merely accreted to the existing office-clerical unit, and that a question concerning representation would need to be raised and determined in a merged or enlarged unit such as CPEA now seeks. Mount Vernon School District, Decision 1629 (PECB, 1983).

On its face, the existing collective bargaining agreement covering the office-clerical bargaining unit would bar raising a question concerning representation in that unit until the summer of 1985. The CPEA argues that the contract should not bar a representation election because this unit was formed as a result of a consent election and not by a PERC unit determination. The argument is patently incorrect. PERC did, in fact, determine the office clerical bargaining unit appropriate. Shelton School District 309, Decision 1609 (PECB, 1983). CPEA did not avail itself of its opportunity under WAC 391-25-590(2) to file objections following the election directed by that order. The decision stands as res judicata, and CPEA is hardly in a position here to make a collateral attack on the ruling from which it enjoys the benefits of certification, by a claim now that the bargaining unit is inappropriate. The CPEA relies on South Kitsap School District 402, Decision 1541 (PECB, 1983) as authority to avoid a contract bar. This reliance is misplaced. Neither that case, nor Appalachian Shale Products Co., 121 NLRB 1160 (1958) nor Andrews Industry, 105 NLRB 946 (1953), are on point. South Kitsap involved two separate bargaining units through which the employer had voluntarily, but fragmentarily, recognized unions for its office-clerical employees. PERC was called upon, through a unit clarification petition, to allocate an office-clerical position claimed with some legitimacy by both units. It was concluded that both of the existing units were inappropriate, because they contained similar classifications. This is not the case at issue. The aides and office-clericals are readily distinguishable from one another. The contract in Appalachian Shale was held not to be a bar to a petition for a representation election because the successor contract was unsigned when the petition was filed. Andrews Products considered a bargaining unit divided along racial lines and, as such, is clearly distinguishable.

The CPEA also argues that since the district has not raised the question of

contract bar, there is no need for PERC to invoke the contract bar rule. The statutory directive cannot be so easily overlooked. Highline School District, Decision 1507 (PECB, 1982). PERC cannot construe the district's silence in these proceedings as acquiescence in cancelling its collective bargaining contract with the petitioner.

The CPEA is in the curious position of seeking to invalidate a certification and a collective bargaining contract which it vigorously pursued. If the CPEA had not made such a serious effort to disclaim the unit and its contract, the argument would have been dismissed as specious. In light of the zealous advocacy, this analysis now turns to the question of whether, in the absence of a contract bar or collateral estoppel, only a combined unit of office clerical and teaching aides would be appropriate.

The CPEA characterizes the teaching aides as "essentially secretaries for teachers". Petitioner contends there are "few clear lines to separate aide work from secretary work." The record shows, however, that SLO (Student Learning Objectives) aides perform duties which are primarily concerned with teaching, working mostly with teachers and students. The HOSTS (Help One Student To Succeed) aide assists the reading teacher and supervises adult volunteers who are assisting students. Both of these types of aides spend the majority of their time in educational related activities. They perform clerical tasks which are incidental to their educational roles. Both types of aides testified that they did the typing and filing related to student testing and that they maintained computer records of test scores. The job descriptions of other teaching aides confirm that the clerical duties which they perform are routine and in support of the educational function.

CPEA acknowledges that the persons in the office-clerical unit perform their work in support of district administrative functions. See also: Shelton School District, Decision 1609-B (PECB, 1984). The members of the office-clerical unit take and transcribe dictation for principals and other administrators, handle correspondence pertaining to the principals' student discipline function, maintain attendance records, type administrative reports, act as receptionist and account for meal ticket receipts. Student contact for members of the office-clerical unit is incidental to their primary administrative duties, and is then often limited to support of administrative functions such as student attendance and discipline.

The CPEA relies on the fact that aides sometimes substitute for secretaries. The testimony indicates, however, that aides have covered for secretaries on an irregular basis over lunch or for appointments. When they have covered for the office-clericals, aides answer phones, sort mail and perform other routine clerical activities. Many of the examples given pre-date separation of the office-clerical employees from the combined unit which existed prior to 1983, and must be evaluated in a context in which unit work considerations

would have been less important than at present. The instances when teaching aides substituted for secretaries for longer periods of time or were hired as secretaries involve unique circumstances. Both persons in question evidenced special secretarial qualifications and past work experience as clerical employees. The decision to utilize these aides as secretaries was made on the basis of their secretarial qualifications, rather than the limited clerical experience which they gained as aides. The fact that aides may even now occasionally substitute for and do duties of office-clericals is not persuasive that teaching aides are interchangeable with office-clericals. There was no evidence that secretaries and other clericals covered for teaching aides or performed the aides' educational duties.

The CPEA asserts that the secretaries and aides have the common supervision of the building principal, whereas the other classified employees have departmental supervision. This contention is inaccurate. The immediate day-to-day supervisor of teaching aides is the classroom teacher or department chairperson. The principal's supervisory role is one which arises from the overall responsibility to oversee all activities in the building. The principal supervises and evaluates custodial personnel jointly with the maintenance supervisor. Principals perform the same role in the joint supervision and evaluation of teaching aides and clericals not under their immediate supervision.

The CPEA correctly asserts that office-clericals have been recognized by both PERC and the NLRB as being a presumptively appropriate separate bargaining unit. That is not persuasive, however, that teaching aides at Shelton are office-clericals of the type recognized in the cited precedents. That both the office-clerical staff and teacher aides are trained on the use of computers in their recordkeeping is not any more relevant to the issue than the fact they both use typewriters or pencils in performing their duties. The cases cited as authority are, in fact, precedent that clericals working in support of production functions have a different community of interest from office-clericals. General Electric Co., NLRB 70 (1953). In Albany Medical College, 239 NLRB 853 (1978), clerks who typed orders were placed in the plant maintenance unit rather than in the clerical administrative support unit. PERC decisions have also drawn a distinction between production and central office administration. In Franklin Pierce School District, Decision 78-B (PECB, 1977) it was determined:

... That instructional assistants do at times perform clerical tasks, the thrust of their work is aimed directly at the instruction of students.... In view of the foregoing, I find that the clerical employees have a distinct and separate identity from instructional assistants.

The teaching aides' primary function is in the instruction of children. Even

though they perform some clerical functions, teaching aides are not office-clerical employees, nor are their functions integrated. The teaching aides do not share a sufficient community of interest with office clericals to conclude that their placement in a combined unit is the only appropriate unit structure.

Finally, CPEA invites a decision in its favor on the absurd ground that it would also decide the migrant records clerk issue in the earlier case, by rendering it moot. The argument is fatuous. Cases are decided on their merit, not on administrative convenience.

The Severance Issue

CPEA argues in the alternative that the teaching aides should be severed from the existing bargaining unit in accordance with the principles enunciated in Mallinckrodt Chemical Works 162 NLRB 387 (1966), cited in Yelm School District, Decision 704-A (PECB, 1980). At the outset, it is important to note that Mallinckrodt Chemical and American Potash, 107 NLRB 1418 (1954), involved severance determinations under a federal statute which specifically recognizes that craft employees are appropriately separate unless they vote against separate representation. PERC, on the other hand, determines appropriate units under Chapter 41.56 RCW, which does not accord crafts or groups of skilled workers separate identity. Prior to Mallenckrodt Chemical, the NLRB limited craft severance to true crafts or traditional departments, and required that the union seeking severance qualify as an actual craft union or one which has been customarily devoted to the special problems of the group involved. American Potash, supra. Mallinckrodt Chemical continued to limit severance to a true craft or to a group of skilled employees who share a community of interest by virtue of their special skills, training and function which is separate from other less skilled employees. It also continued to recognize the traditional department approach. Mallinckrodt Chemical, however, down-graded the importance of the criterion that the petitioner qualify as a "traditional representative" to simply one of many other factors to be considered. Among the additional criteria now utilized in deciding severance cases is the extent to which the petitioned-for employees have maintained their separate identities, the history and pattern of collective bargaining in the industry, the bargaining history of the group involved, and the degree to which they are integrated into the employer's production processes. The NLRB in Mallinckrodt was considering the severance of instrument mechanics, helpers and apprentices in the employer's instrument department as a "functionally distinct and homogeneous, traditional department group" and not as a true craft. The majority of the board recognized these employees as sufficiently skilled to qualify as a department, but refused to permit

severance, because of their integration into the employer's production processes and because of a 25-year bargaining history. Member Fanning, in dissent, favored a more liberalized approach. He would have granted a severance election in order to free a small group of skilled workers from a bargaining structure which subordinated their legitimate special interests to those of the majority of unskilled employees.

In determining or modifying bargaining units, the Commission must consider the following factors:

... the duties, skills and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representative; the extent of organization among the public employees

RCW 41.56.060

In Yelm School District the Commission, using the broad discretionary authority contained in RCW 41.56.060, subscribed to the point of view expressed by the NLRB in Mallinckrodt (in the context of member Fanning's dissent). The Commission upheld the dismissal of a petition to sever bus drivers and mechanics from the existing bargaining unit, because they were not skilled craftsmen, they did not have a history of separate identity, the union had no special qualifications to represent the employees, and because severance would cause instability in the district's labor relations. Finally, the Commission concluded the existing unit constituted an integrated support operation essential to the primary educational function of the school district.

The CPEA has not demonstrated that it will effectuate the policies of the statute to carve out a separate unit of aides. In spite of petitioner's contention that these employees are becoming skilled workers because of the trend to computerize records, the nature of their duties does not distinguish them as such, nor do their levels of pay support this conclusion.

The CPEA does not qualify as a "traditional representative" in the American Potash sense. The CPEA represents a variety of classifications employed in school districts and community colleges, as do the Teamsters. The CPEA is a relative newcomer in organizing classified school employees. While this in no way questions petitioner's ability to represent these employees, the record does not support a finding that it has special qualifications to do so.

In examining the history of bargaining of the employees sought, evidence of internal union problems is generally not relevant. The petitioner offers evidence of internal union conflict which it alleges resulted in

discriminatory wage increases. The wage increases, in question ranged from 3.4% to 17.7% for teaching aides to over 20% for others. There is no evidence that the wages paid aides are substantially below those paid aides in comparable school districts. Allegations of wage discrimination carry with it a presumption that the district must have supported such a discrimination. There is no evidence presented that this has occurred. One cannot conclude that the incumbent has neglected the economic interests of the aides simply on the basis that different wage increases were negotiated. This is especially true when such increases are negotiated within tight legislative constraints. No evidence has been offered that these teaching aides have established and maintained an identity separate from the others in the broader unit or that there is a pattern in the school industry of forming separate bargaining units for teaching aides.

There is no evidence offered to support petitioner's conclusion that the teaching aides are in a distinct department separate from the others. To the contrary, as has been observed in earlier discussion, the teaching aides, maintenance, custodial and food service employees constitute an integrated group working in support of the district's primary education function.

The history of CPEA involvement in seeking to represent employees of the Shelton School District seems to undermine the labor stability in the district. Its piecemeal approach is troublesome. In 1983, the CPEA filed a petition for all classified employees except bus drivers. It later modified this petition to limit it to the office-clerical unit. Grant of the severance sought in this case would not lead to stability, and could be interpreted as an endorsement to future efforts to further fragment the combined unit which has existed in some form for more than 13 years. The CPEA, in the course of proceedings on the eligibility issues in the office-clerical case made argument that teaching aides are not the same as office-clericals. See: Shelton School District No. 309, Decision 1609-B (PECB, 1984). Less than a year later, CPEA is back before the Commission petitioning for the teaching aides. In view of the many gyrations and contradictory positions, it appears from the long tortured history of these petitions that severance would encourage the filing of other petitions to represent the remaining employees in such bits and pieces as organizing success allows. Clearly, such a procedure would be disruptive of the stability of the district's labor relationships and would vandalize the efficiency of this agency.

FINDINGS OF FACT

1. Shelton School District No. 309 is a school district of the state of Washington organized pursuant to Title 28A RCW, and is a public employer as defined in RCW 41.56.030(1).

2. Classified Public Employees Association, WEA/NEA, a bargaining representative within the meaning of RCW 41.56.030(3), claims to represent a majority of teaching aide and para-professional employees of Shelton School District. The CPEA filed a timely petition and showing of interest, seeking certification as the exclusive bargaining representative of such employees.
3. Teamsters Local 378, a bargaining representative within the meaning of RCW 41.56.030(3), is the certified exclusive bargaining representative of a unit of classified employees of Shelton School District No. 309, including custodial, maintenance, food service and teaching aides.
4. A history of bargaining exists, under which teaching aides and para-professionals have been included since at least prior to 1970 in a common bargaining unit with other classified employees except bus drivers. The incumbent continues to be a viable organization and has a continuing interest in representing the teaching aides and para-professionals as part of the larger unit.
5. Teaching aides are not skilled employees, nor do they belong to a traditional department of skilled workers.
6. The CPEA does not qualify either as a craft union or one which traditionally represents these classified employees.
7. Teaching aides are an integral part of the educational support function of the district along with food service and maintenance/custodial functions.
8. Severance of the teaching aides and para-professionals from the larger unit would contribute to instability in the labor relations in the district.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.
2. The petitioned-for bargaining unit of teaching aides and para-professionals of Shelton School District No. 309 is not an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and no question concerning representation presently exists.

ORDER

The petition of Classified Public Employees Association, WEA/NEA for investigation of a question concerning representation is dismissed.

DATED at Olympia, Washington, this 7th day of November, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).