South Central School District, Decision 5670-A (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SOUTH CENTRAL EDUCATION ASSOCIATION	)	CASE 11924-E-95-1955
	)	
Involving certain employees of:	)	DECISION 5670-A - PECB
	)	
SOUTH CENTRAL SCHOOL DISTRICT	)	DECISION OF COMMISSION
	)	
	)	

Faith Hanna, Attorney at Law, appeared on behalf of the petitioner.

Dionne & Rorick, by Lester Porter, Jr., Attorney at Law, appeared on behalf of the employer.

This case comes before the Commission on objections filed by the employer, seeking review of a direction of election issued by Executive Director Marvin L. Schurke on September 11, 1996.[1]

BACKGROUND

School districts organized and operated under Title 28A RCW bargain with their "certificated" employees under the Educational Employment Relations Act, Chapter 41.59 RCW, and bargain with all of their other employees under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Both collective bargaining statutes are administered by the Commission.

School districts typically offer co-curricular and extracurricular activities for their students. RCW 28A.320.500 and 28A.320.510

[1] South Central School District, Decision 5670 (PECB, 1996).

authorize the use of school facilities for such purposes; RCW 28A.600.200 authorizes school districts to conduct:

> [I]nterschool athletic activities and other interschool extracurricular activities of an athletic, cultural, social or recreational nature for students of the district.

The Washington Interscholastic Activities Association (WIAA) mentioned in RCW 28A.600.200 is a voluntary organization of school districts, organized and operated to plan, supervise and administer interscholastic activities, including athletic competition at the high school level.

Prior to 1995, the general practice throughout the state was that the wages, hours and working conditions of persons who conducted extracurricular activities in school districts were established through negotiations between the particular school district and the exclusive bargaining representative of its certificated employees.[2] In the South Central School District, such matters had been controlled in the recent past by a collective bargaining agreement between the employer and the South Central Education Association.

In Castle Rock School District, Decision 4722-B (EDUC, 1995), the Commission ruled on a complaint in which a former athletics coach alleged that a school district and the exclusive bargaining representative of its certificated employees committed unfair labor practices by purporting to negotiate for extracurricular activities staff positions in the context of collective bargaining under Chapter 41.59 RCW. Finding that educator certification is not required under any statute or State Board of Education rule for

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[2] From 1965 through 1975, such bargaining relationships were conducted under the "Professional Negotiations Act", Chapter 28A.72 RCW. That statute was repealed on January 1, 1976, and such bargaining was thereafter conducted under the Educational Employment Relations Act, Chapter 41.59 RCW.

work as an athletics coach, the Commission found violations in that case and concluded that any collective bargaining rights of such non-certificated jobs would be under Chapter 41.56 RCW. In an emergency rule adopted in February of 1995, as WAC 391-45-560, the Commission directed each school district and exclusive bargaining representative of certificated employees to:

(1) Determine which, if any, extracurricular work historically bargained for under Chapter 41.59 RCW did not require certification as an educator under state law or local practice; and

(2) Post notices by May 1, 1995, informing employees of the removal of all non-certificated work from the bargaining unit of certificated employees maintained under Chapter 41.59 RCW; and

(3) File a copy of their posted notice with the Commission.

The South Central School District and the South Central Education Association filed a notice in response to WAC 391-45-560. They agreed that all high school and middle school athletics coaches fell into the non-certificated category, along with: "Elementary school positions", "Elem. Young Writer's Day Comm.", "High School Announcer", "High School Timekeeper", "High School Ticket Taker", and "High School Events Supervisor". The notices they posted on April 25, 1995, included the following paragraphs required by the Commission's emergency rule:

> EMPLOYEES WHO ARE DISSATISFIED WITH THE BARGAINING UNIT ASSIGNMENTS LISTED [in the notice] should first contact this school district and/or the organizations shown below, to try to resolve the matter. If the matter is not resolved, an employee holding a position listed [in the notice] may file a complaint with the Public Employment Relations Commission under Chapter 391-45 WAC. Any complaint must be filed within six months following the act or event being challenged.
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> EMPLOYEES HOLDING POSITIONS [excluded from the certificated employee bargaining unit] MAY HAVE RIGHTS UNDER THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT, CHAPTER 41.56 RCW. It is the purpose of this notice to "clear the

> air" prior to any exercise of those rights. Any petition for investigation of a question concerning representation, bargaining authorization card, or voluntary recognition agreement that is signed or filed as to such employees prior to or on the date this notice is posted will be deemed void.

Review of the Commission's docket records fails to disclose any unfair labor practice charges filed by South Central School District employees to challenge the separation of non-certificated extracurricular staff from the certificated bargaining unit.

On July 21, 1995, the South Central Education Association (union) filed a letter with the Commission, suggesting that a question concerning representation existed among employees of the South Central School District who conduct extracurricular activities. The union filed a formal petition under Chapter 391-25 WAC on August 10, 1995, seeking certification as exclusive bargaining representative of:

> Extra-curricular positions not requiring certification

The bargaining unit sought by the union encompasses all of the employees who perform work that was excluded from the certificated employee bargaining unit by the notice posted on April 25, 1995.

During a prehearing conference conducted on September 7, 1995, the parties stipulated to: (1) The jurisdiction of the Commission; (2) the identification of the parties; (3) the qualification of the union to act as an exclusive bargaining representative; (4) the existence of a question concerning representation; (5) the description of an appropriate bargaining unit as:

> All employees in extra-curricular positions in the South Central School District for which no certification is required;

and (6) the eligibility of athletic coaches working in positions of more than 30 days duration at the middle school and high school levels for inclusion in the petitioned-for bargaining unit. The parties disagreed as to whether persons performing various tasks at the elementary school level and those performing ancillary tasks at high school athletic events should be eligible voters.

Hearing Officer Martha M. Nicoloff held a hearing on February 15, 1996. In an order issued on September 11, 1996, the Executive Director ruled that persons employed to conduct extracurricular activities and perform related assignments for an aggregate of more than 30 days within any 12-month period ending during the current or immediately preceding school year have an expectancy of continued employment, are regular part-time employees of the South Central School District, and are to be included in the bargaining unit.[3] An election was directed, and was conducted by mail ballot.

The election ballots were counted on October 24, 1996. The tally of ballots issued at that time reflected:

APPROXIMATE NUMBER OF ELIGIBLE VOTERS	34
VOID BALLOTS	0
VOTES CAST FOR SOUTH CENTRAL EDUCATION ASSOCIATION ..	10
VOTES CAST FOR NO REPRESENTATION	1
VALID BALLOTS COUNTED	11
CHALLENGED BALLOTS CAST	0
VALID BALLOTS COUNTED PLUS CHALLENGED BALLOTS	11
NUMBER OF VALID BALLOTS NEEDED TO DETERMINE ELECTION.	6

The employer filed timely objections on October 31, 1996, requesting the Commission to review the rulings made by the Executive Director in the direction of election.

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[3] The Executive Director held that persons who have not been employed in such a manner were to be considered "casual" employees, and excluded from the bargaining unit.

POSITIONS OF THE PARTIES

The employer claims the Executive Director erred: (1) By combining the total number of days in all positions worked to determine whether an individual meets the 30-day threshold; (2) by finding there is a community of interest between the disputed positions and the agreed-upon bargaining unit positions; and (3) by requiring an unnecessarily burdensome time period within which the 30 days are to be calculated. The employer argues that the 30 days test should consider only the number of days worked in the each position. It urges that neither the high school events positions nor the extracurricular positions at its elementary schools share a community of interest with athletic coaches at its middle and high schools. The employer suggests that either the current school year or the 12 months immediately preceding the filing of the petition or the Commission's decision, should be used for calculating time served. The employer asks the Commission to exclude employees in the disputed positions because they do not meet the 30-day threshold and/or because they lack a community of interest.

The union contends that the Executive Director applied appropriate standards for determining voter eligibility. The union notes that Commission precedent distinguishes between "casual" and "regular part-time" employees, and that the fundamental test for regular status is an expectancy of a continuing relationship. The union notes the direction of election was in line with the threshold for determining eligibility of substitute teachers for certified bargaining units, and that measuring the test by the number of shifts worked followed Commission precedent. It claims the elementary school activity instructors and high school events staff share a community of interest with other extracurricular employees, that there is no other bargaining unit appropriate for them, and that they would be too small of a group to stand alone. The union asserts those employees would be stranded if not included in this unit, and would be unfairly deprived of the their rights.

DISCUSSION

Definition of Employee

The employer acknowledges that some of its extracurricular activities staff have an ongoing expectancy of continued employment sufficient to make them eligible voters. It only challenges the Executive Director's ruling that the disputed personnel are "employees" under the statute.

The purpose of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is set forth in RCW 41.56.010, as follows:

> [T]o promote the continued improvement of the relationship between public employers and their **employees** by providing a uniform basis for implementing the right of public **employees** to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

[Emphasis by **bold** supplied.]

RCW 41.56.040 prohibits interference with or discrimination against "any public **employee** or **group of employees** in the free exercise of **their right to organize and designate representatives of their own choosing** ..." [emphasis by **bold** supplied].

RCW 41.56.030(2) defines "public employee" as:

> (2) "Public employee" means **any employee of a public employer** except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary neces-

> sarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (d) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

[Emphasis by **bold** supplied.]

The Commission has interpreted the legislative intent of the term "employee" in collective bargaining statutes to apply only to persons who have a reasonable expectancy of an ongoing employment relationship with the particular employer, and not to persons associated with an employer "on a very brief or temporary basis":

> The fundamental test for being an "employee", ... is the parties' expectancy of a continued employment relationship, with the consequential mutual interest in wages, hours and conditions.

Columbia School District, Decision 1189-A (EDUC, 1982).[4]

Only casual and temporary employees are completely excluded from bargaining units, however.[5] The Commission has been reluctant to exclude persons who work in part-time assignments that have an

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[4] See, also, Green River Community College, Decision 4491 (CCOL, 1993), affirmed, Decision 4491-A (CCOL, 1994).

[5] See, Everett School District, Decision 268 (EDUC, 1977); Tacoma School District, Decision 655 (PECB, 1979); and City of Auburn, Decision 4880-A (PECB, 1995) and cases cited therein. Consistent with the exclusion from bargaining units, casual and temporary employees do not have voting rights on long-term matters such as the certification and decertification of exclusive bargaining representatives and ratification of contracts.

apparent potential for ongoing employment of the same nature,[6] and "regular part-time" employees are routinely included in the same bargaining unit with full-time employees performing similar work.[7] The Executive Director has summarized these holdings, as follows:

> [T]hese classifications thus implement a balancing of the rights and interests of public employees and public employers: Persons with an ongoing interest in the affairs of a bargaining unit are permitted to implement their statutory bargaining rights; at the same time, a union and employer who are properly concerned with employees having a clear community of interest are not burdened with bargaining for those who have had only a passing interaction with the employer and its workforce.

Kitsap County, Decision 4314 (PECB, 1993), at page 5.

The Commission noted in Castle Rock, supra, that the extracurricular activities work recurred for fixed periods on a seasonal basis from year to year, and involved substantial work hours, so as to appear to be "regular".

In Okanogan School District, Decision 5394 (PECB, 1996), the Executive Director rejected a claim that none of the extracurricular activities staff in that school district were "employees" under Chapter 41.56 RCW. We are affirming the Executive Director's Okanogan ruling today, and are satisfied that it is equally applicable based on the facts presented in this case. The record indicates that the extracurricular functions at the South Central

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[6] See, also, Green River Community College, Decision 4491 (CCOL, 1993), affirmed, Decision 4491-A (CCOL, 1994).

[7] See, e.g., Columbia School District, supra, Mount Vernon School District, Decision 2273-A (PECB, 1986); Municipality of Metropolitan Seattle (METRO), Decision 2986 (PECB, 1988); Skagit County, Decision 3828 (PECB, 1991); Lower Columbia College, Decision 3987-A (CCOL, 1991); City of Poulsbo, Decision 3737 (PECB, 1991).

School District recur from year to year, and involve substantial work hours. We infer that incumbents reasonably anticipate such employment as a substantial source of their livelihood, and are an ongoing part of the workforce available to the employer for the accomplishment of its functions. The extracurricular employees at issue in this case thus have the potential to be "employees" for the purposes of Chapter 41.56 RCW.

Propriety of the Bargaining Unit

In structuring bargaining units, the Commission is guided by RCW 41.56.060, which states:

> 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**.

Unit determinations are made on a case-by-case basis. The Legislature did not prioritize the criteria set forth in RCW 41.56.060, and the Commission has never applied the four factors on a strictly mathematical basis. Not all of the four factors arise in every case. Where they do exist, one factor may be more important than another. Pasco School District, Decision 5016-A (PECB, 1995). For instance: The "history of bargaining" need only be considered where the petitioned-for employees are already represented for the purposes of collective bargaining; the "extent of organization" will not be at issue where an employer-wide unit is sought; the "desires of the employees" will only be significant if two or more appropriate bargaining unit configurations are being proposed by competing labor organizations. See, Puyallup School District, Decision 5053-A (PECB, 1995).

The starting point for any unit determination analysis is the configuration sought by the petitioning union. In this case, the union petitioned for an employer-wide bargaining unit of "extra-curricular positions not requiring certification". An election was directed for a bargaining unit of:

> All employees who conduct extracurricular activities and perform related assignments in the South Central School District for which no certification is required, excluding certificated employees, supervisors, confidential employees, casual employees, and all other employees of the employer.

Having decided that extracurricular activities staff members can meet the definition of employee, we turn to the analysis of whether the disputed employees have a community of interest with the coaches already stipulated in the petitioned-for unit.

The employer cites City of Auburn, Decision 4880-A (PECB, 1994), where the Commission concluded that seasonal helpers in a parks department and a maintenance division were excluded from a bargaining unit of that employer's full-time and regular part-time employees. In addition to concerns about whether the unit clarification petition was timely in that case, and about whether the summer helpers qualified as "employees" for purposes of the collective bargaining statute,[8] those seasonal employees needed only the ability to perform unskilled, manual labor duties to augment the work of bargaining unit employees or to lead recreational activities. The skilled and semi-skilled employees in the bargaining unit operated heavy equipment, and were required to have significant work-related experience. Those substantial differences of duties, skills and working conditions thus supported a conclusion that a community of interest was lacking. In contrast, our

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[8] Many of the seasonal employees at issue in Auburn were college students headed toward other careers, with little expectation of continuing employment.

review of the record now before us indicates that a community of interest exists involving a separate body of work.

Duties, Skills, and Working Conditions -
The duties of the coaches deemed eligible by the employer are set forth in formal job descriptions, and include leadership responsibilities such as organizing, supervising, and instructing athletic participants, maintaining athletic equipment and facilities, and communicating with the school community and members of the public in numerous activities before, during and after the sport season.

Employees performing ancillary duties at high school football and basketball games have duties which include tickets/admissions, scorekeeping, timekeeping, announcing, and providing security. The employer notes that they do not have formal job descriptions, and contends that they do not require the skills, time commitment, or travel of the coaching positions. The employer also argues that the incumbents of the disputed positions do not need to possess knowledge of a particular sport and the pertinent regulations, and do not need the ability to instruct and supervise students or deal with injury procedures. Time spent in coaching and preparing a team for athletic competition would be pointless, however, without having the team demonstrate the learned skills in game situations. In that context:

A person would need to be familiar with the rules and regulations of the game in order to properly keep score, keep time, or announce the game. One would also need to carefully observe the intricacies of what is happening on the floor or field of competition, in order to properly perform scorekeeper, timekeeper or announcer functions. The persons filling these roles may need to work closely with coaches, and must be able to communicate the language of the game. Similar to a coach, persons in these positions would need to be familiar with student athletes by name.

Some of the people who perform the ancillary duties also coach: Kermit Escame, who was disputed by the employer in his capacity as announcer for basketball games (in 1993-94 and 1994-95) and football games (in 1994), coached high school boys tennis and/or girls tennis (in 1993-94, 1994-95 and 1995-96) as well as high school wrestling (in 1993-94); Jack Orewiler, who was disputed in his capacity as a timekeeper for basketball games (in 1993-94, 1994-95, and 1995-96) served as assistant football coach during the same school years. Coaches may have a broader range of duties, but the fact that some of the skills and knowledge required for coaching are interchangeable and interrelate with the skills and knowledge required to put on games is persuasive evidence supporting a conclusion that a community of interest exists.

While the coaches are expected to focus their attention on the student athletes who are on the floor or field of competition, ticket and security personnel presumably focus on behavior in the grandstands. The employer's claim that the disputed positions involve only one basic task, or limited tasks, at a particular athletic contest is thus too narrow. Work need not be identical to justify inclusion in a bargaining unit.[9] We infer that ticket and security personnel who staff many or all of the games in a season or year will acquire knowledge of student behavior and identities which will be valuable in avoiding disruptions which would distract attention from the athletic competition. The coaches' responsibility naturally spans more time, but these positions and the coaches have a work location in common on game days and the incumbents of the disputed positions perform responsibilities in support of, and in conjunction with, the coaches who are stipulated as eligible for this bargaining unit. The coaching positions and the disputed

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[9] This is particularly applicable where the unit is a "vertical" unit structured along lines of the employer's departmental or divisional organization, or is a presumptively appropriate "wall-to-wall" unit. See, Snohomish County Police Staff and Auxiliary Services Center, Decision 4313-A (PECB, 1993).

positions thus go hand-in-hand, as both are critical to the success of the game.

Differences in the procedures for filling the disputed positions are not conclusive. The employer notes that vacant coaching positions are posted months before the beginning of the sport season, and that the hiring recommendation is acted upon by the principal and the superintendent and the Board of Directors. It contends, however, that the events positions are filled by the athletic director without any formal hiring process. We recognize these differences in hiring procedures, but we view the "duties, skills and working conditions" factor as a whole. All of the stipulated and disputed personnel are hired to serve in recurring roles within the school athletics program.

Differences in the procedures for compensating the disputed positions are also inconclusive. The employer notes that coaching positions have been paid in the past under supplemental contracts, while the events employees have been paid an hourly wage based on monthly time sheets. We are aware that concerns have been voiced that removal of extracurricular positions from the "professional" aura of the certificated employee bargaining process may require that closer attention be paid to the compensation procedures required by the federal Fair Labor Standards Act, and so infer that all of these compensation questions may be open to reconsideration.

The Elementary Activity Instructors must, like the coaches, be acquainted with the basic rules and skills of the extracurricular activity they are supervising. Similar to the coaches, these instructors are guiding, leading, coaching, and disciplining students. Both the disputed activity instructors and the stipulated coaches are involved in activities that are extracurricular in nature. We infer that an underlying purpose of all such activities is to provide students an opportunity for fun and recreation, while developing skills, teamwork and valuable learning experiences that are not part of the planned academic day but could potentially become lifelong interests. In that context:

The informality and flexibility of the elementary school activities varies from the rigidity imposed upon athletics programs by the WIAA, but the way in which the specific programs originate has little bearing on the fundamental nature of the duties, skills and working conditions of the jobs. While the employer asserts that the disputed positions lack the stability of the coaching positions, and that there will always be a football coach, there is no actual evidence before us that the employer anticipates cutting off the elementary activities in the foreseeable future. To the contrary, we infer that positions as the nursery rhyme instructor will continue to be created and scheduled each year.

Differences in the size and age of the student participants, and of the type of game, sport, or activity involved, necessitate some differences as to the specific knowledge and skill required of the instructor or coach, but the basic fact remains that these are also activities for students outside of the regular academic program. We note that many of the activities focus on the development of physical skills or rhythm which, we infer, would be valuable preparation for athletic competition at the middle school and/or high school level.

The absence of formal descriptions, guidelines or procedures governing the conduct of the elementary positions is not conclusive. The community involvement in the elementary activities program, and the approval of programs by ad hoc committees based on the current interest of the students, imposes an outside force on the program in much the same way that the WIAA is an outside force fostering athletic competition.

The supplemental contracts which have been issued in the past for the elementary school activities positions are similar to those which have been issued for coaching positions stipulated as being eligible for inclusion in the bargaining unit.

While the elementary activities positions do not involve the year-round or off-season duties associated with coaching, the amount of time spent performing the work is factored into a test for "regular part-time employee" status. Thus, the fact that

coaching duties extend beyond a particular season does not persuade us to overlook the common duties.

History of Bargaining -
The disputed positions are not currently represented for the purposes of collective bargaining. If anything, the employer's arguments here are contradicted by its previous bargaining for the now-disputed positions as part of the same bargaining unit with the coaches under the certificated employee bargaining process.

Extent of Organization -
When sought by a petitioning union, employer-wide bargaining units have been viewed as presumptively appropriate. All of the employees of an employer inherently share some community of interest in dealing with their common employer. A mutual interest in wages, hours and working conditions is a direct consequence of the parties' mutual expectancy of continued employment.[10] Occupationally-based unit configurations are also apt in cases where there is integration of duties or interaction among employees across either real or nominal departmental lines.[11]

Concerns about "extent of organization" and fragmentation generally relate to the number and complexity of contracts to be negotiated and administered within an employer's workforce. The Commission has a long-standing policy of avoiding unnecessary fragmentation of the workplace into multiple bargaining units. Ben Franklin Transit, Decision 2357-A (PECB, 1986); Municipality of Metropolitan Seattle, Decision 2358-A (PECB, 1986). Very small units are

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[10] See, Columbia School District, Decision 1189-A (EDUC, 1982).

[11] Where work locations, shift arrangements and supervision of employees are separate and distinct, the Commission has found integration of duties or interaction among the employees less significant. See, City of Centralia, Decisions 3495-A (PECB, 1990), and cases cited therein.

discouraged where the positions can fit appropriately into a broader bargaining unit.[12] Unit structures which bifurcate a workforce have been found inappropriate, or attempts to create such units have been rejected, where work jurisdiction conflicts are likely to arise on an ongoing basis.[13]

In Castle Rock, supra, the Commission specifically rejected a bifurcated format which separated those extracurricular activities staff members who had certification from those who lacked certification, because of the potential for work jurisdiction problems and complications in administering personnel functions. The Commission noted that extracurricular activities have changed over the years to the point where they are separate jobs which have different minimum qualifications from classroom teaching. The Commission has also stated concern about avoiding the stranding of employees:

> Concerns about "fragmentation" of bargaining units arise from time to time. **One very real concern is that employees not directly involved in an organizational effort will be deprived of their statutory bargaining rights by being left "stranded" alone or in a unit that is too small to bargain effectively.** Another concern is that the establishment of a bargaining relationship gives rise to a scope of "bargaining unit work", and a duty on the part of the employer to give notice to the exclusive bargaining representative and provide opportunity for bargaining prior to transfer of bargaining unit work to employees outside of the bargaining unit. Thus, **decisions have required that fringe groups be incorporated into the bargaining units to**

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[12] See, e.g., City of Auburn, Decision 4880-A (PECB, 1995).

[13] South Kitsap School District, Decision 1541 (PECB, 1983), cited with approval in Ephrata School District, Decision 4675-A (PECB, 1995). See, also, City of Seattle, Decision 781 (PECB, 1979) and Skagit County, Decision 3828 (PECB, 1991).

> **which they logically relate**, and have rejected unit configurations that Balkanize departments or occupational groups into units that can be explained only on the basis of "extent of organization."

City of Centralia, Decision 3495-A and 3496-A (PECB, 1990) [Emphasis by **bold** supplied].

Keeping the disputed positions out of the petitioned-for bargaining unit in this case could potentially leave room for another bargaining unit within the employer's workforce. Any certificated employees who also coach and perform ancillary duties such as timekeeping, scorekeeping or announcing could become "triple-status" employees, with their allegiance torn between a certificated bargaining unit, an extracurricular activities staff bargaining unit, and an events staff bargaining unit. A better approach is to keep the entire extracurricular activities staff together for the purpose of exercising their collective bargaining rights. In the case now before us, the proposed employer-wide bargaining unit of extracurricular positions for which no educator certification is required will also avoid a potential for fragmentation or the stranding of a group of employees without the opportunity to exercise their collective bargaining rights.

Desires of the Employees -

The unit sought by the South Central Education Association is the only proposal before the Commission in this case. Thus, there is no need to consider a unit determination election to assess the desires of the employees. Clark County, Decision 290-A (PECB, 1977).

Conclusions on Community of Interest Criteria -

The unit sought in this case is occupationally-based, bringing together all of the employer's extracurricular activities staff. Despite some differences in details, the incumbents of the disputed positions share basic duties, skills and working conditions with

the coaches who are stipulated as members of the petitioned-for unit. Too many similarities exist to allow the minor differences to strand a group of employees. As a result of analysis of the statutory factors, we conclude that the disputed positions have a sufficient community of interest with the stipulated positions to be included in the same bargaining unit. The statute does not confine us to certifying only "the most appropriate unit" in each case; it is only necessary that the petitioned-for bargaining unit be an appropriate one. Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require rejecting a proposed unit that is appropriate. City of Centralia, supra.

The Eligibility Test for Extracurricular Employees

As the Commission noted in Columbia School District, et al., Decision 1189-A (EDUC, 1982), any threshold quantification is somewhat arbitrary, but some test is necessary if unit determination matters are to be administered with order.

The employer takes issue with the Executive Director's ruling that the total number of days worked in all extracurricular positions should be combined to determine whether the 30-day threshold was met. Noting that a separate supplemental contract is issued for each activity position, that different work schedules exist for various positions, that the scheduling and hiring is handled independently at each elementary school, and that employees are hired to lead specific activities, the employer argues that the 30 days should be computed by considering only the number of days worked in each particular position.

By determining that there is a community of interest among the disputed and stipulated positions, we have already determined that the work done within all of these positions is bargaining unit work. The employer is nevertheless using community-of-interest

arguments in a further effort to reduce the number of employees eligible to become members of the bargaining unit. This is, however, a question of "regular" versus "casual" status which returns to the question of whether particular incumbents of extracurricular activities positions are employees.

There is a great deal of movement of employees among the positions within the petitioned-for bargaining unit. We infer that individuals who have held one extracurricular activities position may have an interest in working in other coaching, ancillary or activities job(s) to augment their income, experience and/or skills at other times of the year. That portability contradicts separating out individuals on the basis of time spent in only one position. Thus, we agree with the Executive Director that one computation should be made for any person performing bargaining unit work.

The ongoing need of school districts for employees to staff their extracurricular activities programs is aptly compared to the ongoing need of school districts for a cadre of "substitute" employees to fill in when an employee normally scheduled for a particular assignment (i.e., teaching a class, driving a bus route, preparing lunches) is to be absent from work. Thus, Commission decisions dealing with substitutes in school districts are instructive here:

In Everett School District, Decision 268 (EDUC, 1977), it was determined that RCW 41.59.080(1) did not permit a categorical exclusion of substitute teachers from certificated bargaining units. Those who had been placed on the salary schedule after 20 consecutive days of work were included in the unit as "regular part-time" employees.

In Tacoma School District, Decision 655 (EDUC, 1979) it was concluded that persons who had worked for the same school district for 30 or more days in a one-year period and who continued to be

available for work of the same type were also regular part-time employees to be included in the bargaining unit.[14]

In Columbia School District, supra, the Commission affirmed the 20/30 day test announced in Tacoma as an equitable formula for determining employee status, while emphasizing that community of interest factors were less important in such cases:

> The 20/30 day rule reflects our belief that if a substitute has been called back by a school district for 20 consecutive days or for 30 days in a one-year period, it is because he or she has demonstrated some desirable employee characteristic. Similarly, the employer develops an expectancy that the person who has been available for the 20 consecutive or 30 nonconsecutive day period will continue to be available as a substitute. This expectancy of a continuing relationship is not affected by the number of days of service required for higher daily pay, **nor are bargaining histories or variations in substitutes' duties relevant when determining who is or is not an "employee"**. Thus, unlike unit determinations where significant variations of fact make a "per se" rule inappropriate ... these same **fact variations become much less significant when determining who is or is not an employee.**

Decision 1189-A [emphasis by **bold** supplied].

In reaching that result, the Commission relied on National Labor Relations Board precedent and the decisions of labor relations agencies of other states.

In Sedro Woolley School District, Decision 1351-C (PECB, 1982), the Executive Director adapted the "30-days" test to school district classified employees. The Executive Director indicated concern about establishing a threshold which reflected the nature

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[14] The "30-days" test which originated in the Tacoma decision represents approximately one-sixth of the nominal 180-day work year for school teachers.

of the employment relationship and the industrial setting in which it occurs, and found that the 30-day test corresponded to school employment practices. The classified employees shared the 180 day yearly cycle of school district operations with the substitute teachers hired by those employers, so the 30-day test for bargaining unit inclusion was reasonably related to the work assignments and actual time worked by classified employees.

The "30 days" test developed in school districts was subsequently adapted as a "one-sixth test" applied in several other employment settings. See, King County, Decision 1675 (PECB, 1983); Green River Community College, Decision 4491-A (CCOL, 1994); Kitsap County, Decision 4314 (PECB, 1993); Lower Columbia College, Decision 3987-A (CCOL, 1992); Municipality of Metropolitan Seattle, Decision 2986 (PECB, 1988).

The employer has been willing to accept a "days worked" test in this case. In Okanogan School District, Decision 5394-A (PECB, 1997), we are affirming the Executive Director's rejection of a request for computation of the test for extracurricular activities staff on an "hours worked" basis. The use of a "days worked" approach has been the standard in school districts, particularly since a ruling in the Sedro Woolley decision that a substitute who worked the full shift of an employee normally scheduled to work four hours would be credited with a "day" for purposes of the "30-days" test. Rather than developing another test for employers to administer,[15] it is more straightforward to treat "public education" as the industrial setting, and to apply the general rule of "30 days in a one-year period" already in use in school districts for computing the bargaining unit eligibility of the extracurricular activities staffs.

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[15] The employer's "240 hours" proposal would create such a situation, deviating from methods it should be using for both its certificated and classified substitutes.

Computation Methodology

The employer's claim that the Executive Director has used an unnecessarily burdensome three-year time period for computation of eligibility appears to have misunderstood or misapplied the language used by the Executive Director, so that we do not find it is burdensome. The formula specified by the Executive Director is exactly the same as the employer should be using for assessing the bargaining unit status of its substitute employees.

The calculation is based on work within a one-year period of time; that period of time must end during the current or immediately preceding school year. It will be appropriate to make an annual assessment of time worked by extracurricular activities staff members, preferably in the summer months when there is little or no activity in the extracurricular activities program.

An employee is to be credited for a "day" of work for each calendar day during which the individual performs compensated work on extracurricular activities, regardless of the number of hours worked and regardless of what non-extracurricular work is performed on the same day. Thus, a full-time teacher who is a football coach will receive a "day" of credit for each day on which football practice or games are held even if some of those are days when school is in session. The methodology should be as follows:

A. For an assessment made during the summer months: How many "days" of extracurricular activities work did the employee perform in the school year just ended (**YEAR 1**)?

   (1) If the number is less than 30, the individual is a "casual employee", and will not be included in the extracurricular activities staff bargaining unit.

(2) If the number is 30 or more, the individual is a "regular part-time employee", and will be included in the extra-curricular activities staff bargaining unit for the ensuing school year (**YEAR 2**), unless the individual resigns or refuses renewal of extracurricular activities employment.

B. For an assessment made during the school year: How may "days" has the individual completed, or is the individual expected to complete, within one year?

(1) If the number is less than 30, the individual is a "casual employee", and will not be included in the extracurricular activities staff bargaining unit.

(2) If work in **YEAR 2** will give an individual who worked less than 30 days in **YEAR 1** a total of more than 30 days within 12 consecutive months, he or she will be a "regular part-time employee" upon completing the 30 days, and will be included in the extracurricular activities staff bargaining unit for the balance of **YEAR 2**, unless the individual resigns or refuses renewal of extracurricular activities employment.[16]

(3) If an individual is contracted for 30 or more days of work in **YEAR 2**, he or she will be a "regular part-time employee" upon signing the contract and will be included in the extracurricular activities staff bargaining unit for the balance of **YEAR 2**, unless the individual resigns

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[16] Employees who worked less than 30 days in a school year carry over those days to the following school year, but days worked are permanently "lost" on a rolling basis if 12 months pass without attaining "regular part-time" status.

or refuses renewal of extracurricular activities employment.

Contrary to the employer's contention that an employee who had not worked for 35 months would remain in the bargaining unit, the reassessment made between **Year 2** and **Year 3** would exclude an individual from the bargaining unit at the outset of **Year 3** under paragraph (A) if he or she had not worked since **Year 1**. The individual in the example posed by the employer would remain in the bargaining unit no more than 24 months or until they fell under paragraph (E), whichever came first.

NOW, THEREFORE, it is

ORDERED

1. The objections filed by the South Central School District are overruled.

2. This case is remanded to the Executive Director for issuance of a certification.

Issued at Olympia, Washington, on the 14th day of March, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner