STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF GOLDENDALE SCHOOL DISTRICT, an affiliate of PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,	CASE NO. 4000-U-82-622
Complainant,	DECISION NO. 1634-A - PECB
vs.	
GOLDENDALE SCHOOL DISTRICT NO. 404,	DECISION OF COMMISSION
Respondent.	

Edward A. Hemphill, Legal Counsel, appeared on behalf of the complainant.

Robert D. Schwerdtfeger, Labor Relations Specialist, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on March 11, 1982, wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140. George G. Miller was designated as examiner to make and issue Findings of Fact, Conclusions of Law and Order. The examiner issued his decision on May 9, 1983, finding in favor of the complainant. The respondent filed a petition for review on May 31, 1983. Both parties filed briefs on the points raised by the petition for review.

The respondent claims that the examiner held incorrectly in two conclusions of law set forth in the decision:

2. By refusing to bargain with the Public School Employees of Washington regarding the classified instructor position, Goldendale School District No. 404 violated RCW 41.56.140(4) and (1).

3. By threatening to eliminate the classified instructor position if it caused any problems with the association, Goldendale School District No. 404 violated RCW 41.56.140(1).

The district maintains that the district and Public School Employees of Goldendale School District (PSE) did bargain over the position in question, and that PSE was not successful in those negotiations. Specifically, the

district relies on the testimony of its superintendent, Herb Callen, to the effect that the position was already established when the bargaining unit was certified in 1980, and that the district specifically acted to exclude the position from bargaining. Because the union negotiators were not successful in negotiating the position into the bargaining unit, the employer contends that the union waived future rights to bargain over the position, so that the district had no responsibility for bargaining.

PSE contends that it first became aware of the position when it obtained payroll documents from the employer during the 1981-82 school year. It steadfastly maintains that it has not waived its right to bargain on the disputed position through either the representation procedures or contract negotiations.

The record, and the actions of the parties, favor PSE's claim that it has not waived its right to bargain on the disputed position.

The position at issue is titled "classified instructor". The position was created in 1978 to implement a program for gifted pupils. A college degree is required, and on that basis the district would exclude the position from the bargaining unit.

The employer's brief to the Commission takes issue with the examiner's characterization of the bargaining unit as inclusive of all classified employees, and calls into question the intent of the order certifying PSE as exclusive bargaining representative. The Commission takes official notice of its case files concerning the representation case in which that certification was issued. PSE filed its representation petition with the Commission on May 13, 1980, and the matter was docketed under Case No. 2768-E-80-538. A routine inquiry was directed to the employer on May 15, 1980, requesting a list of employees. Superintendent Callan responded by letter dated May 19, 1980, listing 44 names under the following heading:

> In answer to your letter dated May 15, 1980, following is a list of all classified employees in the Goldendale School District. (emphasis supplied)

Two of the names on that list were annotated "C.E.T.A.", three of the names on that list were annotated "CONFIDENTIAL", one name was annotated "TRANS. MAINT. SUPERVISOR", one name was annotated "TRANSPORTATION SUPERVISOR", and one name was annotated "CUSTODIAL SUPERVISOR". There were no other indications of job title or function. The parties executed a cross-check agreement under the rules of the Commission, to which they attached a copy of Superintendent Callan's May 19, 1980 letter as the stipulated list of eligible employees. The only exclusions from the list as supplied by the district were initialed by the representative of both parties. They were the three individuals marked as "CONFIDENTIAL" and the one marked "CUSTODIAL

SUPERVISOR". The unit as proposed in the petition, agreed to in the cross-check agreement and as set forth in the certification broadly covers all five general groupings commonly found among school district classified employees: transportation, food service, secretarial, aide and custodial-maintenance. Nothing whatever in the official records of the case lends any support or confirmation to Callan's testimony or to the position of the district that other exclusions were discussed or agreed upon.

The record suggests that the position was probably never discussed. By the time of the representation proceedings and while the first collective bargaining agreement between these parties was being negotiated, the first incumbent of the "classified instructor" position had received a teaching certificate and appeared to have been in a certificated position. PSE's claim, that it first became aware of the "classified" nature of the position (and of its potential bargaining unit claim) when the incumbent appeared on the employer's classified payroll, is both reasonable and supported by the record.

Since then, the disputed position has had, in sequence, at least three incumbents, none of whom has had a teaching certificate. It is true that the present incumbent's qualifications, and the position itself, have characteristics in common with both certificated teachers and with the aides. In addition, there are some attributes that are sui generis. By statute, however, the position cannot be included in a bargaining unit with certificated teachers under Chapter 41.59 RCW. We believe it would be contrary to the public policy on which Chapter 41.56 RCW is founded, and contrary to well-established labor law precedent, to exclude the disputed employee from all units and leave her in a class by herself. A one-person bargaining unit is not appropriate. Town of Fircrest, Decision 248-A (PECB, 1977). A public employee stranded in such a situation is effectively deprived of the collective bargaining rights conferred by statute. More importantly, we believe that it is in the best interest of all parties, as well as of the public, to discourage the proliferation of bargaining units of employees of a single employer. See: Yelm School District, Decision 704-A (PECB, 1980), where the Commission denied a "severance" petition, finding that:

> "All of the employees of the employer" (After separation of certificated employees as required by statute RCW 41.59) constitute an integrated support operation essential to the overall discharge by the district of its primary educational function, and therefore are more appropriately dealt with as a unit.

Oak Harbor School District, Decision 1319 (PECB, 1981), relied upon by PSE, similarly avoided fragmentation of bargaining units by placing "instructors" not qualifed for bargaining rights under Chapter 41.59 RCW in the bargaining unit with "aides" under Chapter 41.56 RCW. A multiplicity of bargaining units is cumbersome for the employer to deal with, and can lead to a

breakdown of bargaining relationships. Accordingly, we find that, considering all relevant circumstances, the classified instructor position is included in the bargaining unit represented by PSE, along with aides and others working in support of the educational program.

PSE did not waive its right to bargain concerning the "classified instructor" position, and the district should not have refused to bargain concerning it. When the district placed the position on the classified payroll and on the classified employee group insurance list, and given the undetermined status of the position, the district had the obligation to fully discuss the situation. If discussion failed to resolve the dispute, the unit clarification procedures of Chapter 391-35 WAC were available to the district, and should have been utilized. The district's answer essentially admits that the district refused to bargain with PSE, and the record clearly indicates that it implemented wages, hours and working conditions which were markedly different from those negotiated with PSE. The district did so at its peril. Once refusal to bargain and the unilateral changes occurred, PSE was not limited to pursuit of the unit clarification procedure, but rather was entitled to obtain the unit determination as an adjunct to an unfair labor practice proceeding in which remedies could also be obtained for the employer's unlawful conduct.

The district offered PSE the Hobson's choice of either discontinuing discussion of the disputed position or jeopardizing the continuance of the position. The question of whether this was an unlawful interference with employee rights is easily answered. It was an unfair labor practice on its face, whether or not the choice was delivered in a menacing or neutral manner. In this case, the violation takes on an additional gravity as it appears that the district's representative was taking some advantage of the naivete of PSE's local unit officer. Ruby Bargas testified:

> To be perfectly honest, I was believing what he was telling me that, you know, he had the right to hire this position as he did with other positions that he subcontracted.

The docket records of the Commission disclose that the district has a collective bargaining relationship under Chapter 41.59 RCW with its teachers. Superintendent Callan can be presumed to have at least the appearance of superior knowledge and authority with respect to the processes ofcollective bargaining and rights of the parties. In interference cases, it is the appearance which counts. It is not necessary that Callan had intended to interfere with the exercise of employee rights if the statement were reasonably perceived by its recipient as a threat of reprisal or force or a promise of benefit. Callan was not dealing with a PSE business agent, who might have taken it as bargaining banter or challenged him on the rights of an employer regarding skimming of unit work or subcontracting. (See: South Kitsap School District, Decision 472 (PECB, 1978) and legion

subsequent cases on that subject matter). Callan's statements to Bargas were unlawful. We deviate from the examiner only with respect to the degree of certainty indicated by Callan. The examiner made a finding of fact that the unlawful threat was to the effect that the disputed position "would" be eliminated. We read the record to indicate that the threat was to the (equally unlawful) effect that the disputed position "could" be eliminated. We amend the examiner's order accordingly.

ORDER

1. Paragraph 3 of the examiner's findings of fact is amended to state:

   On December 29, 1981, the Association became aware of a classified position titled "classified instructor" that was not included in the bargaining unit. The president of the association met with the district superintendent on December 29, 1981 to clarify the matter. The association representative was advised that the position was not in the bargaining unit and if there were any problems with the association, the classified instructor position could be eliminated.

2. Except as amended in paragraph 1 of this order, the Findings of Fact, Conclusions of Law and Order issued by Examiner George G. Miller on May 9, 1983 are affirmed and adopted as the Findings of Fact, Conclusions of Law and Order of the Commission.

3. Goldendale School District shall notify the Executive Director of the Public Employment Relations Commission, in writing, within thirty (30) days following the date of this Order, as to what steps have been taken to comply herewith and at the same time shall provide the Executive Director with a signed copy of the notice to employees required by the Examiner's order.

ISSUED, at Olympia, Washington, this 10th day of February, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMMISSION

Jane R. Wilkinson
JANE R. WILKINSON, Chairman

Mark C. Endresen
MARK C. ENDRESEN, Commissioner

Mary Ellen Krug
MARY ELLEN KRUG, Commissioner