

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
GRANDVIEW EDUCATION ASSOCIATION	)	CASE NO. 1506-C-78-68
Involving certain employees of:	)	DECISION NO. 1140 - EDUC
GRANDVIEW SCHOOL DISTRICT NO. 116-200	)	ORDER CLARIFYING BARGAINING UNIT

Symone Scales, Attorney at Law, appeared on behalf of the Grandview Education Association.

Robert Schwerdtfeger, Negotiations Specialist, appeared on behalf of the Grandview School District No. 116-200.

On May 30, 1978, the Grandview Education Association filed a petition with the Public Employment Relations Commission, wherein it requested a ruling as to whether the positions of Federal Programs Coordinator, Special Education Director and Vocational Director were supervisory or non-supervisory. A hearing was held on February 20, 1979 before Hearing Officer George G. Miller at Grandview, Washington. Both parties filed post-hearing briefs on March 28, 1979.

BACKGROUND:

The parties had a 1976-77 collective bargaining agreement and were working under a 1977-79 collective bargaining agreement at the time of the hearing. The 1977-79 contract excluded the superintendent, assistant superintendent, business manager, principals and assistant principals. The positions in question were created by the district after the 1977-79 agreement was negotiated.

PERTINENT STATUTORY PROVISIONS:

RCW 41.59.020(4)(a), (b), (d):

"The terms "employee" and "educational employee" means any certificated employee of a school district except:

- (a) The chief executive officer of the employer.
- (b) The chief administrative officers of the employer, which shall mean the superintendent of the district, deputy

superintendents, administrative assistants to the superintendent, assistant superintendents, and business manager. Title variation from all positions enumerated in this subsection (b) may be appealed to the commission for determination of inclusion in, or exclusion from, the term "educational employee".

* * *

- (d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which means any employee having authority, in the interest of an 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 the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority."

POSITION OF THE PARTIES:

The District contends that the positions in question were created after a collective bargaining agreement was negotiated between the parties providing for exclusion of all "newly created certificated positions that are principally supervisory and administrative" (Article I, Section I, Recognition). It further contends that these positions are part of the superintendent's management team and that the titles of Assistant Superintendent or Administrative Assistant could have been assigned to all three of the employees in question.

The GEA argues that the employees holding the disputed positions are not supervisors and that a preponderance of their time is spent in the role of coordinators of district programs in concert with teachers.

DISCUSSION:

Renton School District, Decision 951 (EDUC, 1980) cites the basic test for clarifications of certificated bargaining units:

"...supervisors, identified as such by a preponderance of their duties, are excluded from rank-and-file certificated bargaining units where they work in support of the administrative function

of the school district; employees whose duties are routinely clerical or ministerial in nature and who serve as resource personnel in support of the educational program have remained in nonsupervisory educational employee bargaining units."

See also: Clover Park School District, Decision 376 (EDUC, 1978); Tacoma School District, Decision 652-A (EDUC, 1979), affirming Decision 652 (EDUC, 1979). The term "confidential" is defined in the statute and given interpretation by our Supreme Court in IAFF v. City of Yakima, 91 Wn.2d 101 (1978). The statute expressly leaves to the commission determinations on title variations among those claimed to be "chief administrative officers". The employer claims all three bases of exclusion.

None of the three disputed individuals has teaching responsibilities, but all are certificated by the Superintendent of Public Instruction of the State of Washington. It has been held repeatedly that the mere absence of teaching responsibilities is not a sure indicator of bargaining unit status, nor is compensation on an "administrative" salary schedule separate and apart from the teacher salary schedule. Clover Park, supra; Tacoma, supra. If any of the disputed individuals clearly met the requirements for any of the indicated bases for exclusion, it is likely that the parties might have stipulated their status during or at the conclusion of the hearing. See: Peninsula School District, Decision 411 (EDUC, 1978); Tacoma, supra. The absence of any stipulations in this case is likely attributable to the circumstance that on this record, none of the disputed individuals clearly meets the criteria to invoke any of the bases for exclusion.

Programs Coordinator - Arno L. Johnson

Mr. Johnson had been employed by the Grandview School District for two years and seven months as Director of Special Programs. His contract with the District as "Director of Special Programs" is for the same 182 day work year as is specified in the collective bargaining agreement for teachers. By his own testimony, he is responsible for the "minor supervisory, major coordination, management and evaluation of all special programs conducted within the Grandview School District". Programs which are supported with monies other than State basic education apportionment fall into this category, including: Title I-Disadvantaged; Title I-Migrant; State Gifted; Title IV-B and Title IV-C.

The programs within Johnson's area of responsibility are staffed by twenty staff members, thirteen certificated and seven classified. Those employees are interspersed throughout the District's staff. The hiring of staff is done by committee, operating on a one-man-one-vote principle, with the superintendent having the final say. Evaluation of

staff members is performed by the principal of the building in which the individual staff member is assigned. Johnson evaluated one certificated staff member in the gifted program in 1978 but that task has thereafter been performed by a building principal.

Johnson provides the special programs staff members with materials and techniques to assist them in the teaching of children. He achieves this through weekly and sometimes daily involvement. The selection of materials and purposes for which monies will be spent is done by an Instructional Materials Committee which involves teacher input at the building level. Johnson then processes the committee's recommendations. His budgetary responsibility is limited to handling gifted program funds which are allocated according to a formula, and negotiating for migrant funds.

Johnson is an evaluator of programs, but not staff. He does not make effective recommendations with respect to hiring. He has no authority to adversely affect any staff member. Rather, he works in support of the district's educational program.

Johnson testified that he sat in on one bargaining session but was not part of the bargaining team nor did he help develop district proposals. He was merely one of a number of administrators who rotated sitting at the table as observers with the district's negotiating team. Johnson's limited and non-continuous contacts with bargaining dictate that he not be viewed as a confidential employee with respect to preparation and formulation of labor relations policy or the administration of the collective bargaining agreement. See: City of Mercer Island, Decision 725 (PECB, 1979).

Although reporting directly to the superintendent, Johnson does not function as a "chief" administrator of the district. The district's contention that the title of assistant superintendent or administrative assistant could have given is contradicted by the testimony. He has no district-wide administrative responsibilities, and there is no indication that he has a place in the chain of command as a substitute for the superintendent.

Special Education Director/School Psychologist - Earnest D. Fisher

Mr. Fisher had been employed by the district for two years as Special Education Director/School Psychologist. He holds credentials as a psychologist (Standard Specialized Personnel Certificate). His time is divided between the Grandview School District and the Granger School District. He spends three and one half days a week in Grandview. Neither testimony or briefs described how Mr. Fisher's time is spent in Granger. He has a 195 day contract. Prior to taking this position, Mr. Fisher worked for an Educational Service District as a School Psychologist, serving a number of Yakima Valley school districts, including Grandview.

Sixty percent of Mr. Fisher's time is spent in screening physically and/or mentally handicapped students for eligibility and placement in the various school programs. The process is usually initiated by teachers, who refer the students to Fisher. He, in turn, contacts the parents for permission to test. The testing is done by Fisher with the assistance of a Communications Disorder Specialist and two aides. He consults with principals, parents and teachers regarding the eligibility and the program placement of handicapped students. All of the paperwork associated with this on-going process is completed by Fisher.

Mr. Fisher has evaluation responsibility for the Communication Disorder Specialist, who works the same inter-district schedule as does Fisher. The six certificated employees and the four aides who teach the handicapped students are assigned to various buildings throughout the district and are evaluated by the building principals. All hiring is done by a committee and, therefore, Mr. Fisher does not make effective recommendations with respect to hiring.

Mr. Fisher cannot be deemed a supervisor. The preponderance of his duties are in support of the District's education program for the handicapped. Even if his authority to evaluate the one person is credited as giving him authority in the areas of suspension, discipline and discharge, there is no evidence that he makes effective recommendations or has authority with respect to hiring, assignment, promotion, transfer, layoff, recall or grievance adjustment.

Fisher has never been part of the negotiations process, even as an observer. Fisher reports directly to the superintendent, but the relationship is not that of an administrative assistant or an assistant superintendent as contended by the district. Fisher's budgetary responsibility is governed by formulas, with a great deal of parent and teacher input which is also a governmental requirement. To give meaning to the statutory adjective "chief", one must conclude that Fisher performs administrative work within well defined parameters and not in the administration of the district's total program as the "chief administrative officer" would imply.

Director of Vocational Education - Ms. Norma J. Parton

Ms. Parton has worked for the district since 1968. She was a counselor until 1974, when she began serving as Director of Vocational Education part-time while still serving as a counselor. In 1977, she became the Director of Vocational Education full-time. Ms. Parton performs two other functions. She is responsible for student placement in the Yakima County Youth Corps and Youth Employment Training Programs, and she does the purchasing of vocational educational equipment.

The Vocational Education Program operates primarily in the high school, with some pre-vocational programs in the middle school. Parton's job is to develop vocational programs, curriculum and materials within the State and Federal guidelines and funding formulas. She prepares the S.P.I. reports. She is responsible for assuring that the courses developed will be State approved.

The vocational program has eleven additional staff members in addition to Parton. They all are certificated, with some holding dual certification for both academic and vocational education. Ms. Parton does not supervise the day to day activities of any of these individuals, and she assists in their evaluation only upon request. As with the other positions in question, hiring for the vocational program is done by committee.

Thirty percent of Parton's work is related to the proper handling of the State forms required of the program. Twenty percent centers around "follow-up" of the graduates of the program. This is done through two CETA secretaries and some advisory committees.

Parton was not a part of the negotiation process. She did not participate in the development of district proposals. She never observed the process, nor is she responsible for administering the Agreement. Parton is not a confidential employee. Parton's relationship with students, parent groups and quasi-department heads consumes the majority of her time. Ms. Parton's budgetary responsibility is not discretionary, but rather guided by formulas. To apply the title of "assistant superintendent" or "administrative assistant" would be a misnomer, and would be the type of title the Commission is statutorily authorized to interpret. The preponderance of Ms. Parton's duties are in support of the district's vocational educational program and not in the administration of the district.

It is noted that this record was made quite some time ago, and that the decision has been delayed while resources have been directed to other cases having a higher priority. The decision is, of necessity, based on the record which was made. No motion to reopen has been received and any changes in circumstances since the hearing have not been considered.

FINDINGS OF FACT

1. Grandview School District, No. 116-200, is and at all times material herein, a school district within the meaning of RCW 41.59.020(5).
2. Grandview Education Association is, and at all time material herein, an employee organization within the meaning of RCW 41.59.020(1)

and the recognized exclusive bargaining representative of non-supervisory educational employees of Grandview School District No. 116-200.

3. A dispute has arisen between the Grandview School District and the Grandview Educational Association as to whether certain positions are to be included in the non-supervisory educational employee bargaining unit.

4. The "Federal Programs Coordinator" coordinates, manages and evaluates special programs. He provides materials and techniques to the certificated staff. He is not responsible for the evaluations of the staff and does not make effective recommendations on or otherwise have authority regarding the supervision of employees.

5. The "Special Education Director/School Psychologist" is responsible, as a psychologist, for the screening of handicapped students for proper placement in the various programs. He tests those students and is responsible for all of the paper work associated with this on-going process. He has limited evaluation authority and lacks a majority of the indicators of supervisory authority.

6. The "Director of Vocational Education" develops vocational programs, curriculum and materials for the district. She is responsible for obtaining approval of these programs by the State. She performs these functions within State and Federal guidelines and funding formulas. She does not supervise employees or make effective recommendations for hiring or firing.

7. The district conducts its collective bargaining on an ongoing basis by its Superintendent and a contracted negotiator/consultant. None of the disputed individuals has had ongoing contact as an integral part of the District's negotiating team.

8. Each of the disputed individuals has administrative responsibilities in limited areas and none of them is a "chief" administrative officer of the school district.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists in the bargaining unit of non-supervisory educational employees of Grandview School District, No. 116-200, and the Public Employment Relations Commission has jurisdiction in this matter to issue an order clarifying an existing bargaining unit.

2. The Federal Programs Director, Special Education Director/School Psychologist and the Director of Vocational Education have non-supervisory duties, skills and working conditions which are similar to those of educational employees of the employer and the incumbents of the disputed positions share a community of interest with the employees in the bargaining unit referred to in paragraph 2 of the foregoing Findings of Fact as educational employees within the meaning of RCW 41.59.020(4).

ORDER

The bargaining unit consisting of all full-time and regular part-time non-supervisory educational employees, is clarified to include the positions of Federal Programs Coordinator, Special Education Director/School Psychologist and Director of Vocational Education.

DATED at Olympia, Washington this 28th day of April, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marvin L. Schurke", is written over the printed name.

MARVIN L. SCHURKE, Executive Director