STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RENTON EDUCATION ASSOCIATION Complainant, vs. RENTON SCHOOL DISTRICT NO. 403, Respondent.	CASE NO. 843-U-77-99 DECISION NO. 706-A EDUC DECISION AND ORDER OF THE COMMISSION

Symone B. Scales, attorney at law, Washington Education Association, appeared on behalf of the complainant.

Montgomery, Purdue, Blankenship & Austin, by George W. Akers and Christopher L. Hirst, attorneys at law, appeared on behalf of the respondent.

Since 1976, Renton School District No. 403 has declined to bargain with the Renton Education Association, hereinafter called REA, concerning rates of pay for substitute teachers, on the ground that the subject of substitutes' pay is a permissive, rather than mandatory, subject of bargaining. The REA charged the district with failure to bargain collectively as required by RCW 41.59.140(1)(e). While several allegations of refusal to bargain in good faith were litigated before the Examiner, the issue of substitutes' pay is the only issue before us on appeal. The Examiner dismissed the charge.

The district bases its argument on appeal largely on the contention that the REA has never been recognized or certified as the "exclusive bargaining representative" of the district's "substitute" teachers. At page 19 of its brief to the Examiner, the district expressed its willingness to stipulate to the inclusion of "long-term substitutes" within the bargaining unit. See: Everett School District, Decision 268 (EDUC, 1979). It then shifted gears to argue that the issue is "daily substitutes" only, and that a ruling in this proceeding is impossible, citing RCW 41.59.020 (6). The district then proceeded to argue that "daily substitutes" should not be in the unit, quoting RCW 41.59.080 incompletely, on the theory that "daily substitutes" lack a community of interest with the districts' contracted teachers and "long term substitutes". For the reasons set forth below, those arguments are without merit.

Pointedly, RCW 41.59.080(1) provides:

> "A unit including non-supervisory educational employees shall not be considered appropriate unless it includes all such non-supervisory educational employees of the employer."

Community of interest of certain of the "daily substitutes" is certainly minimal, and we hold, in keeping with our decision in Everett School District, Decision 268 (EDUC, 1977) and Tacoma School District No. 10, Decision 655 (EDUC, 1979), that "daily" substitutes who are casual employees, as distinguished from full time and regular part time employees, are excluded from the bargaining unit.

In Everett, supra, it was urged that a literal reading of RCW 41.59.080(1) would impel the conclusion that all certificated substitutes, daily as well as long-term, must be included in the bargaining unit. Oregon has so held, in Eugene Substitute Teacher Organization v. Eugene School District, 677 GERR B-6 (1976), relying on community of interest principles. Other states, whose decisions are cited in Tacoma, supra, have followed the precedents of the National Labor Relations Board distinguishing regular from casual employees, as do we in the interest of sound labor relations practice.

As the Examiner observed, the Everett and Tacoma decisions held that substitute teachers who were employed for 30 or more total days during a twelve month period or for 20 consecutive days in the same assignment were regular part time employees included in the non-supervisory certificated employee bargaining unit. Only those working less than the stated tests for "regular" employment were deemed to be "casual" employees and excluded as such. Such casual employees would not be eligible voters in representation elections, they would not be obligated under union security provisions affecting the bargaining unit, and they would be outside the REA's duty of fair representation. But such is beyond the point.

No one is seriously challenging the REA's status as the exclusive bargaining representative of the district's non-supervisory certificated employees. The district's arguments based on the recognition clauses of the contracts between the parties are circuitous and unsound. Respondent's Exhibit No. 28 in this record confirms the existence of a negotiations relationship between the parties under repealed RCW 28A.72 as early as 1969-70, making RCW 41.59.020(6)(b) operative. The parties bargained collectively under RCW 41.59 without benefit of a PERC certification, indicating the employer's recognition of the REA under RCW 41.59.020(6)(b); and they have signed collective bargaining agreements, the first of which was signed even before the complaint in this case was filed. Omission of the substitutes from recognition agreements made under a prior law does not justify continuation of that omission under the current law with its vastly different

unit determination provisions. There is no reason why the recognition clause should mention "substitutes" expressly. RCW 41.59.080(1) puts that to rest. If the employee is certificated and employed for a certificated position (and all substitutes must meet those qualifications) the unit must include them. Our decisions exclude only "casual" employees on the bases specified in Everett and Tacoma. It was not necessary for the REA to make a demand for negotiations which differentiated between "long term" and "daily" substitutes.

Even if the employer had some good faith doubt concerning the scope of the bargaining unit when it embarked on collective bargaining in 1976, the demands concerning "substitutes" advanced by the REA in 1976 were limited to wages of substitutes, and were a mandatory subject of bargaining. Clearly, the members of the non-supervisory certificated employee bargaining unit have an interest in when and under what circumstances casual employees are hired to replace them. As accumulation of time in "casual" status leads to "regular" status and unit inclusion, the members of that bargaining unit also have an interest in the transition from "daily" to "long-term" assignments and in the accumulation of sufficient time with the employer to be considered a regular part time employee. If the Tacoma School District No. 10 decision limiting the bargaining unit to full time and regular part time employees is sound, as we believe it to be, it still necessarily follows that the minimum wages for all substitute teachers are proper subject of negotiations between the parties.

In Local 24, Teamsters v. Oliver, et. al., 358 U.S. 283 (1959), minimum rental rates for owner-operated trucks were found to be a mandatory subject of bargaining between the contracting carrier and the union representing the drivers of carrier-owned trucks, because of the union's interest in protecting the negotiated wage scale for members of its bargaining unit against possible undermining, and because of the union's interest in protection against the progressive curtailment of bargaining unit work by the withdrawal of more and more carrier-owned vehicles from service. The specific evil there addressed was the diminution of owner-operator wages for driving by their operation under rental rates which did not actually cover their operating costs. The case before us is analogous. It is not as if some other bargaining unit or employee organization existed, or could exist, whose bargaining rights would be infringed upon. RCW 41.59.080(1) precludes the existence of any such unit among the "casual" employees.

The foregoing does not extend the bargaining rights of the REA into all aspects of the wages, hours and working conditions of casual substitutes. On the contrary, the REA's interests and bargaining rights extend only to the minimum terms of employment for the employer's employees not in the bargaining unit, and then only for the limited purpose of protecting the

wage structure and job security of the employees within the bargaining unit. Bargaining on a broader range or for other purposes cannot be required. See: Sperry Rand Corporation, 202 NLRB 183 (1973), rev. 371 F.Supp 198 (CA-2, 1974). The instant case is distinguished from Chemical Workers v. Pittsburgh Plate Glass, 404 U.S. 157 (1971) and from Sperry, supra, by the fact that the casual employees involved here are in direct competition with bargaining unit employees for unit work, whereas the retired employees in Pittsburgh and the employees of another plant in Sperry were not in a position to affect wages or job security of employees within the existing bargaining unit.

The procedures for clarification of existing bargaining units are set forth in WAC 391-30-300, et. seq. Unit determination is not a mandatory subject of bargaining. City of Richland, Decision 279-A (PECB, 1978); Spokane School District, Decision 718 (EDUC, 1979); Beyerl Chevrolet, Inc., 221 NLRB 710 (1975). Either a union or an employer commits an unfair labor practice by insisting on changes of the definition of the bargaining unit. Unit clarification proceedings are the clearly preferred method for determining disputes of this type. As this case has been litigated as an unfair labor practice, and a violation is found with respect to the refusal to bargain minimum wages, the Examiner's decision must be reversed and a remedial order issued.

Accordingly, paragraphs 2, 5 and 6 of the Examiner's Findings of Fact are amended as follows:

> 2. Renton Education Association is an employee organization within the meaning of RCW 41.59.020(1), and is the recognized exclusive bargaining representative of non-supervisory certificated employees of the district.
>
> 5. The district employs persons holding certification as educators under the laws of the State of Washington as "substitute" teachers for the purposes of replacing full time and regular part time non-supervisory certificated employees of the district during their absences from work on leave and otherwise. Some such "substitutes" are casual employees, but all such substitutes perform work within the general work jurisdiction of the association.
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> 6. The association made bargaining demands during collective bargaining in 1976 concerning the wages to be paid to substitute teachers. The district refused to bargain concerning any substitute teachers.

Paragraph 2 of the Examiner's Conclusions of Law is amended and a paragraph 3 is added as follows:

> 2. By the events described in paragraphs 3, 4, 7 and 8 of the Findings of Fact, the district did not commit unfair labor practices in violation of RCW 41.59.140(1) (a) and (e).
>
> 3. By refusing to negotiate in 1976 concerning the minimum wages to be paid to non-supervisory certificated persons performing substitute work, whether on a regular or casual basis, within the work jurisdiction of the bargaining unit of non-supervisory certificated employees, Renton School District No. 403 has refused to bargain collectively with Renton Education Association as the exclusive bargaining representative of all full-time and regular part time non-supervisory certificated employees of the district and has committed unfair labor practices within the meaning of RCW 41.59.140(1)(a) and (e).

The Examiner's order is reversed, and the following order is substituted therefor:

Renton School District No. 403, its officers and agents, shall immediately:

1. Cease and desist from:

(a) Refusing to bargain collectively with Renton Education Association as the exclusive bargaining representative of all full time and regular part time non-supervisory certificated employees of the district with respect to the wages, hours and terms and conditions of employment of all bargaining unit employees, including substitutes employed on a regular basis, and further with respect to the minimum wages to be paid to casual substitutes where the purpose of such bargaining is limited to protection of the wages structure and job security of the employees within the bargaining unit.

2. Take the following affirmative action which the Commission finds will effectuate the policies of RCW 41.59:

(a) Upon request, bargain in good faith with Renton Education Association as the exclusive bargaining representative of all full time and regular part time non-supervisory certificated employees of the district.

(b) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of Renton School District No. 403, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Renton School District No. 403 to ensure that said notices are not removed, altered, defaced or covered by other material.

(c) Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this Order as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceeding paragraph.

DATED this 8th day of February, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY ELLEN KRUG, Chairman

R. J. Williams
R. J. WILLIAMS, Commissioner

"Appendix A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.59, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail to refuse to bargain collectively with the Renton Education Association as the exclusive bargaining representative of all full time and regular part time non-supervisory certificated employees of the district, including substitutes employed on a regular basis, with respect to wages, hours and terms and conditions of employment and further with respect to the minimum wages to be paid to substitutes employed on a casual basis where the purpose of such bargaining is limited to protection of the wage structure and job security of employees within the bargaining unit.

DATED: _____

RENTON SCHOOL DISTRICT NO. 403

BY: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.