STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
MONROE MAINTENANCE ASSOCIATION	)	CASE 11859-E-95-1941
	)	
Involving certain employees of:	)	DECISION 5283 - PECB
	)	
MONROE SCHOOL DISTRICT	)	ORDER OF DISMISSAL
	)	
	)	

Cascade Educational Services, by Gary Gearheart, and James Smith, president of the Monroe Maintenance Association, appeared on behalf of the petitioner.

Bill Prenevost, Assistant Superintendent, appeared on behalf of the employer.

David Fleming, Attorney at Law, appeared on behalf of the intervenor, Public School Employees of Washington.

On June 26, 1995, the Monroe Maintenance Association (MMA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking to sever certain alleged "skilled crafts" employees of the Monroe School District from a larger bargaining unit of classified employees. Public School Employees of Washington (PSE) was granted intervention in the proceedings, based on its status as the incumbent exclusive bargaining representative of the existing bargaining unit which includes the petitioned-for employees. A pre-hearing conference was conducted, by telephone conference call, on August 16, 1995. Issues were framed concerning whether the petitioner was a labor organization qualified for certification under the statute, and whether the petitioned-for bargaining unit is appropriate.

During the telephonic conference, the parties were given the option of submitting the disputed issues for administrative determination under RCW 41.56.060 on the basis of a stipulated record, or having

a formal hearing pursuant to the Administrative Procedure Act, Chapter 34.05 RCW. Each of the above-named participants in the pre-hearing conference expressed a willingness to proceed with creation of a stipulated record at the pre-hearing, and to the disposition of the matter on a motion for summary judgment. Each party was given the opportunity to submit corrections or clarifications to the record developed at the pre-hearing. It thus appeared that the critical facts were not at issue, and that a summary judgment could be appropriate under WAC 391-08-230.

BACKGROUND

The parties have stipulated to the following facts as the official record of these proceedings:

PSE has represented nearly all of the classified employees of the Monroe School District since 1969. PSE and the employer were parties to a collective bargaining agreement that was effective through August 31, 1995, wherein the bargaining unit was described as follows:

> All employees in the general job classifications of "**Secretarial/clerical, drug/alcohol counselor, occupational information specialists**, custodial, maintenance, grounds, transportation, educational assistants, except supervisors, dispatcher, and secretaries not assigned to school buildings.
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> [Emphasis by **bold** indicates classifications which are no longer represented in this bargaining unit.][1]

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[1] The headquarters secretaries were removed from the unit about 10 years ago. The other office-clerical employees were permitted to form a separate bargaining unit represented by PSE about three years ago. The drug/alcohol counselor and occupational information specialist positions were removed from the bargaining unit at an unspecified date.

The local PSE bargaining unit recently voted 18-0 to agree to permit a separate unit for the petitioned-for maintenance employees. PSE's policy on the efficient use of staff (and dues dollars) is not to represent groups of less than 20 employees, but PSE stated that the local employees felt they really did not have a choice, given the desires of the craftsmen.

The petition encompasses seven employees in the following job classifications: Transportation mechanic, maintenance and grounds. The employer organizes its classified workforce into skilled and unskilled positions. The employer considers all of the petitioned-for classifications to be in the skilled category. Each of the three maintenance employees is a journeyman in their respective craft. One is a carpenter; another is an electrician; the third works on heating, ventilating and air conditioning (HVAC) equipment. The two vehicle mechanics are journeymen. One of the two grounds positions is held by an employee who is a journeyman welder; the other grounds position is held by a journeyman warehouseman. In addition, both grounds employees have had special training in their respective duties.

The PSE local chapter executive board is composed of employees from each classification represented. The executive board has represented PSE in collective bargaining negotiations since at least 1983. In the most recent round of negotiations, the bargaining unit voted down a special pay increase for the crafts employees in favor of a general pay increase for all employees.

The existing bargaining unit includes both full-time and part-time employees. The petitioned-for employees are full-time employees working 2080 hours per year, and enjoy the same benefits as other full-time employees in the bargaining unit.

The petitioned-for employees believe their salaries are below the state average for their positions, while other employees such as

bus drivers and aides are paid more than comparable personnel in other school districts. The salary rates shown in the collective bargaining agreement for 1990 indicated that the petitioned-for employees were paid at a "skilled craftsmen" rate of $12.52 per hour, the lead custodian earned $11.49 to $11.64 per hour, the counselor and occupational information specialists were at $12.72 per hour, and the interpreter classification was the highest-paid at $13.50 per hour.

Employees earn and exercise seniority within the general job classifications. Employees with the highest seniority have preferential rights regarding promotion, assignment to new or open jobs, overtime within the work area (on a rotating basis), shift selection, and lay off (when ability, knowledge, skills and performance are substantially equal to the junior employee).

Like other classified employees, they provide support to the employer's primary educational function. The petitioned-for employees are given "maintenance work orders" by the director of facilities and operations. The petitioned-for employees usually have interaction with other employees in the bargaining unit, and normally discuss repair projects with the custodian, teacher or building principal who requested it. During this summer, the employer hired back one of its bus drivers to work as a mechanic helper for four weeks, performing tasks that mechanics do not ordinarily perform (e.g., steam cleaning bus engines, repairing seats and replacing vehicle light bulbs). Summer temporary help opportunities are open to education assistants, bus drivers, custodians and others to perform small painting tasks (e.g., touch-ups) which are within the job responsibilities of custodians.

The petitioned-for employees are supervised by the director of facilities and operations, who evaluates their job performance. The assistant transportation supervisor will occasionally assign work to them, but does not evaluate their work.

POSITIONS OF PARTIES

The petitioner argues that the petitioned-for employees are skilled craftsmen who have a strong community of interest, and that their desire to separate from the existing unit is mutual, as expressed by the 18-0 vote. The petitioner asserts that the needs of the petitioned-for employees have not been met, because they are out-voted in the existing unit.

The employer acknowledges that the needs of the petitioned-for employees have not been met in the existing unit configuration. It believes the petitioned-for employees are significantly different from other classifications, based on skills, qualifications, training and quality of work. The employer is not concerned about the increasing the number of bargaining units in its workforce.

PSE acknowledges that it agreed to sever the clerical employees from the historical wall-to-wall unit, but cites Commission precedents finding such bargaining units appropriate, and opposes severance of the petitioned-for employees from the existing bargaining unit on the basis of a different line of Commission precedent. PSE argues that such a unit would improperly fragment the employer's workforce. PSE characterizes the petitioned-for group as a mixture of craft and non-craft employees, rather than as a distinct and homogeneous craft group. PSE relies on the history of bargaining for over 25 years in which the petitioned-for group has been represented as part of the existing bargaining unit.

DISCUSSION

Status as a Labor Organization

The decision in Southwest Washington Health District, Decision 1304 (PECB, 1981), described a relatively small quantum of evidence

necessary to establish status as an organization that is qualified for certification under the statute. The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, defines bargaining representative broadly, to include "any lawful organization which has as one of its primary purposes the representation of employees". RCW 41.56.030(3). Based on the use of the term "prospective" in the statute, it was concluded in Franklin Pierce School District, Decision 78-B (PECB, 1977), that it is sufficient for an organization to establish its status during the course of representation proceedings before the Commission.

The purpose of the MMA is clearly stated in its bylaws, as being to represent employees in collective bargaining with their employer. There is no indication of management domination or interference in the organization, as was the situation in Quillayute Valley School District, Decisions 2809, 2809-A (PECB, 1988). Under the precedents of Franklin Pierce School District and Southwest Washington Health District, the MMA is found to be a labor organization within the meaning of the Act.

Appropriate Bargaining Unit

The Legislature has conferred on the Public Employment Relations Commission the sole responsibility to determine, modify or combine appropriate bargaining units:

> RCW 41.56.060 DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, **the unit appropriate for the purpose of collective bargaining.** 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.** ...
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> [Emphasis by **bold** supplied.]

In implementing the authority conferred on it by RCW 41.56.060, the Commission has looked to the decisions of the National Labor Relations Board (NLRB) in developing a body of precedent designed to establish continuity and avoid conflicting results.

Petitions seeking severance of a group of employees historically included within a larger bargaining unit necessarily invoke the "history of bargaining" aspect of the statutory unit determination criteria.[2] In addressing "severance" situations as far back as Yelm School District, Decision 704-A (PECB, 1980), the Commission has followed principles enunciated by the NLRB, as follows:

> [W]e shall ... broaden our inquiry to permit evaluation of all considerations relevant to an informed decision in this area. The following areas of inquiry are illustrative of those we deem relevant:
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> 1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
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> 2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in

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[2] Not all of the statutory criteria come into operation in each case. There is no "history of bargaining" to be considered among unrepresented employees; there are no "extent of organization" considerations in a "wall-to-wall" unit; there is no occasion to implement the "desires of employees" on a unit determination question unless there are two or more potentially appropriate units under consideration.

> labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
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> 3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
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> 4. The history and pattern of collective bargaining in the industry involved.
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> 5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
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> 6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.
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> In view of the nature of the issue posed by a petition for severance, the foregoing should not be taken as a hard and fast definition or an inclusive or exclusive listing of the various considerations involved in making unit determinations in this area. No doubt other factors worthy of consideration will appear in the course of litigation. We emphasize the foregoing to demonstrate our intention to free ourselves from the restrictive effect of rigid and inflexible rules in making our unit determinations. Our determinations will be made only after a weighing of all relevant factors on a case-by-case basis, and we will apply the same principles and standards to all industries.

Mallinckrodt Chemical Works, 162 NLRB 387 (1966) at pages 397-398 [footnotes omitted].

During the 12 years prior to its Mallinckrodt decision, the NLRB had granted severances to craft units under a policy the Board had enunciated in American Potash & Chemical Corporation, 107 NLRB 1418

(1954).[3] After 12 years of experience, however, the NLRB had come to believe the earlier decision was based on an erroneous interpretation that the statute favored craft severance, and that American Potash seriously undermined the authority of the NLRB to determine appropriate bargaining units. Accordingly, Mallinckrodt added four

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[3] In American Potash, the NLRB was struggling with the balancing of the principle of craft independence (which the Board thought Congress intended to preserve) against potential disruptions to industrial stability which the severance of the craft from highly integrated industries. The NLRB was concerned that granting severance might result in the loss of maximum efficiency through fragmentation of bargaining units, jurisdictional disputes over work assignments and strikes of small craft groups shutting down a large industrial plant or nationwide industries employing thousands of workers. The NLRB described its dilemma in terms which may be apt to the controversy in the instant case:

> The lesson we draw is that, consistent with the clear intent of Congress, it is not the province of this Board to dictate the course and pattern of labor organization in our vast industrial complex. If millions of employees today feel that their interests are better served by craft unionism, it is not for us to say that they can only be represented on an industrial basis or for that matter that they must bargain on strict craft lines. All that we are considering here is whether true craft groups should have an opportunity to decide the issue for themselves. We conclude that we must afford them that choice in order to give affect to the statute. Whatever may be lost in maximum industrial efficiency, ... is more than compensated for by the gain in industrial democracy and in the freedom of employees to choose their own unions and their own form of collective bargaining.

American Potash, 107 NLRB at pages 1422-3.

The rationale of the decision in American Potash was a basic concern over industrial stability, which the NLRB believed could be seriously undermined by prolific fragmentation of large stable bargaining units with a multiplicity of small craft units. The NLRB thus attempted to minimize disruptions by limiting severance to homogeneous craft units sought by those who traditionally represent such crafts.

additional criteria. Mallinckrodt did not change the basic rule, that a craft unit must consist of a "distinct and homogeneous group of skilled journeymen, working as such, together with their apprentices and or helpers". To be a journeyman craftsman under that line of precedent, an individual had to have a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training. Further, the union seeking to represent such a unit had to be one which traditionally represents that craft. The Mallinckrodt criteria have been cited in numerous Commission precedents since Yelm was decided in 1980.[4]

Application of "Severance" Criteria

Characterization as a "Craft" Group -

The first of the Mallinckrodt criteria parallels the "duties, skills and working conditions" aspect of the RCW 41.56.060 unit determination criteria, by looking for close groupings of employees with particular skills. In this case, the employer organizes its classified workforce into skilled and unskilled positions, and it considers all of the petitioned-for positions to be "skilled". The petitioner seeks, however, a mixed-craft unit composed of employees working in a variety of separate and distinct crafts.

The evidence additionally falls short of the Malinckrodt test with regard to the grounds personnel. Although they happen to hold

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[4] See, for example, Vancouver School District, Decision 4022 (PECB, 1992); North Mason School District, Decision 3841 (PECB, 1991); City of Mount Vernon, Decision 3762 (PECB, 1991); Highline School District, Decision 3562 (PECB, 1990); City of Moses Lake, Decision 3322 (PECB, 1989); Pasco School District, Decision 3217 (PECB, 1989); Okanogan County, Decision 2800 (PECB, 1987); Auburn School District, Decision 2710-A (PECB, 1987); King County Fire District 39, Decision 2638 (PECB, 1987); Centralia School District, Decision 2599 (PECB, 1987); and Thurston County, Decision 2574 (PECB, 1986).

journeyman status, their present duties are not the traditional functions of their crafts. Accepting that they are "skilled" in the employer's dichotomy, the grounds positions neither require a formal apprenticeship or journeymen status.

History of Bargaining -
The second of the Mallinckrodt criteria directly parallels the "history of bargaining" aspect of the RCW 41.56.060 unit determination criteria. Both the MMA and employer argue that the existing patterns of bargaining will not be unduly disrupted by the proposed severance, but the record indicates that the petitioned-for employees have been represented in the existing bargaining unit for more than 25 years.

There has been no history of separate representation of the petitioned-for employees. The PSE continues to be a viable organization and has a continued interest in representing the skilled workers as part of the existing bargaining unit.

There is some evidence in the record that the proposed severance has been motivated, at least in part, by employee dissatisfaction with being voted against by other employees in the bargaining unit when the employer offered a higher pay increase for the skilled employees in order to bring their salaries up to the average salary paid in the area.[5] Employees in the petitioned-for group have made their needs known and have served on bargaining committees in negotiations with their employer. Absent any evidence of actual discrimination, or of exclusion of the petitioned-for employees

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[5] Given that "wages" are a mandatory subject of bargaining, and that the duty to bargain is mutually imposed on the employer and union, an employer faced with a recruitment and retention problem is in a position to insist to impasse on a wage adjustment for critical classifications. The employer is a full participant at the bargaining table, and certainly is not at the whim of internal union politics.

from participation of the affairs of the existing bargaining unit, the perception of MMA leaders that the PSE bargaining committee was unsympathetic to their proposals is not sufficient to upset the long history of bargaining in the employer-wide unit. See, Grays Harbor County, Decision 3067 (PECB, 1988).

Maintenance of Separate Identity -
The third of the Mallinckrodt criteria appears to touch both the "duties, skills and working conditions" and "extent of organization" aspects of the RCW 41.56.060 unit determination criteria. While units smaller than employer-wide have been approved, as in City of Centralia, Decision 3495-A (PECB, 1990), the evidence does not support a finding of a separate identity in this case.

The petitioned-for employees are within a bargaining unit that includes both full-time and part-time employees. They have generally the same benefits as full-time employees in other classifications within the existing bargaining unit. Full-time employees receive one more holiday per year than part-time employees. With some exceptions, part-time employees receive pro-rata vacation and sick leave rights, based on the ratio that their hours and work year bears to full-time employment. The mix of full-time and part-time employees in the same bargaining unit is, however, entirely consistent with Commission precedent, and is not a basis for creation of a separate unit. See, Auburn School District, Decision 2710-A (PECB, 1987); Centralia School District, Decision 2599 (PECB, 1987). Further, the full-time and part-time employees are brought closer together by state appropriations providing full medical and other insurance benefits for employees working as little as 1440 hours per year, and by local practice providing pro-rated benefits for part-time working fewer hours.

Seniority of employees is earned within the general job classification. Employees with the highest seniority have preferential rights regarding promotion, assignment to new or open jobs and

overtime within the work area on a rotating basis, shift selection and lay off when ability, knowledge, skills and performance are substantially equal to the junior employee.

History of Bargaining in Industry -
The fourth of the Mallinckrodt criteria looks to both factual and legal precedent. An employer-wide unit, such as that which existed in Monroe until separation of the office-clerical unit, can be and remain appropriate. City of Winslow, Decision 3520-A (PECB, 1990). A wide variety of bargaining unit configurations exist among Washington school districts, but it is clear that skilled personnel can properly be included in larger units.

Integration of "Crafts" into Employer's Workforce -
The fifth of the Mallinckrodt criteria also appears to touch both the "duties, skills and working conditions" and "extent of organization" aspects of the RCW 41.56.060 unit determination criteria. The record indicates that the petitioned-for employees are supervised by the director of facilities and operations, but occasionally receive assignments from the assistant transportation supervisor. The petitioned-for employees usually discuss work orders with the management employee who originated the work request and with other employees at the work site who may have brought the needed project or repair to the principal's attention. It, thus, appears that the petitioned-for employees usually have interaction with other noncraft employees in the course of their responsibilities and like other classified employees provide support to the primary educational function of the employer.

Conclusions

The existence of a "question concerning representation" depends on the existence of an appropriate bargaining unit. In Bainbridge Island School District, Decision 2123 (PECB, 1985), application of the Mallinckrodt criteria led to dismissal of a petition seeking

the severance of a mixed group of maintenance personnel which included electricians, painters, plumbers, and other workers in the district's maintenance department. The facts in this case are similar. The severance of the petitioned-for bargaining unit from the historical unit would not be appropriate.

While affirming that the Commission has authority to rule on the propriety of bargaining units as a pre-condition to the existence of a "question concerning representation", the Washington courts have held that the Commission should not interfere with the choice of bargaining representative by public employees once an appropriate unit is found to exist. International Association of Fire Fighters, Local 1052 v. PERC, 45 Wn.App 686 (Division III, 1986). There is no "question concerning representation" in this case, however, because the petitioned-for unit is found to be inappropriate on other grounds. The petition for investigation of a question concerning representation filed in this case must be dismissed.

FINDINGS OF FACT

1. Monroe School District is a school district organized and operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).

2. Monroe Maintenance Association, a prospective bargaining representative within the meaning of RCW 41.56.070, is a recently formed organization of public employees which exists for the purpose of collective bargaining on behalf of certain skilled public employees of the Monroe School District.

3. Public School Employees, a bargaining representative within the meaning of RCW 41.56.030(3), has been the exclusive bargaining representative of Monroe School District employees

involved in maintenance and operations of school buildings, grounds, food service, and transportation.

4. A history of bargaining has existed over 25 years under which skilled maintenance employees have been included in the same bargaining unit with other classified employees. There has been no history of separate representation of skilled maintenance employees. Skilled employees have participated on the executive board and bargaining committee of the incumbent organization, and have presented proposals to the bargaining committee for negotiations. The intervenor continues to be a viable organization and has continuing interest in representing skilled maintenance employees as part of the larger unit.

5. The skilled maintenance employees have working conditions and benefits similar to other employees in all but a very few areas. These employees share the same seniority rights in their classifications as other employees. Differences in level of benefits are primarily based on hours of work, and not on classification. The petitioned-for employees are not a distinct and homogeneous group of skilled employees.

6. The employees in the existing bargaining unit constitute an integrated support operation essential to the primary educational function of the school district.

7. Severance of the proposed unit would contribute to fragmentation of the bargaining unit and disruption of labor relations of the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. Monroe Maintenance Association is a bargaining representative within the meaning of RCW 41.56.030(3).

3. The petitioned-for bargaining unit consisting of maintenance employees and grounds employees 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 for investigation of a question concerning representation filed by the Monroe Maintenance Association is DISMISSED.

Issued at Olympia, Washington, this 4th day of October, 1995.

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).