

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS, LOCAL 280) CASE 7638-E-88-1306
)
Involving certain employees of:) DECISION 3217 - PECB
)
PASCO SCHOOL DISTRICT NO. 1) DIRECTION OF ELECTION
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Don Bushey and Ron McLean, Business Representatives, appeared on behalf of the petitioner.

Robert Schwerdtfeger, Labor Relations Consultant, appeared on behalf of the employer.

Eric Nordlof, Attorney at Law, appeared on behalf of the incumbent intervenor, Public School Employees of Washington.

On October 25, 1988, International Union of Operating Engineers, Local 280, filed a petition with the Public Employment Relations Commission, seeking to represent a bargaining unit of school bus drivers employed by the Pasco School District. Public School Employees of Washington (PSE) was granted intervention in the proceedings based on its status as the incumbent exclusive bargaining representative of the petitioned-for employees. A pre-hearing conference was held on December 8, 1988, at Pasco, Washington, where the parties stipulated several matters. A hearing was held at Pasco on January 5, 1989, before J. Martin Smith, Hearing Officer. Briefs were filed by the parties to complete the record in this case.

BACKGROUND

The Pasco School District serves approximately 6300 students in the "Tri-Cities" area of south-central Washington. Larry Nyland is the superintendent of schools. Douglas Kernutt is the director of personnel. Among the services it provides, the employer maintains a fleet of school busses to transport students to and from its high school, two junior high schools and eight elementary schools. The employer has approximately 700 full-time employees and about 120 part-time or substitute employees. Of those, approximately 370 are "classified" employees covered by Chapter 41.56 RCW.

Apart from the bargaining unit or units at issue in this proceeding, the employer has collective bargaining relationships with a number of organizations representing various groups of its employees:

- * A bargaining unit of non-supervisory certificated employees is represented under Chapter 41.59 RCW by the Pasco Association of Educators (PAE), an affiliate of the Washington Education Association.

- * A bargaining unit of school principals is represented under Chapter 41.59 RCW by an independent organization.

- * A bargaining unit of certificated supervisors is represented under Chapter 41.59 RCW by an independent organization.

- * A bargaining unit of custodial and maintenance employees is represented under Chapter 41.56 RCW by the petitioner in this proceeding, IUOE Local 280.¹ The employer and union currently have a collective bargaining agreement covering that bargaining unit.

¹ The union was certified by the Commission in Pasco School District, Decision 947 (PECB, 1980). At that time, the unit included approximately 40 employees.

The school bus drivers at issue here first organized for the purposes of collective bargaining in 1972, when the Department of Labor and Industries² certified an independent organization, "The Association of Regular Part-Time Bus Drivers of Pasco School District No. 1", as exclusive bargaining representative of those employees. For the period September 1, 1981 through August 31, 1983, the unit of "regular full-time and regular part-time drivers" was covered by a collective bargaining agreement between Pasco School District No. 1 and "The Pasco School District Regular Part-Time Bus Drivers, an affiliate of Public School Employees of Washington."³

The employer voluntarily recognized PSE in 1976 as exclusive bargaining representative of a unit of "clerical" employees.⁴ The record indicates that separate contracts were signed for a unit of office clerical employees and aides until 1983.

In the autumn of 1983, the employer and PSE agreed to merge the bus driver and clerical/aide groups represented by PSE into a single bargaining unit. The record suggests that this was done largely to ensure that limited local funds could be used for wage increases, inasmuch as the Legislature had frozen wages

² The Department administered Chapter 41.56 RCW from 1967 through 1975.

³ It is inferred that there was a merger of organizations on an unspecified date. Neither records transferred to the Commission by the Department of Labor and Industries nor the Commission's own docket records contain indication of a representation case involving these bus drivers between 1972 and 1981.

⁴ The docket records of the Commission indicate that Case No. 183-E-76-16 was a representation case filed with the Commission on February 1, 1976. The case was closed on April 30, 1976, on the basis of "voluntary recognition" having been granted. There were approximately 32 employees in that unit.

for classified employees during this period. The first contract signed by the employer and PSE for such a "combined" bargaining unit covered September 1, 1983 to August 31, 1986.

The employer's food service employees had organized at an unspecified time under representation by the Washington State Council of County and City Employees (WSCCCE).⁵ PSE filed a petition with the Commission in 1983 to initiate representation proceedings concerning the food service unit. PSE prevailed in an election and was certified in March of 1984 as exclusive bargaining representative of "all full-time and regular part-time classified employees in the general job classification of food service".⁶ It does not appear that the food service unit ever negotiated a separate contract after that election. Instead, an amendment to the 1983-86 collective bargaining agreement covering the school bus, clerical and aide employees was signed on January 15, 1985, including wage provisions for the food service employees for the September 1, 1983 to August 31, 1986 period.⁷

For reasons which are not made entirely clear in the record, it appears that negotiations on limited "openers" in 1985 were converted into a "rollover" contract covering the September 1, 1985 to August 31, 1988 period.

⁵ The docket records of the Commission indicate that the unit pre-dates 1981, as a unit clarification case was filed in that year. Case 3815-C-81-179.

⁶ Pasco School District, Decision 1878 (PECB, 1984). Approximately 45 employees were in that bargaining unit at that time.

⁷ This "second version" of the 1983-86 agreement includes provisions for the transportation classifications, aide classifications, and secretary/clerk classifications, and hence represents the first coherent expression of the "consolidated" bargaining unit claimed by PSE in the instant case.

POSITIONS OF THE PARTIES

Local 280 argues that a separate bargaining unit of transportation employees is the most appropriate unit, and that the Commission ought to conduct a representation election in such a unit. It points out that the transportation employees were originally certified as a separate bargaining unit, and contends that any subsequent merger with other classified employee groups was not sanctioned or certified by the Public Employment Relations Commission. The petitioner urges that no "fragmentation" problem exists in this situation.

The employer objects to the severance of the petitioned-for unit from the existing unit structure, claiming that it would fragment a bargaining unit which has a history of bargaining favoring consolidation.

PSE argues that, although separately certified, the petitioned-for bus drivers have been included in the consolidated bargaining unit for several years. PSE contends that the idea of a consolidated unit was suggested by the employer, and that the consolidated unit does not violate "appropriate unit" principles set forth in RCW 41.56.060. It urges that a "wall-to-wall" unit of classified employees should survive the application of severance criteria, so that the petition should be dismissed.

DISCUSSION

Bargaining units are determined by the Commission under the criteria set forth in RCW 41.56.060. A unit consisting of "all of the classified employees" of a school district (thus constituting all of the employees of the employer who are

covered by Chapter 41.56 RCW) is an inherently appropriate unit, as all of the employees share a community of interest in dealing with their common employer concerning their wages, hours and working conditions. Unlike the situation existing under the Educational Employment Relations Act, Chapter 41.59 RCW, which proscribes the fragmentation of bargaining units of "certificated" employees of school districts,⁸ the "duties, skills and working conditions", "history of bargaining", "extent of organization", and "desires of employees" criteria of the statute are truly operative under Chapter 41.56 RCW.

Separate units of office-clerical employees have also been regarded as presumptively appropriate. National Labor Relations Board precedent on the subject is of long standing, and the Commission has reached the same result in a number of cases that are summarized in Longview School District, Decision 2551 (PECB, 1986).

Severance

Efforts to "sever" existing bargaining units of school district classified employees into two or more bargaining units have been before the Commission in a number of cases. Except for efforts to obtain severance of office-clerical employees from broader bargaining units, such efforts have generally met with limited success.

In Yelm School District, Decision 704-A (PECB 1979), the Commission rejected a proposed severance of school bus drivers from a bargaining unit that included all of the classified employees of the employer other than "office-clerical" employees. The existing unit was described as "an integrated

⁸ See RCW 41.59.080(1).

support operation essential to the overall discharge by the district of its primary educational function, and therefore ... more appropriately dealt with as a unit." Thus, fragmentation of the existing bargaining unit was rejected.⁹

School bus drivers were also the focus of discussion in West Valley School District, Decision 1129 (PECB, 1981), and in Lake Washington School District, Decision 1170 (PECB, 1981), where severances were sought from bargaining units composed of all of the classified employees of the employer. In each of those cases, 12-year bargaining histories contributed to decisions which left the existing units undisturbed. In both West Valley and Lake Washington, the incumbent exclusive bargaining representative expressed interest in continuing to represent the drivers, and continued to exist as a viable labor organization fully capable of negotiating contracts as contemplated by Chapter 41.56 RCW.

As in Okanogan County, Decision 2800 (PECB, 1988) and Grays Harbor County, Decision 3067 (PECB, 1988), a party will not prevail on a "severance" by merely arguing, as does the petitioner here, that there are differences of view between the various groups of employees within an existing unit.

PSE's brief quotes extensively from a review of the "severance" precedent made in Cusick School District, Decision 2946 (PECB,

⁹ Yelm was a watershed case for the Commission, as it set out "severance criteria" taken largely from National Labor Relations Board precedent in two leading cases, Mallinckrodt Chemical, 162 NLRB 387 (1966) and American Potash, 107 NLRB 1418 (1954). Those criteria require a showing that the unit proposed for severance consists of a distinct and homogenous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or where there was a "tradition" of separate representational status.

1988).¹⁰ The problem for PSE is that its own quotation from the Cusick decision starts with: "'Wall-to-wall' bargaining units of school district employees". Given the existence of the separate unit of custodial-maintenance employees, the group of employees currently represented by PSE is certainly not a "wall-to-wall" unit. Nor is it even an "operations and maintenance" unit consisting of all of the employees of the employer other than office-clericals.

It is not possible to describe PSE's existing unit as an "integrated support operation" in the sense used in Yelm. It follows that blind obedience to "severance" precedent is not indicated in this case.

"Amalgams" of Units

If Yelm marks the high-water mark for the adoption and use of "severance" criteria, Pierce County, Decision 1039 (PECB, 1980) may define the opposite end of the spectrum. In that case, the employer had made a practice of recognizing unions along lines of extent of organization. Certain unions came to represent diverse groups of employees. A de facto "merger" came about when the separately-organized bargaining units sat down to bargain a "master agreement" which covered virtually all of the employees of the employer and was signed by multiple labor

¹⁰ As in the instant case, the petitioner in Cusick sought to represent a separate group of bus drivers who had become disenchanted with their representation through a consolidated bargaining unit with the employer's office-clerical, food service, and aide employees. The case is clearly distinguished, however, by the fact that the incumbent in the former "wall-to-wall" unit had previously disclaimed the drivers, so that they had been unrepresented for some time prior to the filing of the petition.

organizations.¹¹ When a representation dispute arose between two of the organizations and application of "severance" criteria was sought, it was concluded that the de facto "merger" had never defined an appropriate bargaining unit, so that the four groups at issue continued to be treated for unit determination purposes as separate units.

After years of rejecting proposed severances in numerous cases, the Commission has recently encountered two other cases where broad units have been rejected in favor of smaller bargaining units defined along "occupational" lines. In Spokane Transit Authority, Decision 3149 (PECB, 1988), a bargaining unit created by voluntary recognition was not protected from a "severance" petition. In Raymond School District, Decision 3202 (PECB, 1989), an effort to create a bargaining unit composed of school district transportation employees and office-clerical employees was rejected as inappropriate.

Under Pierce County and its progeny, the key question here is whether the collection of employees now represented by PSE has become one bargaining unit. Put another way, "Is the unit to be protected by severance criteria merely an amalgam of separate units that happen to be represented by the same labor organization?" If the group is merely a collection of bits and pieces, then application of "severance" criteria is not warranted.

Application of Precedent to the Facts

Absent anything in the record to the contrary, it must be assumed that the school bus drivers in Pasco have duties,

¹¹ The employer signed separate, supplemental contracts with the various organizations setting forth non-standard provisions for various units.

skills and working conditions which are typical of school bus drivers around the state. Were they unrepresented, there is little doubt that the bus drivers could organize as an appropriate separate unit. Cusick School District, supra. It also follows that their duties, skills and working conditions likely vary in many details from those of the clerical, aide and food service employees who comprise the balance of the existing group represented by PSE. The existing unit can be described as "an" appropriate unit. Lacking inclusion of all of the classified employees, or even of all of the operations and maintenance employees, it cannot be regarded as the "most" or "only" appropriate unit.

Contrary to the arguments advanced by Local 280, there is nothing inherently wrong with the employer's voluntary recognition of PSE for the office-clerical unit. The rules for processing of representation cases anticipate, at WAC 391-25-070(4)(a), that a union seeking to represent previously unrepresented employees will make a request for voluntary recognition, in order to frame a "disagreement" before filing a petition under RCW 41.56.050. To extend voluntary recognition, the employer need only be satisfied that the union has the support of the majority of the employees in the bargaining unit. City of Mukilteo, Decision 1571-B (PECB, 1983). The voluntary recognition of the clerical unit came in response to a representation petition filed with the Commission, and so is to be distinguished from the situation in Spokane Transit, supra, where recognition was granted close on the heels of an unsuccessful effort by another organization to obtain representation rights in proceedings before the Commission. The petitioner has cited no decision or doctrine which would absolutely require a Commission certification to create a valid bargaining relationship under Chapter 41.56 RCW, and there is nothing in the record to suggest that Pasco School District's

"recognition" of PSE for any of the groups it now represents was less than in good faith.

Similarly, the merger of the former independent organization representing the school bus drivers into PSE is not a basis for a proforma resolution of this dispute. Mergers of labor organizations can be accomplished as a matter of internal union affairs, and are not regulated or scrutinized by the Commission unless a question concerning representation is raised. See, Skagit Valley Hospital, et al., Decision 2509-A (PECB, 1987). The merger at issue in this case was apparently recognized by the employer without need for intervention by the Commission, and there is nothing to indicate that the merger should be opened to scrutiny at this late date.

On the other hand, PSE's "history of bargaining" argument is not compelling. The school bus drivers in Pasco had a separate bargaining history until they were merged with the office-clericals in a unit of the very type recently rejected in Raymond, supra. Even if they were willing participants in that merger, the record would not support a similar finding as to the addition of the food service workers to that unit in mid-contract, a year or more later. Further, this petition came at the first hiatus between contracts following the merger,¹² so that the "consolidated" bargaining unit in this case lacks the weight of tradition that would be generated by having had the groups bargain together for several contracts. Thus, it is concluded that the collection of employees now represented by PSE remained an amalgam of separate bargaining units, and that it remained subject to challenge without application of the

¹² Although five years have elapsed, the "premature extension" ("rollover") of the 1983-86 contract to 1988 has resulted in this being the first real opportunity for the bus drivers to back away from the merger.

"severance" criteria, at the time the petition in this case was filed.

Where two or more unit configurations could be appropriate under other unit determination criteria, the Commission implements the "desires of employees" criteria by conducting a secret-ballot unit determination election. Such an election is directed in this case.

FINDINGS OF FACT

1. Pasco School District No. 1 is a school district operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).
2. International Union of Operating Engineers, Local 280, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition for investigation of a question concerning representation among school bus drivers employed by the Pasco School District.
3. Public School Employees of Washington (PSE), a bargaining representative within the meaning of RCW 41.56.030(3), has been granted intervention in the proceedings based on its status as the incumbent exclusive bargaining representative of school bus drivers employed by the Pasco School District.
4. Since 1980, Local 280 has been the exclusive bargaining representative of a separate bargaining unit of custodians and maintenance employees in Pasco School District.

5. The school bus drivers in the Pasco School District have been organized for the purposes of collective bargaining since 1972 and have been represented by PSE since at least 1981.
6. In 1983, the employer and PSE agreed to merge the bargaining unit of school bus drivers with a previously separate bargaining unit of classroom aides and office-clerical employees. The arrangement was proposed by the employer in part to save the employer time and money in labor negotiations. A collective bargaining agreement was signed by the parties on November 30, 1983 covering the period from September 1, 1983 through August 31, 1986.
7. In 1984, PSE was certified by the Public Employment Relations Commission as exclusive bargaining representative of food service employees of the Pasco School District.
8. In January of 1985, PSE and the employer signed an amended 1983-86 agreement, adding the food service personnel to the composite bargaining unit.
9. In bargaining on limited openers for the 1985-86 school year, PSE and the employer agreed to a premature extension of their 1983-86 collective bargaining agreement and so signed an agreement covering the period from September 1, 1985 through August 31, 1987.
10. Local 280 filed the petition to initiate these proceedings in October of 1988, after the final expiration of the first collective bargaining agreement covering the bargaining unit created by mergers agreed to in 1983 and 1985.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this case pursuant to Chapter 41.56 RCW.
2. A bargaining unit consisting of all full-time and regular part-time school bus drivers employed by Pasco School District No. 1, excluding confidential employees, supervisors and all other employees of the employer, would be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060 if the desires of employees so indicate in a secret-ballot unit determination election conducted by the Commission.
3. If the employees vote to create a separate bargaining unit in the election referred to in paragraph 2 of these conclusions of law, a question concerning representation will exist in that appropriate bargaining unit under RCW 41.56.060 and RCW 41.56.070.

DIRECTION OF ELECTIONS

1. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission in the following voting group:

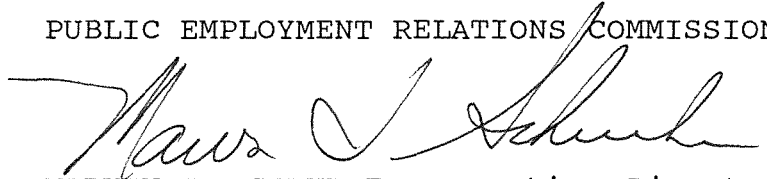
All full-time and regular part-time school bus drivers employed by Pasco School District No. 1, excluding confidential employees, supervisors and all other employees of the employer.

to determine whether a majority of employees eligible to vote in such election desire to constitute themselves a bargaining unit separate and apart from all other employees of the employer.

2. In the event that a majority of those eligible to vote in the voting group described in paragraph 1 of this order cast ballots in favor of creation of a separate bargaining unit, then a representation election shall be held under the direction of the Public Employment Relations Commission among the employees in that bargaining unit, to determine whether a majority of those employees desire to be represented by International Union of Operating Engineers, Local 280; by Public School Employees of Washington; or by no representative.

DATED at Olympia, Washington, this 26th day of May, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed
by filing timely objections
with the Commission pursuant
to WAC 391-25-590.