STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
LOWER COLUMBIA COLLEGE INDEPENDENT FACULTY ASSOCIATION	CASE 9138-E-91-1513
	DECISION 3987-A - CCOL
Involving certain employees of:	
LOWER COLUMBIA COLLEGE	DECISION OF COMMISSION

Paul R. Roesch, Jr., Attorney at Law, appeared for the petitioner.

Ken Eikenberry, Attorney General, by Bonnie Y. Terada, Assistant Attorney General, appeared for the employer.

Eric R. Hansen, Attorney at Law, appeared for the intervenor, Lower Columbia College Faculty Association for Higher Education.

This matter comes before the Commission on a timely petition for review filed by Lower Columbia College, seeking to overturn a Direction of Election issued by Executive Director Marvin L. Schurke.[1]

BACKGROUND

Lower Columbia College (employer) is a community college of the state of Washington, operated under Chapter 28B.50 RCW. The employer's main campus and administrative headquarters are located in Longview, Washington.

The employer and the Lower Columbia College Faculty Association for Higher Education (AHE) signed two collective bargaining agreements

[1] Lower Columbia College, Decision 3987 (CCOL, 1992).

on or about February 26, 1991.[2] Both of those contracts describe the covered bargaining unit as:

> 102 EXCLUSIVE RECOGNITION
>
> The District recognizes the LCCFAHE as the exclusive bargaining agent per RCW 28B.52, as now or hereafter amended, for all academic employees employed by the District.

AHE acquired its status as exclusive bargaining agent through voluntary recognition, not by means of an "election" conducted by the Commission pursuant to Chapter 391-25 WAC.

On April 26, 1991, the Lower Columbia College Independent Faculty Association (IFA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, pursuant to Chapter 391-25 WAC. The IFA sought certification as exclusive bargaining representative of academic employees of Lower Columbia College. The AHE moved for intervention in the proceedings under WAC 391-25-170, claiming status as the incumbent exclusive bargaining representative of employees in the petitioned-for bargaining unit.

During a pre-hearing conference held on June 21, 1991, the parties agreed that unit determination criteria set forth in Community College District No. 12, Decision 2374 (CCOL, 1986), are controlling, but they disagreed as to whether community education instructors should be included in the bargaining unit. Such instructors had not been considered part of the existing unit, but AHE now sought their inclusion. IFA opposed the inclusion of these instructors in the bargaining unit, as did the employer.

---

[2] The first of those agreements was effective for the period from February 26, 1991 through June 30, 1991. The second contract is effective for the period from July 1, 1991 through June 30, 1994.

The employer's community education (community service) program offers a variety of short-term courses, special classes, seminars, activities, and workshops that are designed primarily for adults who wish to pursue personal, professional, vocational or avocational interests. Those courses are offered on a non-credit, ungraded basis, and are funded almost exclusively by student fees. Unlike the regular college curriculum, there are no minimum admission standards or prerequisites. Selection and availability of these self-supporting courses is contingent primarily upon community interest and requests. Classes are canceled if there is insufficient student enrollment to pay the costs of operating the class.

The employer provides its community service program by means of a separate workforce from that used in providing its regular college curriculum. Community service instructors need not be teachers by training, and their employment at the college is usually incidental to an instructor's primary occupation or interest in his or her field of expertise.[3] These instructors are compensated on an entirely different basis than are persons who teach credit-granting courses; have only occasional contact with matriculated students of the college; and have no role in counseling such students or in students' progress towards graduation.

A hearing was held on August 29, 1991, after which the parties filed post-hearing briefs. The Executive Director then issued a Direction of Election on February 5, 1992. He ruled, inter alia, that the bargaining unit for which AHE claims status as incumbent is inappropriate under RCW 28B.52.030, by reason of the exclusion, as a class, of persons employed by Lower Columbia College to teach community education classes.

---

[3] Members of the faculty who teach credit-granting courses at the college may also teach community service courses, based upon some personal interest. In such cases, a separate personal contract to teach a community service course is incidental to a professor's employment as regular college faculty.

A representation election was conducted under the auspices of the Commission on May 19, 1992, at which time 31 votes were cast in favor of the IFA, 57 votes were cast in favor of the AHE, and two ballots were challenged.

On May 26, 1992, the Lower Columbia College filed objections under WAC 391-25-590(2). Those objections focused on the Executive Director's ruling that the inclusion of community service instructors is required for an appropriate bargaining unit.

POSITION OF THE PARTIES

The employer contends that the Executive Director erred in his interpretation that Chapter 28B.52 RCW does not authorize the Commission to make a unit determination which excludes all community service instructors from the bargaining unit. The employer asserts that inclusion of community service instructors in the bargaining unit is inappropriate, because those instructors do not share a "community of interest" with regular full-time and part-time academic employees. The employer contends that the community service instructors have not sought representation for collective bargaining, having chosen instead to exercise their right to negotiate individually on their own behalf. Finally, the employer contends that the customary "one-sixth" test, used to define regular part-time academic employees, should not be applied to community service instructors.

The AHE agrees with the Executive Director's ruling and asks that it be affirmed.

The IFA did not file an appeal brief responding to the employer's objections.

DISCUSSION

Applicable Unit Determination Standards

RCW 28B.52.020(2) defines "academic employee" as:

> **"any teacher**, counselor, librarian, or department head, **who is employed by any community college district**, whether full or part time, with the exception of the chief administrative officer of, and any administrator in, each community college district.
>
> [emphasis by **bold** supplied]

There has been no contention that community service instructors do not fall within this broad statutory definition of "academic employee".

The central issue in this case concerns the Executive Director's conclusion that a "one unit per district" standard is applicable to the bargaining relationships between community college districts in this state and their academic employees.[4] The question before us is one of statutory interpretation, and we approach it with the applicable rules of statutory construction in mind. Principal among these is the mandate that this Commission endeavor to ascertain and give effect to the intent of the Legislature. City of Yakima v. International Assn. of Fire Fighters, 117 Wn.2d 669 (1991).

The legislative history of Chapter 28B.52 RCW has been well described by the Executive Director in his decision, and that

---

[4] The Executive Director acknowledged that under conventional "community of interest" principles, there would be some basis to exclude the community service instructors from a bargaining unit composed primarily of employees engaged in teaching the employer's credit-granting courses. Decision 3987 at page 7.

history is incorporated herein by reference. The employer has not disputed the Executive Director's recitation of the legislative history, it simply disputes the conclusions he draws from that history. We find the legislative history of Chapter 28B.52 RCW well supports the conclusion that, as originally enacted, the statute contemplated a "one unit per district" standard.

From the time of its original enactment in 1969, RCW 28B.52.030 has provided:

> Representatives of an employee organization, which organization shall by secret ballot have won a majority in an election to represent **the** academic employees **within its community college district**, shall have the right ...

[emphasis by **bold** supplied]

Amendments to Chapter 28B.52 RCW in 1987 substituted the duty to bargain in good faith, added unfair labor practice provisions and other "collective bargaining" features, and abbreviated the balance of RCW 28B.52.030 to conclude with "to bargain as defined in RCW 28B.52.020(8)". However, the above quoted language has remained as the only "unit determination" criteria to be found in Chapter 28B.52 RCW.

As noted by the Executive Director, the community college bargaining act was originally patterned after a statute covering the K-12 schools, and that the K-12 statute provided no agency authority to make unit determinations. Chapter 28.72 RCW. In 1976, the K-12 statute was replaced with a collective bargaining act patterned after the National Labor Relations Act (NLRA). The new Educational Employment Relations Act, Chapter 41.59 RCW, specifically authorizes the Commission to determine appropriate bargaining units, and sets forth "community of interests" standards for doing so. RCW 41.59.080. In the companion statute which created this Commission, the Legislature made it clear that it was not altering any existing

bargaining unit or any existing authority under the various separate collective bargaining statutes transferred to the new agency for administration. RCW 41.58.005. The move was to obtain "more uniform" administration of separate collective bargaining laws, not to enact a single, uniform collective bargaining law.

When the law covering community colleges, Chapter 28B.52 RCW, was amended extensively in 1987, no provision analogous to RCW 41.59.080 was ever added. Chapter 28B.52 is conspicuous in this omission. In RCW 28B.16.100(10), administered by the Higher Education Personnel Board (HEPB) and governing other community college employees, the Legislature specifically directed the adoption of rules regarding, inter alia, "the determination of appropriate bargaining units". The Legislature also specified "community of interest" unit determination criteria.[5] In the Public Employees' Collective Bargaining Act (PECBA), the Legislature adopted a similar provision authorizing this Commission to make bargaining unit determinations on "community of interests" principles. RCW 41.56.060. We find the lack of any similar modification to Chapter 28B.52 to be persuasive evidence that only one bargaining unit of community college academic employees was contemplated by the Legislature.

In support of its contention that more than one unit should be permissible, the employer relies on one of the amendments to Chapter 28B.52 RCW which were adopted in 1987. The amendment adopted a definition for "exclusive bargaining representative" which reads as follows:

> RCW 28B.52.020 DEFINITIONS. As used in this chapter:
> ...
> (7) "Exclusive bargaining representative" means any employee organization which has:

---

[5] More than one unit per district is allowed under HEPB rules. WAC 251-14-030(2).

> (a) Been certified or recognized under this chapter as the representative of the employees **in an appropriate collective bargaining unit;** .... (emphasis added)

In the employer's view, the reference to "an appropriate unit" in RCW 28B.020(7) would be superfluous if the Legislature had intended that a college district could only have one bargaining unit of academic employees. We find that assertion unpersuasive.

The 1987 amendments added both an enforceable duty to bargain and unfair labor practice provisions to Chapter 28B.52 RCW. Since Commission precedent makes the existence of an appropriate bargaining unit a condition precedent to the existence of a duty to bargain, it is entirely consistent with the addition of those new features that the law should also now refer to "an appropriate bargaining unit". The conditional exclusion in RCW 28B.52.020(3) of administrators from a unit of academic employees provides another reason for the reference in RCW 28B.52.020(7)(a) to "an appropriate unit".

The wording of RCW 28B.52.020(7)(a) must be read in the context of the rest of Chapter 28B.52 RCW. Numerous other provisions in that Chapter are worded in a way that suggests only one bargaining unit was contemplated. For example, in RCW 28B.52.020(3) the conditional exclusion of community college administrators reads as follows:

> Administrators shall not be members of **the bargaining unit** unless a majority of such administrators and a majority of **the bargaining unit** elect by secret ballot for such inclusion .... [emphasis by **bold** supplied].

RCW 28B.52.020(6) defines "union security provision" as a provision under which some or all employees in "**the** bargaining unit" may be required to either join the union or pay an agency fee. In

addressing the issue of authorized dues deduction, RCW 28B.52.045 then states:

> Upon filing with the employer the voluntary written authorization of a bargaining unit employee under this chapter, the employee organization which is the exclusive bargaining representative of **the bargaining unit** shall have the right to have deducted from the salary of the bargaining unit employee the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative.

[Emphasis by **bold** supplied]

Regarding the right to bargain, RCW 28B.52.030, reads as follows:

> Representatives of an employee organization, which organization shall by secret ballot have won a majority in an election to represent **the academic employees within** its community college **district**, shall have the right to bargain as defined in RCW 28B.52.020(8).

[Emphasis by **bold** supplied]

The singular wording of all of the foregoing provisions is consistent with a legislative contemplation of a "one unit per district" standard for bargaining units of academic employees.

In view of the foregoing, we do not read Chapter 28B.52 RCW's definition of exclusive bargaining representative as implying that any particular set of unit determination criteria are thereby adopted. Nor do we find the 1987 amendment to RCW 28B.52.020(7)(a) indicative of a legislative intent to change the "one unit per district" unit determination criteria that had characterized Chapter 28B.52 RCW up until that time. Instead, the Commission reads RCW 28B.52.020(7)(a) as intended to indicate that whenever there is a disagreement, as in this case, about inclusions in or

exclusions from the one bargaining unit of academic employees allowed per community college district, the Commission is to resolve the dispute.

Eligibility for "Employee" Status

"Regular part-time" employees are included in bargaining units with full-time employees performing the same work, but it has long been Commission policy to exclude "casual" employees. See, Everett School District, Decision 268 (EDUC, 1977); Tacoma School District, Decision 655 (PECB, 1979). The Commission has previously noted that any test used to distinguish "regular part-time" employees from "casual" employees is somewhat arbitrary, although necessary.[6]

In 1986, a ".1667 FTE" test was adopted for determining whether a community college teacher qualified as a regular part-time employee. Community College District 12, Decision 2374 (CCOL, 1986). The parties stipulated to use of the "one sixth" test in the pre-hearing conference, by reference to the District 12 decision. That test was then applied in developing the final eligibility list.

The employer now argues that a test different from that used in Community College District 12, supra, should be used for determining the eligibility of community service instructors. The record does not indicate that the employer was arguing at the hearing for any different test to differentiate "casual" from "regular part-time" employees. Thus, there was no notice to the Executive Director that the customary "one-sixth" test was at issue. No evidentiary record was developed to support application of a different test. In the past, the Commission has not hesitated to hold parties to the stipulations they make in a representation

---

[6] Columbia School District No. 400, et al., Decision 1189-A (EDUC 1982).

case. Community College District 5, Decision 448 (CCOL, 1978). We find it appropriate to do so in this case. The employer's contention that a new test should be developed to define regular part-time community service instructors is untimely, and we reject it.

NOW, THEREFORE, it is

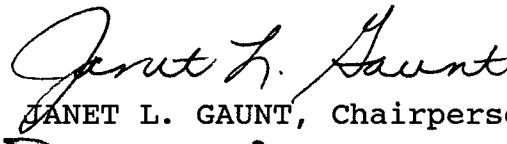
ORDERED

1. The objections to the Direction of Election issued on May 26, 1992 are OVERRULED.

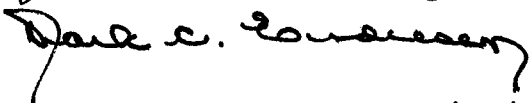
2. The case is remanded to the Executive Director for issuance of an appropriate certification.

Entered at Olympia, Washington, the 15th day of September, 1992.

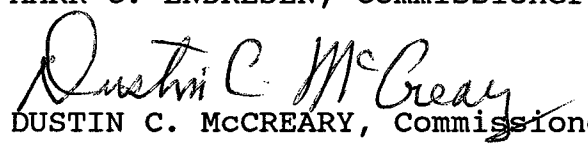
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



DUSTIN C. McCREARY, Commissioner