STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
FACILITIES ENGINEERS UNITED	)	CASE 9211-E-91-1528
	)	
Involving certain employees of:	)	DECISION 4022 - PECB
	)	
VANCOUVER SCHOOL DISTRICT 37	)	ORDER OF DISMISSAL
	)	
	)	

Bill Buckman, President, appeared on behalf of the petitioner.

Horenstein and Duggan, by Dennis Duggan, Attorney at Law, appeared on behalf of the employer.

Anthony D. Vivenzio, Attorney at Law, and Schwerin, Burns, Campbell and French, by Lawrence R. Schwerin, Attorney at Law, appeared on behalf of intervenor, Service Employees International Union, Local 9288.

On June 17, 1991, Facilities Engineers United (FEU) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The petitioner seeks to represent a unit of "craft" employees of Vancouver School District (employer). Service Employees International Union, Local 9288, was granted intervention in the proceedings, based on its status as the incumbent exclusive bargaining representative of a broader existing bargaining unit which includes the petitioned-for employees. A pre-hearing conference was held on September 4, 1991, at which time the FEU amended its petition to exclude employees working under titles of "backhoe grader operator", "sanitation truck driver", and "groundskeeper". Issues remained as to whether the petitioner is qualified to act as a bargaining representative, and as to whether the petitioner is seeking an appropriate unit. A hearing was held on those issues at Vancouver, Washington, on October 18, 1991, November 5 and November 6, 1991, before Hearing Officer William A. Lang. Local 9288 made post-hearing argument on

the record at the hearing. The petitioner filed a post-hearing brief on January 14, 1992.

BACKGROUND

Vancouver School District 37 is located in Clark County, and serves an area of some 60 square miles. Approximately 17,000 students attend 29 schools operated by 1700 employees, of which 700 are classified employees. Doug Spencer heads the department responsible for fiscal and building support. That department is administratively divided into food service, transportation, warehouse/purchasing, and physical facilities divisions. Mary Oven manages food service operations. Robert Dolhanyk heads the transportation operation. Joe Schoenlein runs the warehouse and purchasing division. Todd Horenstein supervises physical facilities, including custodial operations, building maintenance, equipment repair, mechanical maintenance, and grounds maintenance. Jerry Turner is the manager of maintenance and custodial operations, under the supervision of Horenstein.

SEIU Local 9288 represents approximately 350 classified employees working in the fiscal and building support functions. That bargaining unit currently includes foremen in each of the operating areas described above. The SEIU has represented the classified employees for over 20 years.

The petitioner seeks to carve out a group of 34 employees who work in mechanical maintenance, building maintenance and equipment repair functions. The specific classifications sought are:

> Carpenters, plumbers, painters, office machine specialists, heating and air conditioning maintenance (HVAC), machinists, metal fabricator/welder, equipment repairmen, electricians, equipment repair technicians, boiler service technicians, carpenter helpers, electrician helpers, HVAC helpers, and leadmen and foremen.

Other classifications in the existing bargaining unit include:

> Backhoe operators, sanitation truck drivers, groundskeepers, stockmen, warehouse delivery men, warehousemen, custodians, janitors, bus mechanics, garage servicemen, bus drivers, cooks, bakers, cafeteria assistants, central kitchen managers and substitutes for the above classifications.

All of the petitioned-for employees work under the direction of Turner, and they are all included in the existing bargaining unit.

Three other bargaining units exist among employees of this employer. The Vancouver Association of Educational Office Personnel (VAEOP), affiliated with the Washington Education Association, represents classified employees working in clerical support staff and staff assistant functions.[1] The Vancouver Education Association, also affiliated with the Washington Education Association, represents non-supervisory certificated employees, while the Principal's Association represents school principals and assistant principals.[2]

Classified employees in various professional and technical occupations, referred to by the employer as "pro-tech", are not represented by any employee organization. The "pro-tech" employees are found in each of the departments where employees are currently represented by SEIU Local 9288.

Facilities Engineers United (FEU) was established by the adoption of by-laws at a meeting held on June 5, 1991. Those by-laws describe the purpose of the FEU as being to bargain wages and other

---

[1] Some of the employees represented by VAEOP work in the same departments as employees currently represented by SEIU Local 9288.

[2] The latter two bargaining units are subject to the Educational Employment Relations Act, Chapter 41.59 RCW.

terms of employment with the Vancouver School District. The officers of the FEU are a president, vice president, secretary-treasurer, recording secretary, sergeant at arms, and two trustees. An executive board consists of one representative from each trade area. Dues were set at $1.00 per month. Officers have been elected and a budget has been prepared.[3]

POSITIONS OF THE PARTIES

Contending that employees have both a constitutional and statutory right to form a union, the FEU urges that their right to do so should not be diminished without good cause. The FEU contends that the fact patterns in prior cases are entirely different from those of the instant case, so that Commission precedent on "severance" should not apply here. The FEU asserts that the petitioned-for employees are a distinct and homogeneous group of skilled craftsmen with the exception of the bus mechanics, who are under separate supervision. The FEU believes that the helpers are skilled, because they require attainment of journeyman status within two to four years and have vocational training or prior experience in the trade. The FEU does not believe there is an industry pattern available to assist in determining the controversy. The FEU sees a dilemma in participating in Local 9288, and questions the validity of the severance criteria requiring craftsmen to have maintained their separate identity while at the same time trying to further their interests. The FEU argues that the criteria should be revised to consider whether the skilled workmen's effort to have its interests addressed was successful. The FEU asserts that the interests of the petitioned-for employees were largely ignored by Local 9288 in representing the larger group.

---

[3] The budget forecasts revenues of $366.00, and expenditures of $150.00 for collective bargaining and another $150.00 for refreshments. Printing was allocated $50.00 and $16.00 for miscellaneous.

The employer did not take a position on the issue of severance of the petitioned-for employees from the existing bargaining unit.

SEIU Local 9288 argues that the petition should be dismissed on the basis of a long line of Commission precedents. Local 9288 does not believe that the petitioned-for bargaining unit is appropriate, characterizing it as a mixture of craft and non-craft employees rather than a distinct and homogeneous craft group. The SEIU relies on there having been a history of bargaining for over 20 years in which the petitioned-for group has been represented as part of the existing bargaining unit. The SEIU contends that the evidence shows that there is considerable interaction among the maintenance group and other employees in the bargaining unit, in terms of promotions, seniority and work. The SEIU does not believe the record supports either a pattern of a separate identity of the craft workers within the larger group or a history in the industry which justifies severance. The SEIU disputes that the FEU is a labor organization qualified to represent craft employees. The SEIU argues that the interests concerning the employees' right of self determination under RCW 41.56.030 must be balanced against the statutory interests of stable labor relations.

DISCUSSION

Status as a Labor Organization

The decision in Southwest Washington Health District, Decision 1304 (PECB, 1981), described the 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). In Franklin Pierce School District,

Decision 78-B (PECB, 1977), it was concluded that it was sufficient for a prospective bargaining representative to establish its status during the course of representation proceedings before the Commission. Quillayute Valley School District, Decision 2809, 2809-A (PECB, 1987) provides the only example among Commission decisions where an organization failed to qualify as a bargaining representative under the statute.

The purpose of the FEU 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. Under the precedents of Franklin Pierce School District and Southwest Washington Health District, the FEU is found to be a labor organization within the meaning of the Act.

Appropriate Bargaining Unit

The constitutional right of assembly and the statutory right to form a union are not at issue in this case. The bargaining obligation exists only between the employer and the "exclusive bargaining representative" of its employees, so that formation of a union does not automatically result in the right to bargain on behalf of any group of employees. Under RCW 41.56.030(4) and 41.56.080, two additional requirements must be met: (1) the group of employees to be represented must be "an appropriate bargaining unit"; and (2) the organization must demonstrate that it enjoys majority support among the employees in such a 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.** ... [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 state 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.[4] In addressing "severance" situations as far back as Yelm School District, Decision 704-A (PECB, 1980), the Commission has followed the 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:
>
> 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.

---

[4] 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.

> 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 labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
>
> 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.
>
> 4. The history and pattern of collective bargaining in the industry involved.
>
> 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.
>
> 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.
>
> 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].

Prior to Mallinckrodt, the NLRB had granted severance to craft units under American Potash & Chemical Corporation, 107 NLRB 1418 (1954).[5] After 12 years of experience, however, the NLRB had come to believe the earlier decision was based on an erroneous interpre-

---

[5] 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.

tation 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 additional criteria. Mallinckrodt did not change the basic rule, however, 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.[6]

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 particularly close groupings of employees with particular skills. In this case, the petitioner points out that, when assigned work through a work order, the petitioned-for employees are responsible for obtaining the necessary materials and performing the required tasks under minimal supervision. That evidence falls short of the Mallinckrodt test, however.

---

[6] See, for example, 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).

The employer requires journeyman credentials or four years of craft or trade experience for most of the positions in the petitioned-for unit. There are, however, a number of exceptions:

The boiler service technician is not required to possess either journeyman credentials or four years of experience, and need only have a knowledge of boilers and their cleaning, repair and preventive maintenance.

The machinist is required to have only two years of experience, instead of four years, in lieu of a journeyman card.

The HVAC position description requires only four years of experience.

The equipment repair technician needs to be certified through a two-year course in electronics, or have four years of experience.

The job descriptions for leadmen and for metal fabricator/welder do not require journeyman status, although the job posting for the welder position required an apprenticeship as a machinist or comparable experience.[7]

Job descriptions for the various "helper" jobs require two years of experience, but that has been gained in some cases by summer work with this employer.

Not included within the proposed unit are several bus mechanics and grounds equipment mechanics, who must serve apprenticeships prior to becoming journeymen in their trades.

Other testimony describes crossing of traditional "craft" lines by the petitioned-for employees:

A painter helped carpenters remodel a library, by taking out cabinets, cleaned graffiti off walls which the custodian could not get clean, and refinished gym floors.

A painter helper was assigned as a substitute custodian.[8]

---

[7] The welder testified that he did belong to, and had carried a card from, the metal trades union.

[8] The same employee had been utilized as a painter when assigned as a custodian.

At least one carpenter helper worked on groundskeeping tasks during the summer.

The petitioned-for employees do the custodial work in their shops, including cleaning the toilets, because custodians are not assigned to clean those work areas.

At the same time, the record shows that employees outside of the petitioned-for group occasionally perform "craft" duties, even if only of a minor nature:

Custodians routinely perform touch-up painting on lockers and doors. In several instances, custodians painted a boiler room at a principal's request.[9]

Groundskeepers have used the backhoe to assist the metal fabricator/welder in lifting heavy beams, and assisted him in pouring concrete.

The backhoe operator testified that he routinely repairs playground equipment using gas welder equipment on a truck, and that he had constructed gates in the past.[10]

Many custodians regularly work on paint crews or roofing crews during the summer.

Custodians work as craft helpers in the summer.

A custodian testified that he performed work not associated with his position, such as finishing floors, taking boilers apart and pulling up tiles in bathrooms.

Three years ago, groundskeepers were assigned to help the carpenter in the carpenter shop during extremely cold weather.

Other groundskeepers have assisted carpenters with the refinishing of floors.

The petitioner misreads the Mallinckrodt criteria. While it does make the point that the petitioned-for employees have some

---

[9] The union filed a grievance, however, and the paint was removed from the schools, except for two examples noted.

[10] Construction of gates and fences is now contracted out.

distinguishing skills associated with their respective trade or craft experiences, the bargaining unit sought by the FEU encompasses skilled employees and their helpers in a variety of crafts. Further, it is clear from the foregoing that traditional craft lines have not been closely observed in this workforce in the past. The record does not support a conclusion that the petitioned-for employees constitute a homogeneous group of workers in a single trade or craft.

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. The FEU argues that the existing patterns of bargaining will not be unduly disrupted by the proposed severance, but that is not supported by the evidence or precedents.

The record indicates that the petitioned-for employees have been represented in the existing bargaining unit, along with other classified employees of this employer, for more than 20 years. There has been no history of separate representation of the petitioned-for employees. The SEIU 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 the former business agent for Local 9288. If that is the case, the solution is an internal union affair rather than a basis for a unit determination under RCW 41.56.060.

Employees in the petitioned-for group have made their needs known to the SEIU and to the employer, and have served as shop stewards for their respective areas. Since 1974, the SEIU has conducted negotiations with the employer on a unit-wide basis, by means of a bargaining committee composed of representatives from the various

general classifications set forth in the collective bargaining agreement.[11] Representatives from among the petitioned-for group have also served on SEIU bargaining teams. The "crafts" representatives played a leading role in the latest collective bargaining negotiations with the employer, helping the union to prepare for negotiations, and were provided information by the union to correlate. Absent any evidence of actual discrimination, or of exclusion of the petitioned-for employees from participation of the affairs of the existing bargaining unit, the perception of FEU leaders that the Local 9288 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. As full-time employees, they have generally the same benefits as full-time employees in other classifications within the existing bargaining unit, including the ability to take vacation at any time. Full-time employees receive one more holiday per year than part-time employees. With some exceptions,[12] part-time employees receive

---

[11] These include: maintenance and operations, transportation, food service, warehouse.

[12] Bus drivers and food service workers do not receive vacation leave, but their pay rates are adjusted to include an amount equal to five paid vacation days. Employees whose work year coincides with the school

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.

The fact that the boilerman, mechanics and painters within the petitioned-for group are issued coveralls is not of sufficient magnitude to base a severance. The "uniform" practices are not even consistent within the petitioned-for group.

The petitioned-for employees are included in one of three seniority lists provided for under the collective bargaining agreement: Maintenance and operations; transportation; and food service. In addition to the petitioned-for employees, the maintenance and operations seniority list covers bus mechanics, bus servicemen, grounds crew, foremen, custodians and warehousemen, with bumping rights in cases of layoff across the subdivisions covered.[13] Seniority is also a factor in job changes and promotions.

The petitioned-for employees have not maintained a separate identity within the existing bargaining unit.

---

calendar are generally restricted to taking time off when schools are closed for breaks.

[13] The record shows that several years ago during a layoff, a painter bumped back into a custodian position.

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 exists in this case, can be and remain appropriate. City of Winslow, Decision 3520-A (PECB, 1990). Clearly, a wide variety of bargaining unit configurations exist, in fact, among Washington school districts.

The FEU does not contend that any industrial practice supports the severance which it seeks in this case. On the other hand, the FEU would distinguish precedents based on industrial situations (i.e., where there may be large groups of employees identified with separate crafts), as being generally inapplicable to school districts which may employ only one employee of a single craft. The arguments advanced by the FEU have been considered and rejected in the past, however. See, Bremerton School District, Decision 527 (PECB, 1978).

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 FEU contends that there is little interaction among the craftsmen and the employees in the remainder of the bargaining unit, but that claim is not borne out by the evidence.

The petitioned-for employees report for work at their respective "craft" shops, but there was credible testimony that they take their breaks and lunches with custodians or other employees at the locations where work is being performed. It is also clear that the petitioned-for employees occasionally request assistance from other employees at their work sites. The employer provided testimony that the workforce was integrated, in that all employees worked together. One of the petitioned-for employees felt that the craft employees were a team or family with the other workers.

Career advancement is an important interest of employees, and the record in this case discloses that the employer has indicated a clear preference for promoting in-house applicants. Examples of the substantial flexibility shown by this employer in filling the so-called "craft" vacancies include:

A custodian was granted a waiver of the journeyman or experience requirements when promoted to painter in 1984.[14]

Another employee was considered qualified as a carpenter helper based, in part, on his summer work, and was given preference over an outside applicant who was a journeyman carpenter.

The record shows 22 instances where employees in the petitioned-for unit were promoted from other positions with this employer. A number of those employees had gained craft experience outside of this employer's workforce, and had taken jobs as janitors with this employer until a vacancy occurred for which they were qualified to bid.

One employee who had journeyman credentials as a brickmason apparently was hired as carpenter on the basis of his general experience in the construction industry.

The petitioner also faces difficulties with the employer's organizational structure. The fact that all of the petitioned-for employees have the same supervisor is not enough. The petitioner seeks to represent only a portion of the workers in the physical facilities department, and only a portion of the maintenance and operations employees working under the supervision of Turner. The grounds maintenance and custodial staffs who are under the same supervisors would be excluded. Thus, the evidence fails to support a conclusion that the petitioned-for employees have supervision separate from that of the other employees.

---

[14] The employer cited budgetary restraints and a policy to promote from within as justification for this waiver.

The record shows there is some interchange of duties among the crafts and other workers, and that many employees have used such experience to gain entry into the craft positions. Rejecting a proposed severance of school bus drivers in Yelm, supra, the Commission described the existing unit in that case as:

> ... an integrated support operation essential to the overall discharge by the [employer] of its primary educational function, and therefore ... more appropriately dealt with as a unit.

The same can be said for the classified workforce of the Vancouver School District.

Qualifications of Petitioner -

The decision in this case need not be, and is not, based on the identity or history of the FEU as a labor organization. There is no explicit counterpart to that Mallinckrodt element in RCW 41.56-.060.[15]

---

[15] The NLRB's focus on the organization in American Potash likely related to the competition between the American Federation of Labor (AFofL) and Congress of Industrial Organizations (CIO) which existed at the time, and to the underlying struggle between "industrial" and "craft" union philosophies. In Mallinckrodt, the NLRB footnoted:

> ... we shall no longer require, as a sine qua non for severance, that the petitioning union qualify as a "traditional representative" in the American Potash sense. The fact that the union may or may not have devoted itself to representing the special interests of a particular craft or departmental group of employees is a factor which will be considered in making our unit determinations.

Mallinckrodt, Footnote 15 on page 397.

The AFofL and CIO have long-since made peace with one another, having merged to form the current AFL-CIO umbrella organization with which the SEIU is affiliated.

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.

Conclusions

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. The petition for investigation of a question concerning representation filed in this case must be dismissed.

FINDINGS OF FACT

1. Vancouver School District 37 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. Facilities Engineers United, 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 Vancouver School District.

3. Service Employees International Union, Local 9288, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of Vancouver School District employees involved in maintenance and operations of school buildings, grounds, food service, and transportation.

4. A history of bargaining has existed over 20 years under which the skilled maintenance employees of the district have been included in a common bargaining unit with other classified employees. There has been no history of separate representation of skilled maintenance employees. Skilled employees have been represented on the bargaining committee and have utilized the opportunity to present 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 share common supervision with other employees in the bargaining unit, and have working conditions and benefits similar to other employees in all but a very few areas. These employees share the same seniority list with other employees and have exercised such rights over others in both promotions and in lay off. 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. Facilities Engineers United is a bargaining representative within the meaning of RCW 41.56.030(3).

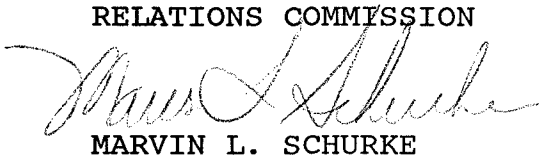
3. The petitioned-for-bargaining unit consisting of certain skilled maintenance employees and helpers is not an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and no question concerning representation presently exists.

ORDER

The petition of the Facilities Engineers United for the investigation of a question concerning representation is DISMISSED.

ENTERED at Olympia, Washington, this 31st day of March, 1992.

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).