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-A - PECB
VANCOUVER SCHOOL DISTRICT 37	)	DECISION OF COMMISSION

Bill Buckman, President, and Dave Ottosen, Vice-President, appeared on behalf of the petitioner.

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

This matter comes before the Commission on a petition for review filed by Facilities Engineers United, seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke.

BACKGROUND

The Vancouver School District (employer) operates schools in Clark County for approximately 17,000 students in kindergarten through the 12th grade.

For many years, Service Employees International Union, Local 9288,[1] has been the exclusive bargaining representative of approximately 350 employees of the Vancouver School District. That bargaining unit includes classified employees who perform mechanical and building maintenance, grounds, warehouse, security monitor, custodian, transportation and food service functions.

---

[1] SEIU Local 9288 is the successor to SEIU Local 92, which historically represented this bargaining unit.

Apart from a non-represented group of "pro-tech" employees and the bargaining unit represented by the SEIU, the employer's workforce is divided among three other bargaining units:

Office-clerical employees are represented for the purposes of collective bargaining under Chapter 41.56 RCW;

Non-supervisory certificated employees are represented for the purposes of collective bargaining under Chapter 41.59 RCW; and

Principals and assistant principals are represented for the purposes of collective bargaining under Chapter 41.59 RCW.

On June 17, 1991, Facilities Engineers United (FEU) filed a petition for investigation of a question concerning representation with the Commission, seeking to replace SEIU Local 9288 as the exclusive bargaining representative of approximately 41 employees. The FEU characterizes the petitioned-for employees as "craft" employees.[2] The FEU later amended its petition to exclude certain of the classifications originally involved.[3]

Local 9288 was granted intervention as the incumbent exclusive bargaining representative of the petitioned-for employees. A hearing was held at Vancouver, Washington, in October and November of 1991, before Hearing Officer William A. Lang. Local 9288 made argument at the hearing. The FEU filed a post-hearing brief.

On March 31, 1992, Executive Director Marvin L. Schurke dismissed the petition, finding that severance of the petitioned-for unit was

---

[2] The petition involved the following job titles: Carpenters, plumbers, painters, office machine specialists, HVAC, machinists, metal fabricator, welder, equipment repairman, electricians, equipment repair technicians, boiler service technician, carpenter helpers, electrician helpers, plumber helpers, HVAC helpers, backhoe grader operators, sanitation truck drivers, groundskeeper, leadman and foreman associated with those assignments.

[3] The FEU thereby dropped its claims as to the "backhoe grader operator", "sanitation truck driver" and "groundskeeper" classifications.

inappropriate. The Executive Director concluded that: (1) the petitioned-for employees are not a distinct and homogeneous group of skilled craftsmen; (2) the employees in the existing bargaining unit constitute an integrated support operation; and (3) severance of the proposed unit would contribute to fragmentation of bargaining units and disruption of labor relations.

The FEU filed a timely petition for review, thus bringing this case before the Commission.

POSITIONS OF THE PARTIES

The FEU believes that an election should be held in the unit it has defined. It argues that it seeks a "pure crafts group" which meets established criteria for severance, and that it even eliminated some positions to preserve the "crafts" nature of its unit. The FEU takes issue with the Executive Director's conclusion that some of the petitioned-for positions do not require fixed periods of training or experience. It defends its inclusion of "helper" positions on the basis that they have experience requirements and/or are in direct preparation for becoming "craft" employees. The FEU defends its exclusion of bus mechanics and grounds equipment mechanics from its proposed bargaining unit, on the basis of earlier decisions which had denied severance petitions involving similar classifications. The FEU also takes issue with the Executive Director's conclusion that traditional "craft" lines are not closely observed within the employer's operation, arguing that any examples of cross-over are insignificant. The FEU urges that severance of its proposed unit would not lead to excessive fragmentation, in light of the size of the employer's workforce.

SEIU Local 9288 submitted a letter stating its agreement with the Executive Director's decision, and asking that the order of dismissal be affirmed.

The employer has not taken a position on the unit determination issue framed by the two unions in this appeal.

DISCUSSION

The resolution of this case rests largely on application of the facts to standards that have been established for some time.

American labor history includes a well-documented struggle between "craft" and "industrial" unions. Creation of the Congress of Industrial Organizations (CIO) in the 1930's, and the departure of "industrial" unions from the American Federation of Labor (AFL) from the 1930's to the 1950's, was a direct result. The "craft" unions were dedicated to representing employees working within a particular range of skills, often in the building construction industry.[4] In contrast, "industrial" unions desired to organize all employees working in a plant or factory, including unskilled workers and those with a variety of skills.[5] It was in that context that the National Labor Relations Act (NLRA) of 1935, as amended by the Labor-Management Relations Act of 1947, provides:

> **SEC. 9.** ...
> (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, **the unit appropriate for the purposes of collective bargaining shall be the** employer unit, **craft unit**, plant unit, or subdivision thereof: PROVIDED, That the Board shall not
> ...

---

4 E.g., United Brotherhood of Carpenters and Joiners; International Brotherhood of Electrical Workers; United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States; etc.

5 E.g., United Steelworkers of America; United Mineworkers of America; United Automobile Workers.

> (2) decide that any **craft unit** is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation ...

[Emphasis by **bold** supplied.]

The merger of the AFL and CIO in the 1950's did not put an end to the debate, and problems continued to arise when employees of a traditional craft who had been included in an industrial bargaining unit later sought "severance" as a craft unit. In Mallinckrodt Chemical Works, 162 NLRB 387, 397-398 (1966), the National Labor Relations Board (NLRB) enunciated a revised rationale for unit determinations in "severance" situations, as follows:

> 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. 14/
>
> 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

14/ We are not in disagreement with the emphasis the American Potash decision placed on the importance of limiting severance to true craft or traditional departmental groups, nor do we disagree with the admonitions contained in that decision as to the need for strict adherence to these requirements. Our dissatisfaction with the Board's existing policy in this area stems not only from the overriding importance given to a finding that a proposed unit is composed of such employees, but also to the loose definition of a true craft or traditional department which may be derived from the decisions directing severance elections pursuant to the American Potash decision.

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.15/

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 in the course of litigation.16/ We emphasize

15/ With respect to this factor, 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 a union may or may not have devoted itself to representing the special interests of a particular craft or traditional departmental group of employees is a factor which will be considered in making our unit determinations in this case.

16/ We are in a period of industrial progress and change which so profoundly affect the product, process, operational technology, and organization of industry that a concomitant upheaval is reflected in the types and standards of skills, the

> 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.17/
>
> 16/ CONT'D: working arrangements, job requirements, and community of interests of employees. Through modern technological development, a merg-ing and overlapping of old crafts is taking place and new crafts are emerging. Highly skilled workers are, in some situations, required to devote those skills wholly to the production proess itself, so that old departmental lines no longer reflect a homogeneous grouping of employees.
>
> 17/ To the extent that American Potash forecloses inquiry into all relevant factors, and to the extent that it limits consideration of the factors of industry bargaining history and integration of operations to cases arising in the so-called National Tube industries, it is overruled. To the extent that the decisions in National Tube Company, supra, Permanente Metals Co., supra, Corn Products Refining Company, supra, Weyerhaeuser Timber Company, supra, and decisions relying there on, may be read as automatically foreclosing craft or departmental severance or the initial formation of such units in unorganized plants in the industries involved, they are hereby overruled.

In Mallinckrodt, the International Brotherhood of Electrical Workers (a "craft" union) sought to sever 12 instrument mechanics from a wall-to-wall bargaining unit of 280 production and maintenance employees represented by another union. The NLRB dismissed the petition, citing the importance of the employer's operation to the national interest, and the integration of the petitioned-for group into the employer's production processes.

The Commission embraced the Mallinckrodt criteria in Yelm School District, Decision 704-A (PECB, 1980), where a union sought severance of school transportation employees from a historical

"wall-to-wall classified" bargaining unit represented by another organization. Apart from a conclusion that the employees at issue in that case did not meet well-established criteria for classification as "skilled journeymen craftsmen", the Commission noted:

> 2. A severance ... would not be productive of stable labor relations in the school district.
>
> 3. There is no history giving the petitioned-for employees an identity separate from others in the existing bargaining unit.
>
> 4. "All of the employees of the employer" (after separation of certificated employees ...) constitute an integrated support operation essential to the overall discharge by the district of its primary educational function, and therefore are more appropriately dealt with as a unit.
>
> 5. While the Commission in no way questions the petitioner's ability to represent the district's employees, we find no special qualifications vis-a-vis those of the intervenor.

The Commission thus affirmed an order dismissing the "severance" petition in that case.

The FEU asserts here that the unit it has sought meets all of the Mallinckrodt standards; the Executive Director disagreed. The areas of dispute are whether the petitioned-for unit is a distinct and homogeneous "craft" unit, whether collective bargaining will be disrupted by the creation of a separate unit, and the extent to which the petitioned-for employees have established and maintained a separate identity within the existing bargaining unit.

Distinct and Homogeneous Group of Journeymen Craftsmen

The FEU maintains that it carefully selected the classifications in its proposed unit to meet the "craft" standard. It cites dictionary definitions of "craft" as requiring fixed periods of training,

and contends that all of the classifications in the proposed unit must have extensive training or be involved in apprenticeships where the employee works toward becoming a qualified worker.

The Commission concurs with the Executive Director's observation in North Mason School District, Decision 3841 (PECB, 1991), that entry into a "craft" generally requires formalized apprenticeship or training over a long period of time. Informal on-the-job training does not suffice.[6]

In the petitioned-for unit, there are certainly some employees whose training and duties qualify them as journeyman-level craftsmen (e.g., the carpenter, plumber, HVAC maintenance and office machine positions). We can even agree with the FEU that the metal fabricator / welder job could be considered a "craft" position,[7] but that does not change the result, because we also agree with the Executive Director that there are others in the petitioned-for unit whose job requirements and training do not suffice for "craft" status.

The FEU concedes that the boiler service technician does not have journeyman status, but urges that the position is required to have "... knowledge of boiler and related equipment operations for proper cleaning repair and preventive maintenance". While the FEU

---

[6] Chapter 49.04 RCW devotes three pages of statute to the requirements for apprenticeships. RCW 49.04.050 requires "not less than two thousand hours of reasonably continuous employment" in a training mode, plus "not less than one hundred forty-five hours per year" in supplemental instruction.

[7] The incumbent in this position testified that he has not held a journeyman card since 1981. He was a journeyman welder from 1962 to 1981. He was hired by this employer in 1984 as a helper, and was later promoted to his current position. Close examination of the job posting suggests, however, that journeyman status is among the employer's announced requirements for the job.

argued that boilers operate under pressure, and that explosion is a possibility, the employee did not testify to such a concern.[8] The FEU's contention that this is a highly technical job which fits the criteria of previous Commission decisions is not supported by the record. The technician testified that he only performs routine repairs (e.g., replacing packing), and that the plumber performs the more complex repairs to the boiler. The training for this position falls far short of a formal apprenticeship. The asbestos certificate held by this individual is not persuasive, because it was obtained in a one day in-service class that was attended by non-craft classifications, such as custodians. Further, the testimony and job posting for the boiler service technician describe responsibilities and training at a level similar to that of the backhoe grader operator position, which the FEU removed from its proposed unit as not having "craft" responsibilities.[9]

The record is similarly unpersuasive that the machinist and the equipment repair technician qualify for craft status. The employer's manager of classified personnel testified that these are not positions for which journeyman-level skills are required by the employer. The FEU did not establish that the incumbents have received formalized training over a significant period of time.

The employer's requirements for the "helper" positions differ depending on the position. The job descriptions for the "plumber helper", "HVAC helper" and "carpenter helper" classifications state that the employees in those positions must obtain what this employer has termed "journeyman status" within a specified period

---

8 In fact, he mentioned the climbing of ladders and the handling of asbestos as the risks of his job.

9 The backhoe operator position requires two years minimum training on the equipment and a chemical spray license, but no formal apprenticeship or training. The backhoe operator testified that he does minor welding, using a gas powered welder attached to the back of a truck.

of time. There is no such requirement for the "electrical helper" and "equipment repair helper" classifications, however. We note that the "electrical helper" job requires only two years of prior experience.

The FEU seems to equate the employer's requirements for the "helper" positions to apprenticeship preparation for status as a craft journeyman, but the two are not equivalent. The employer's policy is to assist employees to obtain income during the summers, by working as helpers of one kind or another. After achieving some skills through informal on-the-job experience, the employees are permitted to transfer into helper positions.[10] The term "helper" is loosely defined, and lacks the formality and rigorous training of an apprenticeship. There is no testimony that helpers are assigned specific tasks to be completed under supervision and later tested. There is no protocol on what knowledge must be gained in order to be in a craft, or any documentation of a helper's progress toward fulfilling the duties required at the journeyman level.

The FEU took exception to the Executive Director's conclusion that leadmen need not be journeymen. The employer's manager of classified personnel testified, however, that journeyman status is not required for the leadman positions. The job descriptions require only that the incumbent have knowledge and skills to accomplish the assigned tasks; there is no mention of journeyman status.

An additional concern about the petitioned-for unit is the fact that it combines such a mix of crafts. It is noteworthy that the NLRA uses the term "craft" in the singular form, and that the NLRB used the plural possessive "their craft" in Mallinckrodt. All of the employees at issue in Mallinckrodt were in the same job classification, appear to have performed interchangeable assign-

---

[10] For example, the backhoe operator testified that he has worked during summers as a electrical helper, painter helper and machinist helper.

ments, and worked under the same foreman, thus providing a basis for a credible claim that they were a "homogeneous" group "performing the functions of their craft". The Commission does not view an occasional mixing of job functions (i.e., painters pulling weeds in preparation for painting, janitors touching up damaged paint), as being a problem. The unit sought here takes on a distinctly "industrial" appearance, however, when viewed from a historical perspective, because it mixes employees working under separate supervisors in several traditional "crafts". It thus fails to satisfy the "homogeneous" qualifier to the term "craft", as used in both Mallinckrodt and Yelm.

History of Bargaining

The "history of bargaining" issue in a "severance" case requires consideration of the length of the bargaining relationship, evaluation of the potential disruption of bargaining stability if the historical unit is disturbed, and concern about fragmentation of bargaining units. SEIU Local 9288 represents employees working in building support functions, including the foremen in each of the operating areas. The bargaining relationship between the employer and Local 9288 has been in existence for more than 20 years. The reasons for disturbing such a long-established relationship and resulting collective bargaining agreement would have to be compelling.

With only three other existing bargaining units, the school district might not be excessively burdened by negotiating one additional labor agreement, but that is not conclusive. The Executive Director noted that employees in the petitioned-for classifications have been active in the SEIU local in the past, and that there is no evidence of discrimination against them, or of their exclusion from the union or the collective bargaining process. Those conclusions have not been controverted by the FEU.

Separate Identity

We understand the reference in Mallinckrodt to "establishing and maintaining a separate identity" to relate to the petitioned-for group as a historical sub-set of the existing bargaining unit. If a "distinct and homogeneous group" has maintained separation while included in a larger bargaining unit, there is less reason for concern that their "severance" will upset existing relationships; the separate relationship will have existed de facto.

There is evidence here that some wages, hours and working conditions generally distinguish the petitioned-for employees from others in the existing bargaining unit, but there is little to indicate that the members of the petitioned-for group have historically operated as an identifiable group within the existing bargaining unit.

Integration of Operations

The employer's primary function (basic education pursuant to the state Constitution, and related services) is much larger than either the existing bargaining unit or the petitioned-for unit. The employees at issue in this case serve in "support" functions only. We are mindful of the concerns expressed in both Mallinckrodt and Yelm, supra, that the employer's overall operation not be compromised by creation of additional bargaining units. At a minimum, an ongoing potential for bargaining difficulties on "work jurisdiction" would accompany the creation of a separate bargaining unit in this case.

Conclusions

The moving party in a severance case has a difficult burden to meet when there has been a long-established bargaining relationship. In this case, that burden was not met. The petitioned-for bargaining

unit does not consist of a distinct and homogeneous group of skilled craftsmen or a functionally distinct department for which a tradition of separate representation exists. Applying the Mallinckrodt standards to the facts of this case, the Commission finds that the bargaining unit proposed for severance by the FEU is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

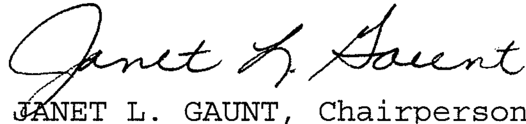
NOW, THEREFORE, it is

ORDERED

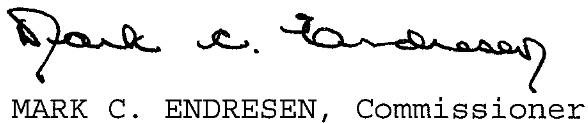
The order of dismissal issued by the Executive Director in the above-captioned matter is AFFIRMED.

Issued at Olympia, Washington, the 9th day of November, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner

DUSTIN C. McCREARY, Commissioner