

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
| WASHINGTON FEDERATION OF |) | CASE NO. 883-E-77-171 |
| TEACHERS, AFL-CIO |) | |
| Involving certain employees of: |) | DECISION NO. 386-A-EDUC |
| |) | |
| CLOVER PARK SCHOOL DISTRICT |) | ORDER REMANDING FOR |
| NO. 400 (Clover Park Vocational- |) | FURTHER PROCEEDINGS |
| Technical Institute) |) | |
| |) | |
| _____ |) | |

APPEARANCES:

MR. HERBERT FULLER, Attorney-at-Law, appeared on behalf of the petitioner.

MS. SYMONE SCALES, Attorney-at-Law, appeared on behalf of intervenor
Clover Park Education Association.

The employer filed an unsigned brief on appeal.

The matter is before the Commission for review of an order of dismissal issued by the Executive Director pursuant to WAC 391-30-124. The employer and the intervenor support the order of the Executive Director, while the petitioner seeks reversal of the order and direction of an election.

Correct interpretation and application of RCW 41.59.080(6) is fraught with difficulty. We concur with the analysis of the Executive Director except with respect to his observation limiting the focus of inquiry, his seventh finding of fact and his conclusions of law.

RCW 41.59.080 in its preamble requires consideration of the history of collective bargaining along with other factors in determining the appropriateness of any unit proposed for collective bargaining. Subsection (6) then says that:

"A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies."

Whether or not there was a viable relationship between the District and an active employee organization recognized as the representative of the district-wide teacher unit is immaterial. Employees may reasonably be expected to make the best use of the representation available to them. The focus of inquiry must be broadened to include "what history of bargaining?" There was no "collective bargaining" for certificated employees of public school districts until the enactment of RCW 41.59.

In the instant case, the intervenor was selected as the bargaining agent of all certificated employees in an election held in 1965. That unit is, by definition, illegal under RCW 41.59.080 because it included the employees mentioned in subsections 2, 3, 4 and 5 without meeting the present statutory conditions. The vocational-technical institute employees mentioned in subsection 6 neither had a choice as to inclusion in or exclusion from the unit, nor was consideration given by any legislative or administrative authority to the propriety of their inclusion or exclusion. They were simply "blanketed in".

The "bargaining history", if we look to the past, is equivocal at best, and we hold it is not binding on the Commission. See: Andrews Industries, Inc., 105 NLRB 946, 949; General Electric Co. (River Woods), 107 NLRB 70,72.

The order of dismissal issued by the Executive Director is reversed and the matter is remanded to the Executive Director for further proceedings under the rules pursuant to the following:

DIRECTION OF ELECTIONS

1. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all full-time and regular part-time vocationally certified employees of Clover Park School District No. 400 employed in Clover Park Vocational-Technical Institute, excluding the Superintendent of Schools, administrative officers of the District, confidential employees, supervisors, non-supervisory educational employees employed in the kindergarten through twelfth grade program of the District and non-certificated employees, to determine whether a majority of the employees eligible to vote in such election desire to be included in a bargaining unit separate and apart from other non-supervisory certificated employees of Clover Park School District No. 400.

2. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission among the employees in the

voting group described in paragraph 1 of this direction of election, to determine whether a majority of the employees voting desire to be represented by Washington Federation of Teachers, AFL-CIO, or by Clover Park Education Association, WEA-NEA, or by no representative for the purposes of collective bargaining with Clover Park School District No. 400. This representation election shall be conducted at the same time as the unit determination election directed in paragraph 1 of this direction of elections. In the event that a majority of those eligible fail to vote in favor of the creation of a separate unit, the ballots cast on the question concerning representation shall be impounded.

DATED this 9th day of June, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY ELLEN KRUG, Chairman

Michael H. Beck
MICHAEL H. BECK, Commissioner

Paul A. Roberts
PAUL A. ROBERTS, Commissioner