

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of:)	
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WASHINGTON FEDERATION OF TEACHERS, AFL-CIO,)	CASE NO. 941-E-77-187
)	DECISION NO. 379-EDUC
Involving Certain Employees of:)	ORDER OF DISMISSAL
)	
RENTON SCHOOL DISTRICT NO. 403 (RENTON VOCATIONAL-TECHNICAL INSTITUTE))	
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APPEARANCES:

PETER D. FRANCIS, Attorney at Law, for the Petitioner.

BILLY J. FOGG, Director of Employees Relations, for the Employer.

SYMONE B. SCALES, Attorney at Law, for Intervenor Renton Education Association, WEA, NEA.

On June 7, 1977, the Washington Federation of Teachers, AFL-CIO, filed a petition with the Commission seeking certification as the exclusive bargaining representative of vocationally certified educational employees of Renton Vocational Technical Institute (RVTI). The Renton Education Association, WEA, NEA, had been recognized as the majority representative under the provisions of repealed RCW 28A.72 in a unit which included the positions affected by the petition, and that organization intervened in these proceedings. A hearing was held on October 4, 5, and 6, 1977 before Alan R. Krebs, Hearing Officer. The Petitioner and Intervenor filed post-hearing briefs.

ISSUES

The parties stipulated at the outset of the hearing that both the Petitioner and Intervenor are employee organizations within the meaning of RCW 41.59; that the Commission has jurisdiction over the matter pursuant to RCW 41.59; and that the petition was timely filed. The Petitioner claims that a separate bargaining unit of RVTI employees would be appropriate under 41.59.080(6), and that a question concerning representation

exists in that unit. The Intervenor asserts that the history of bargaining does not justify the creation of a separate bargaining unit at RVTI, and that severance of the vocational-technical faculty from the District-wide certificated employee bargaining unit would be inappropriate. The District took no position on the matter.

STATUTORY AUTHORITY

RCW 41.59.020(4) defines "employee" and "educational employee" to mean any certificated employee of a school district except the chief executive officer of the employer, the chief administrative officers of the employer, confidential employees, supervisors and principals. RCW 41.59.020(8) defines "non-supervisory" employee as meaning all educational employees other than principals, assistant principals and supervisors.

RCW 41.59.080 controls unde determination under the Act:

"41.59.080 Determination of bargaining unit - Standards. The commission upon proper application as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070(3), and after hearing upon reasonable notice, shall determine 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 educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including non-supervisory educational employees shall not be considered appropriate unless it includes all such non-supervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of such employees indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and non-supervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) 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; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts. (1975 1st ex.s. c 288 § 9.)"

FACTS AND ANALYSIS

The employer operates numerous schools in the Renton area for the education of students in the Kindergarten through 12th grades (herein called K-12) as well as the Renton Vocational Technical Institute.

RVTI serves students over 16 years of age who have varying educational backgrounds, including high school graduates. Its curriculum is geared to direct preparation of students for a specific occupation. RVTI offers full-time vocational training programs in such diverse areas as welding, ornamental horticulture, legal secretary, civil engineering technology, parenthood education and day care center worker. RVTI offers specialized training geared to upgrading the skills of individuals who are already employed in various occupations. For example: RVTI offers courses for appliance repairmen on the servicing of appliances newly introduced into the market. RVTI offers classes designed to provide related training to individuals employed as apprentices. Finally, RVTI offers classes relating to hobbies and basic education for adults. RVTI has a central campus located in Renton and literally dozens of satellite locations throughout the State.

Renton School District No. 403 is headed by a Board of School Directors and a Superintendent of Schools. Directly responsible to the Superintendent is an Assistant Superintendent who also bears the title of "Administrative Director" of RVTI. Although there are "vocational" teachers within the K-12 program of the District, they are under the administrative authority of other branches of the District's administrative structure.

The K-12 and RVTI programs are the products of entirely separate and distinct funding arrangements and statutory arrangements, with the school district in general and the K-12 program being regulated by Title 28A RCW, while the RVTI is also regulated by Title 28C RCW.

The Petitioner asserts that RCW 41.59.080 should be interpreted to mean that all four tests for determining bargaining units of educational employees should be considered in determining whether a severance of the RVTI faculty is appropriate. The Intervenor, on the other hand, attempts to interject the word "only" into RCW 41.59.080(6) at a point where it does not exist, and argues that history of bargaining is the exclusive factor entitled to consideration. In the alternative, the Intervenor suggests that the NLRB's severance rules, as enunciated in Mallinkrodt Chemical Co., 162 NLRB 387 (1966), ought to be applied.

RCW 41.59.080 both confers and delimits the Commission's unit determination authority under the Educational Employment Relations Act. The first paragraph of the Section grants broad unit determination powers in line with relatively conventional factors. Subparagraph (1) takes away almost all of the flexibility implied by the general grant of authority which it follows.

RCW 41.59.080(2), (3), (4), (5) and (7) deal with groups of individuals who are not even employees within the meaning of the Act under RCW 41.59.020(4) until they have voted to create bargaining units and to become employees under the procedures established in these subsections. Subsection (7) really does not relate to unit determination at all, but is a cross-reference to and a conditional modifier of the definition of "collective bargaining", and which could as easily have been located in RCW 41.59.020(2). As to supervisors and principals, the "desires of the employees" are controlling and there is no room for application of the "duties, skills and working conditions", "history of bargaining" and "extent of organization" criteria.

Non-supervisory employees in vocational-technical institutes and occupational skill centers do not need to vote or take other affirmative action to be considered "employees" within the meaning of the Act. Subparagraph (6) clearly contemplates (without expressly denominating it as such) a potential exception to the general rule of RCW 41.59.080(1). Did the legislature intend to call forth for vocational faculties the full scope of unit determination authority set forth in the first paragraph of the Section?

The legislature can be presumed to have known that vocational faculties already existed when it enacted this legislation, and can also be presumed to have known that the predecessor statute precluded multiple units within school districts, so that vocational faculties had theretofore been included in District-wide teacher units. Among the four unit determination criteria, "history of bargaining" alone is referenced in RCW 41.59.080(6). I am thus disposed to interpret RCW 41.59.080(6) as indicating that the "duties, skills and working conditions" criteria is presumptively fulfilled in favor of severance in the case of vocational faculties.

While "extent of organization" would be an important consideration among completely unrepresented employees, this legislation was enacted in the context of a 10 year old organizational environment in which all of the affected school districts had been organized under the prior law. I am thus also disposed to find that the legislature intended to preclude consideration of the extent of organization in the vocational faculty cases.

The legislature does not enact nullities, and thus could not have meant that the mere inclusion of vocational faculties in district-wide units

under the prior law would be controlling. The prior law provided for "meet, confer and negotiate" relationships, and a technical argument might thus be made that those activities were not and did not create a history of "bargaining" as now defined by RCW 41.59.020(2). That interpretation would also nullify the legislation, and the language of RCW 41.59.080(6) must be given meaning if that is possible.

The focus of the inquiry in the discussion which follows is at two levels. The first is whether there is a viable relationship between the District and an active employee organization recognized as the representative in the District-wide teacher unit. Absent such a relationship, there would be a serious doubt as to the existence of any relevant "history of bargaining", and a severance would be indicated. The second inquiry is whether the incumbent representative in the district-wide unit has actively represented individual members of the vocational faculty, and the vocational faculty as a whole, in both "interest" and "rights" issues such that the vocational faculty has been integrated into the district-wide organization and its negotiations under the "meet and confer" law and/or under the provisions of RCW 41.59 prior to the filing of the petition raising the question concerning representation in the potential vocational-technical unit.

The term "may be considered appropriate" takes on a far different meaning in RCW 41.59.080(6) from that which it must be given in RCW 41.59.080(2) through (5). Had the legislature intended to give vocational faculties a right of self-determination with respect to their unit placement similar to that given to supervisors and principals, it would have established voting procedures similar to those provided for supervisors and principals or could have made the "desires of employees" at least co-equal with the history of bargaining. The use of the term "may" in RCW 41.59.080(6) opens the possibility of unit determination based on the desires of employees, such as that provided by the NLRB in Globe Manufacturing and Stamping Co., 3 NLRB 294 (1937), where two different units are found to be equally appropriate under the "history of bargaining" criteria. However, in the instant case, as the following discussion will illustrate, only one unit is appropriate based on the "history of bargaining".

For the reasons set forth above, much evidence and argument relating to the duties, skills, working conditions, extent of organization, desires of employees and various NLRB "severance" criteria are inapposite.

It is undisputed that the REA, as the representative in the district-wide teacher unit, has an active and viable relationship with the District. The REA has been recognized as the representative of the faculty since the advent of the "professional negotiations act" (1965), and the REA and the District entered into their first written collective bargaining agreement for the 1968-69 school year. That agreement covered all of the certificated staff of the District. The 1968-69 contract was abrogated

When the Renton economy suffered as a result of the Boeing Company layoffs of that period, and no new collective bargaining agreement was reached until the 1973-74 school year, but there were some negotiations and also some related litigation in the interim.

RVTI personnel were first specifically referenced in the contract for the 1975-76 school year. Up to that time RVTI faculty salaries were determined on the same salary schedule as the District's K-12 teachers, whereas the 1975-76 contract established a separate salary schedule for the RVTI faculty. The origins of this innovation trace back to 1972, when the REA and the District agreed to form a "Joint Review Committee" comprised of REA and District representatives. That committee issued a report in February, 1973 which recommended separate salary treatment for the RVTI faculty.

During negotiations for the 1973-74 school year, two members of the RVTI faculty sat at the bargaining table as resource persons regarding REA proposals affecting the RVTI faculty.

For the 1975-76 school year, the RVTI faculty received, on the average, a 13.5% increase in salary, while other faculty members of the District had a 9% average increase. In the following year, there was no change in the RVTI salary schedule, while the K-12 faculty of the District received an increase of about 6.5%. Both were the subject of negotiations between the REA and the District, and the agreement for 1976-77 followed precisely the recommendation of an impartial fact finder appointed by the Commission.

The dissatisfaction of the RVTI faculty with the 1976-77 wage settlement between the REA and the District was undoubtedly increased by a statement made by the REA's Chief Negotiator to the effect that they had a good contract, but that the RVTI had to be sacrificed. However, there is no evidence of a history of such treatment. On the contrary, the 60 member REA representation council has traditionally contained between one and three delegates from RVTI. The number of delegates from a given school is fixed as a percentage of the number of union members in that school. Since about 1975, the RVTI faculty has also had a member on the REA executive board. The RVTI delegate to the REA representative council for the 1972-73 and 1973-74 school years testified that he worked directly with the REA president regarding the special problems of the RVTI faculty.

REA newsletters were sent to the RVTI faculty. REA meetings have been held at RVTI. REA has processed a considerable number of grievances filed by RVTI personnel.

FINDINGS OF FACT

1. Renton School District No. 403 is an employer within the meaning of RCW 41.59.020(5). Among other programs, Renton School District No. 403 operates a vocational-technical institute or occupational skill center known as Renton Vocational Technical Institute.

2. Washington Federation of Teachers, AFL-CIO timely filed a petition for investigation of a question concerning representation of employees of Renton Vocational Technical Institute.

3. Renton School District No. 403 recognized Renton Education Association; WEA, NEA, as the majority representative of its certificated employees under the provisions of repealed RCW 28A.72; the certificated employees of Renton Vocational Technical Institute were within the scope of that recognition; and a history of bargaining was developed under which employees of Renton Vocational Technical Institute were members of and actively represented by Renton Education Association.

4. Renton School District No. 403 continued its recognition of Renton Education Association as the exclusive bargaining representative of its non-supervisory certificated employees under the provisions of RCW 41.59; such recognition continued to encompass employees of Renton Vocational Technical Institute at least until a petition was filed with the Commission on or about April 21, 1976 for investigation of a question concerning representation of employees of Renton Vocational Technical Institute; such petition was docketed as Case No. 236-CEW-148; such petition was dismissed for insufficiency of showing of interest, but remained pending on appeal until a date following the filing of the petition in the instant matter; and Renton Education Association has not abandoned or disclaimed its claim to represent the non-supervisory certificated employees of Renton Vocational Technical Institute.

5. A history of bargaining exists indicating that the Renton Education Association has actively represented individual members of the Renton Vocational Technical Institute faculty and the Renton Vocational Technical Institute faculty as a whole, in both contract negotiations and in grievance resolution under the provisions of RCW 41.59.

CONCLUSIONS OF LAW

1. A bargaining unit composed of non-supervisory educational employees of Renton School District No. 403 employed by Renton Vocational Technical Institute would not constitute an appropriate bargaining unit within the meaning of RCW 41.59.080(6).

2. No question concerning representation presently exists in an appropriate bargaining unit of educational employees.

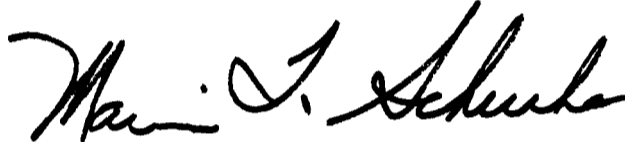
NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed by Washington Federation of Teachers, AFL-CIO is dismissed.

DATED at Olympia, Washington this 1st day of March 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, reading "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director