

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of
MASON COUNTY EDUCATION ASSOCIATION
Petitioner,
vs.
MASON COUNTY SCHOOL DISTRICT NO. 54
Employer.

Case No. 1547-E-78-308
Decision No. 590-EDUC

DIRECTION OF ELECTION

APPEARANCES:

Judith Lonquist, General Counsel, Washington Education Association,
for the petitioner.

Heuston & Settle, by Benjamin H. Settle, Attorney at Law, for the
respondent.

STATEMENT OF THE CASE:

By petition filed on June 27, 1978 and amended on June 30, 1978, Mason County Education Association (hereinafter called petitioner) requested that the Public Employment Relations Commission investigate a question concerning representation of certain employees of the Mason County School District No. 54 (hereinafter district). A hearing was held on November 8, 1978, before Alan R. Krebs, Hearing Officer. At the hearing, petitioner requested that it should be referred to on the ballot as the Olympic UniServ Council, affiliated with the Mason County Education Association.

POSITIONS OF THE PARTIES:

Petitioner seeks a unit of all regular full time certificated employees, excluding the superintendent. There are five such employees. The district contends that four substitute teachers fall within the statutory definition of certificated employee and should also be included within the bargaining unit. Petitioner asserts that the substitutes are casual employees who have separate duties, skills and working conditions from the regular staff, and that they should not be included in the bargaining unit. Petitioner further asserts that one of the four substitutes has resigned and thus should not be eligible to vote.

FACTS:

The district operates one elementary school and has 108 students. It is headed by a superintendent who teaches half time. The petitioned-for employees have never had a certified collective bargaining representative, and have never engaged in collective bargaining with the district.

The district has obtained employment contracts for the four substitute teachers at issue. The contracts provide in part:

"That the Employee shall do occasional substitute teaching in the public school of Said (sic) District, and perform such duties as are prescribed by the laws of the State of Washington and by the policies, rules and regulations of Said District on the days his services are required due to the absence of a permanently assigned teacher.

...

Substitute teachers shall be paid the rate of \$42.73 per day. If the substitute teacher works less than a full day, he shall be paid the number of hours worked. When a substitute teacher works 20 consecutive days or more in the same assignment, he shall be placed on the appropriate position on the salary schedule and shall be paid the same rate as a contracted teacher as long as he continues in the same position."

When the district has need for a substitute teacher, it first contacts the four substitutes who have signed contracts. If they are not available, the district contacts substitutes who have not signed a contract, but who have indicated their availability to the district. The four substitute teachers with contracts are Deborah P. Owen, Suzanne Love, Isabell Wolfer, and Carol Kinney. Owen worked a total of 21 hours during the 1977-78 school year and had not worked at all during the first two months of the 1978-79 school year. Love worked 22½ hours during the 1977-78 school year and 7½ hours during the 1978-79 school year. Wolfer had worked approximately 35 hours during 1977-78 school year and 14 hours during the 1978-79 school year. Kinney was employed on a regular basis for the district as a teacher's aide for the 1977-78 school year, except for a period of time in which she served as a long term substitute for a teacher. Kinney resigned from her teacher aide position in the spring of 1978, stating that she was going to start raising a family. Further, she is unavailable to substitute two days per week because she is attending classes. During the first two months of the 1978-79 school year, she was phoned to substitute on five occasions, but was unavailable on four of them and on the fifth worked for only four hours.

The contracted substitutes may refuse offers of employment when called by the employer, though such refusals may result in their being called less often. When they do perform work at the district, they follow lesson plans prepared by the regularly assigned teacher. Substitutes receive none of the fringe benefits which the regularly assigned teachers receive. The substitutes may, and do, work as substitute teachers for school districts other than this employer.

DISCUSSION

In Everett School District No. 2, Decision No. 268 (EDUC, 1977), daily substitute teachers were found to be "casual" employees and were excluded from a bargaining unit of regular teachers, while "long term" substitutes were included in the unit. "Casual" was held in Everett to include those "'on call' employees who are employed sporadically, with no established pattern of regular continuing employment".

In a series of cases arising out of retail establishments, the National Labor Relations Board has included individuals in bargaining units with full time and other regularly scheduled employees where they perform the same work as the regular employees, received some of the same fringe benefits, and regularly averaged 4 hours or more per week during the calendar quarter preceding the election. See: May Company Department Stores, 175 NLRB 514 (1969); Allied Stores of Ohio, Inc., 175 NLRB 966 (1969); Davison - Paxon Company, 185 NLRB 21 (1970); and Mademoiselle Shoppe, Inc., 199 NLRB 983 (1972). This is not to suggest that the "four hour per week" rule is being adopted here, but is noted in contrast to the facts of the instant case. Only Kinney averaged more than one day's employment per month last year, and her changed circumstances in the current school year make it unlikely that she will have more than sporadic employment for the district in the future.

Other states, notably California, New York, Oregon, Pennsylvania and Wisconsin, have had occasion to rule on the unit placement of substitute teachers; and in a different industrial setting the NLRB has more recently applied a "fifteen days in the preceding calendar quarter" test for casual employees. See: Manncraft Exhibitors Services, Inc., 212 NLRB 923 (1974). That case included the "preferential list" situation present here.

This is not the case in which to attempt to reconcile the NLRB and state agency approaches. It is sufficient here to say that the four substitute employees at issue are casual employees and ineligible to vote in the election.

FINDINGS OF FACT

1. Mason County School District No. 54 is an employer within the meaning of RCW 41.59.020(5).
2. Olympic UniServ Council, affiliated with the Mason County Education Association is an employee organization within the meaning of RCW 41.59.-020(1). Said employee organization timely filed a petition for investigation of a question concerning representation of all regular full time certificated employees of Mason County School District No. 54.
3. Deborah P. Owen, Suzanne Love, Isabell Wolfer, and Carol Kinney are certificated individuals who are employed by the district as substitute teachers on an on call basis; each is employed by the district on a sporadic basis, and they are casual employees.

CONCLUSIONS OF LAW

1. Deborah P. Owen, Suzanne Love, Isabell Wolfer, and Carol Kinney are casual employees to be excluded from the bargaining unit of full time and regular part time nonsupervisory certificated employees of the employer.
2. The Public Employment Relations Commission has jurisdiction to resolve in these proceedings a question concerning representation which exists in the unit described in the foregoing paragraph.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission among all full time and regular part time certificated employees of Mason County School District No.54 (Grapeview), excluding the superintendent, for the purpose of determining whether a majority of such employees desire to be represented for the purposes of collective bargaining by Olympic UniServ Council, affiliated with the Mason County Education Association.

Dated at Olympia, Washington, this 7th day of February, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By: 

MARVIN L. SCHURKE, Executive Director