

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
LAKE WASHINGTON VOCATIONAL-	)	CASE NO. 896-E-77-175
TECHNICAL FEDERATION OF TEACHERS,	)	DECISION NO. 484-EDUC
LOCAL NO. 3533, WFT, AFT, AFL-CIO	)	<u>DIRECTION OF ELECTION</u>
Involving certain employees of:	)	
LAKE WASHINGTON SCHOOL DISTRICT	)	
NO. 414.	)	
_____	)	

Appearances:

PETER D. FRANCIS, Attorney at law, for the petitioner.

JEROME L. RUBIN, Attorney at law, for the employer.

SYMONE B. SCALES, Attorney at law, for intervenor, Lake Washington Education Association.

On May 11, 1977, the Lake Washington Vocational-Technical Federation of Teachers, Local No. 3533, filed a petition with the Public Employment Relations Commission seeking certification as the exclusive bargaining representative of vocationally certificated educational employees of Lake Washington School District No. 414 employed in its Lake Washington Vocational-Technical Institute. The Lake Washington Education Association intervened in the proceedings.

A hearing was held on May 1, and 3, 1978 before Rex L. Lacy, Hearing Officer. The petitioner and intervenor filed post-hearing briefs.

ISSUES:

The petitioner claims that a separate bargaining unit of LWVTI employees would be appropriate under RCW 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 LWVTI and that severance of the vocational-technical employees from the district-wide certificated employee unit would be inappropriate. The employer asserts that a separate unit of vocational-technical employees of the LWVTI is an appropriate bargaining

unit because no history of bargaining exists for LWVTI employees that precludes their severance from the district-wide certificated employee bargaining unit. The employer also claims that the appropriate unit should include only vocationally certificated employees who work more than 20 hours per week. The petitioner and intervenor both seek to include all full-time and regular part-time employees in any appropriate bargaining unit.

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 unit 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

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(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; . . ."

FACTS AND ANALYSIS:

The employer operates a public school system. In addition to its academic program for students in kindergarten through the twelfth grade, the employer operates a "vocational-technical institute" known as Lake Washington Vocational-Technical Institute.

The Commission has previously had before it similar severance petitions in three other vocational-technical institutes. The facts of this case are most comparable to the situation which existed in Tacoma School District (L. H. Bates Vocational-Technical Institute), Decision 390 (EDUC, 1978), wherein the Executive Director ordered the conduct of a representation election and a severance resulted. If anything, the facts of this case more clearly warrant the severance of the vocational-technical institute faculty than did the situation in Tacoma. There has been a complete lack of any history of bargaining or representation indicating a viable relationship between the employer and the incumbent organization in the non-supervisory certificated employee bargaining unit. The testimony clearly establishes that there has been no bargaining concerning the wages, hours or working conditions of the vocational faculty since the vocational-technical institute was created.

The employer's arbitrary cutoff of eligibility at 20 hours per week is resisted by both organizations and is in conflict with established Commission precedent. In Renton School District (RVTI), Decision No. 379-A, Clover Park School District (CPVTI), Decision No. 386-A, and in Tacoma, supra, elections have been directed among "all full-time and regular part-time vocationally certificated employees."

#### FINDINGS OF FACT

1. Lake Washington School District No. 414 is an employer within the meaning of RCW 41.59.020(5). Among other programs, Lake Washington School District No. 414 operates a vocational-technical institute known as the Lake Washington Vocational-Technical Institute.

2. Lake Washington Vocational-Technical Federation of Teachers, Local No. 3533, WFT, AFL-CIO, timely filed a petition for investigation of a question concerning representation of employees of Lake Washington Vocational-Technical Institute.

3. Lake Washington School District No. 414 recognized Lake Washington Education Association as the majority representative of its certificated employees under the provisions of repealed RCW 28A.72. The certificated employees of Lake Washington Vocational-Technical Institute were within the scope of that recognition. Subsequent to such recognition, Lake Washington School District No. 414 has continued to make changes of the wages, hours and conditions of employment of certificated employees of Lake Washington Vocational-Technical Institute by unilateral administrative decision reached and implemented without negotiations with the Lake Washington Education Association. The negotiated agreements between Lake Washington

School District No. 414 and the Lake Washington Education Association failed to make provisions for the accepted and continuing practices affecting wages, hours and condition of employment of certificated employees of Lake Washington Vocational-Technical Institute where such practices differed from the practices in the K-12 educational program operated by the employer and from the provisions of such negotiated agreements.

4. Lake Washington School District No. 414 continued its recognition of the Lake Washington Education Association as the exclusive bargaining representative of its non-supervisory certificated employees under the provisions of RCW 41.59. Such recognition continued to nominally include employees of the Lake Washington Vocational-Technical Institute at least until a petition was filed herein May 11, 1977. Lake Washington Education Association has not abandoned or disclaimed its claim to represent the non-supervisory certificated employees of Lake Washington Vocational-Technical Institute.

5. There exists no history of bargaining between Lake Washington School District No. 414 and Lake Washington Education Association, with respect to certificated employees at Lake Washington Vocational-Technical Institute. Those employees have not been actively represented by the Lake Washington Education Association or integrated into the district-wide negotiations under repealed RCW 28A.72 or under RCW 41.59.

#### CONCLUSIONS OF LAW

1. The history of bargaining between Lake Washington School District No. 414 and Lake Washington Education Association justifies consideration of a separate bargaining unit which includes only employees of Lake Washington Vocational-Technical Institute under RCW 41.59.080(6).

2. A question has arisen concerning the creation of a bargaining unit consisting of non-supervisory vocationally certificated employees Lake Washington School District No. 414 employed in Lake Washington Vocational-Technical Institute.

3. In the event that a majority of the eligible non-supervisory vocationally certificated employees in Lake Washington Vocational-Technical Institute indicate by vote that they desire to create a separate bargaining unit under the provisions of RCW 41.59.080, a question concerning representation will exist among such employees.

NOW, THEREFORE, it is

DIRECTED

1. Lake Washington School District No. 414 shall, on September 15, 1978, prepare and file with the Commission a list containing the names of all full-time and regular part-time non-supervisory vocationally certificated employees in Lake Washington Vocational-Technical Institute who are employed on that date. A copy of such list shall be provided, upon request, to Lake Washington Education Association and Lake Washington Vocational-technical Federation of Teachers, Local No. 3533.

2. 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 certificated employees of Lake Washington School District No. 414 employed in its Lake Washington Vocational-Technical Institute, excluding the Superintendent of Schools, administrative officers of the district, confidential employees, certificated employees employed in the K-12 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 Lake Washington School District No. 414.

3. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission in the voting group described in paragraph 2 of this Direction of Election, to determine whether a majority of the employees voting desire to be represented by Lake Washington Vocational-Technical Federation of Teachers, Local No. 3533, AFT, AFL-CIO, or by Lake Washington Education Association, WEA-NEA, or by no representative for the purposes of collective bargaining with Lake Washington School District No. 414. This representation election shall be conducted at the same time as the unit determination election directed in paragraph 2 of this order. In the event that a majority of those eligible fail to vote in favor of the creation of a separate bargaining unit, the ballots cast on the question concerning representation shall be impounded.

DATED at Olympia, Washington this 9<sup>th</sup> day of August, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director