

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
INTERNATIONAL ASSOCIATION OF)	CASE NO. 4651-E-83-858
MACHINISTS AND AEROSPACE)	
WORKERS, LOCAL NO. 130)	DECISION NO. 2008 - EDUC
Involving certain employees of:)	
KENNEWICK SCHOOL DISTRICT)	ORDER OF DISMISSAL

Ward Johnston, Business Representative, appeared on behalf of the petitioner.

Donald Anderson, Superintendent, appeared on behalf of Kennewick School District.

Jerry Painter, Attorney at Law, appeared on behalf of the intervenor, Kennewick Education Association.

On May 31, 1983, International Association of Machinists and Aerospace Workers, Local 130 (petitioner) filed a petition for investigation of a question concerning representation involving certain employees of Kennewick School District (district). Kennewick Education Association (intervenor) timely intervened in the proceedings, claiming status as the incumbent representative of employees affected by the petition. A pre-hearing conference was conducted in January 27, 1984. A hearing was conducted in Kennewick, Washington, March 9, 1984, before Jack T. Cowan, Hearing Officer. Petitioner and intervenor submitted post-hearing briefs.

BACKGROUND

Three substantial municipalities (Pasco, Kennewick, and Richland) comprise the "Tri-Cities," located in the southcentral part of the State of Washington. Several towns and cities are located in the nearby vicinity. A number of school districts have been established in the area. Of importance to these proceedings are the Pasco, Kennewick, Richland, Kiona-Benton, Finley and Columbia school districts. While these districts offer separate and distinct academic education programs, they have pursued a cooperative approach to vocational-technical education. The school districts have entered into the "Tri-City Cooperative Education Program Joint Operation Agreement for Services in Occupational Education" (hereinafter, "the agreement"), which is in evidence in this proceeding.

The agreement sets forth general policy goals and establishes the broad framework for operating a vocational-technical education facility. An "Area Vocational Director" manages the cooperative effort, and the school districts contribute to the operation of the director's office. The vocational director is responsible for program planning, program initiation, assistance in budget preparation, development of special projects, consultation on vocational certification, and administration of reporting functions.

The agreement calls for creation of two advisory bodies. The "Center Administrative Council" is composed of the superintendents of the six participating school districts, and serves as an advisory body to give "guidance" on issues affecting the vocational-technical center's operation. The "Regional Voc-Ed Advisory Board" is composed of two representatives from each school district and as many as six representatives of "labor and industry".^{1/} The board recommends rules and regulations for operating the vocational-technical center and has input on budget matters, including an annual budget recommendation on the center's operation. The recommendation is submitted to each participating school district for consideration in their budget-making processes.

The record indicates that Kennewick School District coordinated vocational-technical training programs before a single facility was built. With its expertise in the vocational field, the participating school districts decided to locate the vocational education facility in the Kennewick district. Kennewick School District holds title to the property on which the training center is located.

Approximately 200 students attend the vocational-technical training facility. The pupil to teacher ratio is 16.67:1, compared to the normal 20:1 ratio found in the kindergarten through grade 12 (K-12) educational program. State funding for vocational students is approximately 15 percent higher on a per pupil basis than that provided for the K-12 program. While attending the center, vocational students are considered to be enrolled in the Kennewick district.

The agreement specifically reserves administration of the vocational education facility to the Kennewick School District. A "Center Site Director" manages daily operations. Following directives set forth in the joint operating agreement, the director occupies a place on the Kennewick

^{1/} It is assumed that the reference to "labor and industry" refers to local business and/or union craftsmen rather than the Washington State Department of Labor and Industries.

district's administrative staff equal to that of a high school principal. The Kennewick district has exclusive authority to hire, evaluate, discipline and discharge employees at the vocational training center.

Employees hired to teach at the facility must possess a valid teaching certificate. Given the unique nature of technical classes, state law specifies that instructors can be accredited under a regular teaching certificate or under a "Vocational Certificate" which substitutes actual work in a particular field for formal classes in that subject. The record indicates that employees holding both types of certificates work in the training center.

Kennewick Education Association (KEA) represents non-supervisory certificated employees of the Kennewick School District. The association and the Kennewick School District have a bargaining relationship dating to at least 1976, and have entered into a series of collective bargaining agreements since that time. The association and district were parties to a collective bargaining agreement effective through August 31, 1983 and are now parties to a collective bargaining agreement in effect from September 1, 1983, through August 31, 1985.

In the course of negotiations, the KEA and the school district have considered vocational instructors to be included in the district-wide non-supervisory certificated employee bargaining unit. Vocational instructors are placed on the Kennewick School District's salary schedule, and they receive the same benefit coverage as other bargaining unit members. The contract does not treat vocational instructors differently from other non-supervisory certificated employees for purposes of layoff and recall. Vocational instructors have participated in Kennewick Education Association meetings and have voted in the ratification of collective bargaining agreements. In addition, they have served on a number of KEA committees including the "contract maintenance committee" which serves as the initial grievance review process. The association has filed grievances on behalf of vocational instructors and has processed the grievances under terms of a grievance procedure found in the collective bargaining agreement.

POSITIONS OF THE PARTIES

Petitioner argues that instructors working in the cooperative vocational center should be represented in a separate bargaining unit. Petitioner maintains that the center is operated under a distinct organization and does not "belong" to Kennewick School District. Petitioner points out that several administrative groups have been formed to supervise the center's

operation, and urges the Public Employment Relations Commission to reach a decision similar to that reached in Kitsap Peninsula Vocational Skills Center, Decision 838-A (EDUC, 1981).

Intervenor argues that the petition should be dismissed because the proposed bargaining unit is inappropriate for purposes of collective bargaining. Intervenor contends that the bargaining history in this case does not permit consideration of severance. Intervenor notes that a contract was in effect from September 1, 1982 through August 31, 1983, and claims the petition was filed in an untimely manner.

The district did not take a position at the hearing.

DISCUSSION

This petition must be considered in light of the requirements set forth in RCW 41.59.080. In pertinent part, the statute specifies:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; 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.

Those provisions of statute have been interpreted and applied in a number of cases. In Renton School District, Decision 379-A (EDUC, 1978), aff. ___ Wn.2d ___ (1984); Clover Park School District, Decision 377-A (EDUC, 1978), aff. 26 Wn.Ap. 1005 (1980); Tacoma School District, Decision 390 (EDUC, 1978) and Lake Washington School District, Decision 484 (EDUC, 1978), the vocational education facilities involved were operated by single school districts. It was necessary to consider and decide the "history of bargaining" issues raised in those cases, and the Commission did so. The "history of bargaining" issue was not reached in Sno-Isle Vocational Skills Center, Decision 841 (EDUC, 1980) or in Kitsap Peninsula Vocational Skills Center, Decision 838-A (EDUC, 1981), because it was concluded in each of those cases that the vocational education facility at issue was operated separate and apart from the operations of the "host" district, so as to call for treatment as a separate employer.

The vocational education facility at issue in this case is a separate operation, with a specialized teaching staff assigned only to that facility.

In this respect, it is similar to the facilities at issue in all of the cases cited above. The Tri-Cities facility is operated under a joint operating agreement which calls for the existence of a council composed of representatives of the participating districts, superficially similar to contractual arrangements found in the Sno-Isle and Kitsap cases. The record discloses, however, substantial differences which preclude a conclusion that the disputed facility is a separate entity operated separate and apart from the operations of the Kennewick School District.

The cooperative agreement creates several advisory groups concerned with curriculum, accreditation and other related matters. Examination of the agreement discloses that the cooperative bodies can only make recommendations on personnel matters. Uncontroverted testimony establishes that the Kennewick School District is responsible for the personnel functions associated with the vocational-technical center. School district administrators retain authority to hire, discipline, evaluate and discharge vocational instructors. Grievances involving such matters are routinely processed by the Kennewick School District. This specific reservation of final personnel authority to a single school district distinguishes this case from Sno-Isle and Kitsap, where the cooperative group reserved authority to control personnel matters. It is thus concluded that Kennewick School District is, in fact, the employer of the vocational instructors.

The vocational center instructors have established a substantial history of bargaining under Chapter 41.59 RCW as part of the Kennewick Education Association's bargaining unit. They have processed grievances through the grievance procedure found in the collective bargaining agreement between the school district and the Kennewick Education Association. Furthermore, the record clearly demonstrates that the affected employees have participated in the collective bargaining process under Chapter 41.59 RCW as members of the bargaining unit represented by intervenor. This petition must be dismissed.

The collective bargaining agreement between the Kennewick School District and the Kennewick Education Association did not expire until August 31, 1983. The relevance of that contract depended on the determination of who was the employer, a question now determined. RCW 41.59.070 specifies that a petition for investigation of a question concerning representation cannot be filed more than ninety (90) or less than sixty (60) days prior to the expiration of a collective bargaining agreement. The petition is also untimely. It was filed on May 31, 1983, more than ninety (90) days before expiration.

FINDINGS OF FACT

1. Kennewick School District provides educational services for residents of the Kennewick, Washington, vicinity and is an "employer" within the meaning of RCW 41.59.020(5).
2. International Association of Machinists and Aerospace Workers, Local No. 130, an "employee organization" within the meaning of RCW 41.59.020(1) filed a petition with the Commission on May 31, 1983, seeking certification as exclusive bargaining representative of a separate bargaining unit of vocational-technical instructors employed by Kennewick School District.
3. Kennewick Education Association, an "employee organization" within the meaning of RCW 41.59.020(1), represents non-supervisory certificated employees of the Kennewick School District in a bargaining unit described as:

... all professional certificated personnel whether under contract or on leave employed by the Board. Contracted employees shall mean all employees who work twenty (20) consecutive days or more, or more than thirty (30) days of work in any twelve (12) month period. Such representation shall cover all personnel assigned to newly created professional positions unless the parties agree in advance that such positions are principally supervisory and administrative. Such representation shall exclude the following:

Superintendent	Central Office Coordinators
Assistant Superintendents	Directors and Program
Principals	Administrators
Assistant Principals	Casual Substitutes
High School Athletic	Administrative Assistants
Directors	

The term "certificated employee" when used hereinafter in the Agreement shall refer to all professional employees represented by the Association in the bargaining unit as defined.

Sole and exclusive rights as used herein are defined as the rights provided through this Agreement to the Association and such rights shall not be granted to any rival or competing organization which purports to represent the same employee group for purposes of representation and/or collective bargaining.

4. Together with the Pasco, Richland, Kiona-Benton, Finley, and Columbia School Districts, the Kennewick School District has, by written contract, entered into a cooperative vocational-technical education program. The cooperative program is subject to policy decisions by an "Area Vocational Director" who deals with program and curriculum

issues. In addition, a "Center Administration Council" gives "guidance" on issues dealing with the operation of the vocational-training facility.

5. The training facility is located in the Kennewick School District, on land owned by the district. The joint operating agreement specifically reserves administration of the facility to the Kennewick district. Members of the Kennewick district's administrative staff have authority to hire, fire and evaluate vocational instructors, just as they do for other non-supervisory certificated employees.
6. Vocational instructors have been represented by the Kennewick Education Association. Vocational instructors are paid according to the salary schedule established in the collective bargaining agreement between the district and association, and receive the same benefits as other employees covered by the contract. Vocational instructors are also subject to the same layoff and recall procedures as other non-supervisory certificated employees. Kennewick Education Association has represented vocational instructors in grievance procedures, and vocational instructors have participated in association committees.
7. The Kennewick Education Association was the exclusive bargaining representative of non-supervisory certificated vocational instructors working in the Tri-City cooperative vocational training program, under a collective bargaining agreement with a term of August 31, 1983.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.
2. The Kennewick School District is the employer under RCW 41.59.020(5) of the certificated employees working in the Tri-Cities Vocational-Technical education facility.
3. No question concerning representation presently exist in the appropriate bargaining unit described in Finding of Fact 3, above. Severance of a separate bargaining unit of certificated employees at the Tri-cities vocational education facility would not, in light of the history of bargaining, be appropriate under RCW 41.59.080(6).


4. The petition filed by the International Association of Machinists and Aerospace Workers was filed in an untimely manner under RCW 41.59.070.

ORDER

The petition for investigation of a question concerning representation is DISMISSED.

DATED at Olympia, Washington, this 18th day of July, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).