STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of	)	
	)	
INTERMITTENT WORKERS FEDERATION	)	CASE NO. 2037-E-79-369
	)	
Involving certain employees of	)	DECISION NO. 1142 - PECB
	)	
CITY OF SEATTLE	)	DIRECTION OF ELECTION
	)	
	)	

John Scannell, Field Secretary, appeared on behalf of the petitioner.

Douglas N. Jewett, City Attorney, by P. Stephen DiJulio, Assistant City Attorney, appeared on behalf of the employer.

On April 3, 1979, the Intermittent Workers Federation filed a petition with the Public Employment Relations Commission seeking certification as exclusive bargaining representative of parking attendants and monorail cashiers employed by the City of Seattle at the Seattle Center. The petition was accompanied by a showing of interest which was administratively determined to be sufficient to warrant further processing of the petition.

The proceedings in this case were held in abeyance for some time while the parties litigated some fundamental questions in City of Seattle, Case No. 1034-E-77-201 which led to the issuance of Decision 781 (PECB, 1979). A hearing was held in the captioned matter on April 28, 1980 before Jack T. Cowan, Hearing Officer.

During the course of the hearing, apparently in response to a line of argument advanced by the employer, the petitioner sought to amend its petition to seek a larger city-wide bargaining unit. The petitioner neither offered a showing of interest to support the larger bargaining unit, nor did it indicate any willingness or ability to immediately supply such a showing of interest. The Hearing Officer denied the motion for amendment, and that ruling is affirmed and adopted herein by the Executive Director.

Also during the course of the hearing, the petitioner pointed out a change in the employer's terminology during the time the case had been pending, so that positions which had been categorized by the city as

"intermittent" at the time the petition was filed had been re-categorized subsequently as full time or part time. The petitioner indicated its desire to represent all employees who had been classified as "intermittent" at the time the petition was filed, and this matter has been determined on the basis of that clarification.

BACKGROUND:

Reference is made to the "Background" section in City of Seattle, Decision 781 (PECB, 1979) which involved the same parties. No appeal was taken from that decision. Notice is taken of that decision, and no attempt will be made herein to repeat the full details of the background to the relationship of the parties.

The City of Seattle operates a Personnel Department, which in turn operates a temporary employment service through which "on call" employees are dispatched to certain of the employer's departments to supplement the regular work forces in those departments.

The City of Seattle operates the Seattle Center, including parking lots maintained for Seattle Center event patrons and a monorail connecting the Seattle Center with the central business district of the city. The number of parking attendants varies from day to day according to the number and popularity of events. The number of monorail cashiers varies from one on duty when on-train collection of fares is made to two when booths at both terminals are manned. The Seattle Center has its own personnel director and personnel office, its own payroll, and its own workforce of on call employees separate and apart from the temporary employment service operated by the city personnel department.

POSITIONS OF THE PARTIES:

The petitioner contends that the parking attendants and monorail cashiers at the Seattle Center are all presently unrepresented and constitute an appropriate unit for the purposes of collective bargaining.

The employer asserts first that City of Seattle, Decision 781 (PECB, 1979) is controlling and precludes the creation of any bargaining unit in this case. Second, the employer appears to contend that on call employees should not be permitted to organize in any bargaining unit. Third, the employer contends that the petitioned-for bargaining unit is inappropriately limited to the Seattle Center and that any bargaining unit should be city-wide in scope so as to avoid fragmentation and disruption of labor relations.

DISCUSSION:

Prior to the adoption of its new personnel ordinance in January, 1979, the employer categorized a number of its employees as "intermittent". There was no limit to the number of hours per year which an "intermittent" employee could work while so categorized. This petition was filed after the adoption by the city of a personnel ordinance which limited "intermittent" employment to 1040 hours per year; but prior to the implementation of that ordinance with respect to the petitioned-for classifications. The employer submitted a list of 32 employees to the Commission for purposes of verification of the showing of interest. Nine employees who appeared on that initial list as "intermittent" appear on the list submitted by the employer at the hearing as "full time" or "part time". Those working less than 1040 hours per year are still categorized by the employer as "intermittent". It does not appear from the record that the change of employment category made any other change on the employment situations of the affected employees.

Contrary to the employer's interpretation of Decision 781, that decision does not preclude generally the organization of the city's "intermittent" employees or control this case. In Decision 781, a petition was dismissed where creation of the bargaining unit requested would have produced a result where two different bargaining units and labor organizations would have had competing claims for the same work jurisdiction. This case is distinguished by its facts. A job announcement for "on call" employment which was issued by the Seattle Center in March, 1977 lists eight different classifications available for immediate or potential intermittent employment. Testimony at the hearing brought out that one of those has since been eliminated and that others are extra-help workforces to supplement a primary workforce which is already represented for the purposes of collective bargaining. It is undisputed that the parking attendant and monorail cashier classifications had historically been entirely "on call" workforces where none of the employees were represented for the purposes of collective bargaining. Thus, there is no existing bargaining unit to which the petitioned-for employees could be added, nor is there a potential for conflicting jurisdictional claims between the petitioned-for bargaining unit and any existing bargaining unit.

The petitioner made reference during the course of the hearing to the "regular" vs. "casual" test embraced by the National Labor Relations Board in Scoa, Inc., 140 NLRB 1379 (1963). As was noted in Decision 781, supra, the Public Employment Relations Commission has not maintained the total exclusion of "on call" employees from bargaining units which was practiced while RCW 41.56 was administered by the Department of Labor and Industries. Regular part time employees are appropriately included in bargaining units, whether they work a fixed schedule of hours or merely

sufficient hours in a representative calendar period to indicate a continued expectancy of employment. Tacoma School District, Decision 655 (EDUC, 1979). The positions sought by the petitioner appear to involve substantial and continuing employment opportunities paid on an hourly basis. When they were advertised in 1977, the parking attendant classification was paid at a rate in excess of $5.00 per hour and the monorail cashier was paid at a rate in excess of $4.00 per hour. Both operations are described in the testimony as ongoing operations of the employer, and it appears that the re-categorization of nine or more of the employees on and after July 1, 1979 was due to their accumulation of more than the 1040 hour per year limit on "intermittent" work. The Scoa, supra, test suggested by the petitioner (15 days worked in 3 months, representing 16.5% of workdays available on a 7 day per week operation) is similar to the test established for substitute teachers (30 days per year, representing 16.6% of workdays available), and no substantial argument has been advanced why some higher test should be imposed.

The employer's arguments based on the evils of fragmentation of bargaining units also overlook key facts in this case. The authority of the Commission to make unit determinations is set forth in RCW 41.56.060 as follows:

> "...In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees."

Generic bargaining units have been preferred in a number of cases where an effort has been made to exclude one or more identified groups from an otherwise appropriate bargaining unit. See: Yelm School district, Decision 704-A (PECB, 1980) (Commission rejected severance of bus drivers from appropriate employer-wide unit of non-teaching employees); Port of Seattle, Decision 890 (PECB, 1980) (employer-wide clerical unit preferred to isolated clerical unit in two departments only); METRO, Decision 958 (PECB, 1980) (department-wide supervisor unit preferred to supervisor unit limited to two sections of department only) and City of Tacoma, Decision 204 (PECB, 1977) (city-wide clerical unit preferred to two separate units with one being an isolated clerical unit for one department only). However, existing bargaining unit structures must be taken as they are found, and it is not appropriate to frustrate the right of employees to organize merely because historical representation arrangements are fragmented. See: Pierce County, Decision 1039 (PECB, 1980); City of Seattle, Decision 140 - 141 (PECB, 1976). It appears from this record that it would be virtually impossible to gather together all city employees who perform "parking" or "cashier" functions as some part of their employment. Some of the classifications claimed by the City as

similar appear to have substantially higher duties as accounting technicians, while most of the others are within a different departmental structure in the Parks Department. Parking Enforcement Officer in the Police Department have traffic control and citation issuance responsibilities. Some of those "other" employees are already represented for the purposes of collective bargaining. On the other hand, it appears from this record that the Seattle Center has substantial independence from the rest of City government in personnel affairs, including having its own personnel office and director, its own payroll, and its own workforce of "on call" employees separate and apart even from the "temporary employment service" workforce controlled by the employer's main personnel department. There is no evidence of exchange of personnel, supervision or scheduling between the Seattle Center and the closest comparable, the Parks Department. Thus, unlike the situations noted in Yelm, Port of Seattle, Metro and Tacoma, supra, there is no clearly appropriate generic unit having similar duties, skills, working conditions, history of bargaining or extent of organization which would be fragmented by the petition in this case.

While the petitioner has not developed an extensive record, the unit for which it has petitioned appears from evidence to be an identifiable independent group which includes all of the employees performing the type of work involved. The employer's anti-fragmentation arguments have not been substantiated by evidence of existence of a larger integrated group, and it is concluded that the petitioned for unit is an appropriate bargaining unit.

FINDINGS OF FACT

1. City of Seattle is a public employer within the meaning of RCW 41.56.030(1).

2. Intermittent Workers Federation, a labor organization within the meaning of RCW 41.56, timely filed a petition for investigation of a question concerning representation of certain employees of the City of Seattle in a bargaining unit described as: "parking attendants and monorail cashiers employed on an intermittent basis at the Seattle Center".

3. The bargaining unit proposed by the petitioner included the names of employees now identified by the employer as "full time" or "part time", as well as other regular part time employees identified by the employer as "intermittent", who have an expectancy of continued employment and are appropriately included in a bargaining unit.

4. There is no existing unit to which the petitioned employees could be added, and there is no history of bargaining concerning the petitioned employees.

5. The petitioned for employees are hired, assigned and paid through the Seattle Center personnel office separate and apart from other temporary, intermittent or permanent employees of the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. Employees who work no established schedule of hours but who work on an on-call basis for 15 or more days in a calendar quarter are regular part time employees.

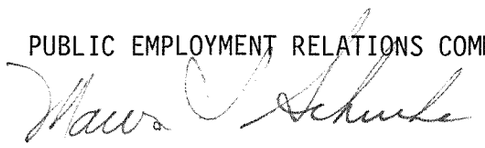
3. A bargaining unit comprised of full time and regular part time parking attendants and monorail cashiers at the Seattle Center is an appropriate unit for purposes of collective bargaining within the meaning of RCW 41.56.060 and a question of representation exists.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission among all full and regular part time parking attendants and monorail cashiers at the Seattle Center, including those who worked on an on-call basis for 15 or more days in the calendar quarter preceding the date of this Order; excluding all casual employees, for the purpose of determining whether a majority of such employees desire to be represented for the purposes of collective bargaining by the Intermittent Workers Federation.

DATED at Olympia, Washington this 28th day of April, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director