

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                   |   |                          |
|-----------------------------------|---|--------------------------|
| In the matter of the petition of: | ) |                          |
| INTERNATIONAL BROTHERHOOD OF      | ) | CASE NO. 4236-E-82-784   |
| ELECTRICAL WORKERS, LOCAL NO. 46, | ) |                          |
| AFL-CIO                           | ) | DECISION NO. 1675 - PECB |
|                                   | ) |                          |
| Involving certain employees of:   | ) | DIRECTION OF ELECTION    |
| KING COUNTY (KINGDOME)            | ) |                          |
| <hr/>                             |   |                          |

Hafer, Cassidy and Price, by John Burns, attorney at law, appeared on behalf of the petitioner.

Norm Maleng, King County Prosecutor, by Steve Kenyon, Deputy Prosecuting Attorney, appeared on behalf of the employer.

On September 20, 1982, International Brotherhood of Electrical Workers, Local No. 46, AFL-CIO (union) filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation of certain employees of King County. The bargaining unit claimed appropriate includes sound reinforcement operators and telescreen operators employed at the King County Stadium (Kingdome). A hearing was conducted on January 20, 1983, before Katrina I. Boedecker, Hearing Officer.

FACTS:

The King County Stadium (Kingdome) has its own audio-visual equipment, and King County employs personnel to operate that equipment for events held at the facility. Two different types of positions are required to operate this equipment. Those positions are listed as "sound reinforcement operators" and "telescreen operators" in the County's payroll records, and are referred to as such in this decision.

The sound reinforcement operators are responsible for the stadium television and scoreboard systems. This involves setting up, turning on and functionally checking the closed-circuit television and scoreboard computers on event days. The sound reinforcement operator is also responsible for providing on-site maintenance of equipment during events and for operating the console that controls various levels and outputs of stadium sound systems. Other duties include repairing equipment and doing preventive

maintenance on the video equipment. Sound reinforcement operators are scheduled to work by Signal Communications, a private company that installed the audio system in the Kingdome, but it is clear that they are carried on the King County payroll. A typical event requires one or two sound reinforcement employees.

Telescreen operators are responsible for program content of the sound, telescreen and closed-circuit systems during Kingdome events. Telescreen operators work in one of four duties during an event: handling the technical controls of the camera, operating the camera, operating the slow motion discs, or operating the video tape machine. Telescreen operators also coordinate technical system requirements with radio and television broadcasting agencies. Evidence suggests that the workforce employed at a typical baseball game would include approximately eight telescreen operators (a camera control operator, a disc operator, two video tape operators, and camera operators).

Robert S. (Nik) Walker is the manager of the technical systems division at the Kingdome. Walker's duties include administering all operations of the technical systems, and supervising full-time and part-time employees in his division. The only full-time employees are Galen Armstrong, assistant; Lawrence Lave, maintenance technician; and Robert Scheller, aide. The part-time employees Walker supervises are the petitioned-for employees. There are no regularly scheduled sound reinforcement or telescreen operators, and all of the employer's requirements for such services are met by calling in part-time employees.

Applicants for "events" employment as telescreen operators contact Walker to set up an interview. Walker usually receives about two applications per month. If the potential employee is qualified, and if there is an opening, the person would be "hired". Openings, however, are rare. Only one person was added to the employment list in 1982.

Until the month the petition was filed in the instant matter, telescreen operators were mailed an availability sheet each month, listing events scheduled in the Kingdome for the forthcoming month. The telescreen operator would indicate when he or she was available to work, and would mail the sheet back to Walker. A change of procedure was implemented in October, 1982, under which Walker telephoned employees to determine their availability. Testimony indicates that the availability sheet procedure was to be resumed beginning in the spring. Regardless of the method of scheduling employees, the work schedule is determined in advance. Additionally, an employee can decide not to work in a given month without jeopardizing employment at future Kingdome events. Sound reinforcement and telescreen operators are compensated exclusively by wages paid, and neither type of employee is in the county retirement program.

Kingdome events are not standardized on eight hour shifts, and it can be inferred from the record that five hours is a more typical shift duration. In 1982 the hours worked by sound reinforcement operators ranged from five hours to 74.1 hours in the first quarter; zero to 58.9 hours in the second quarter; zero to 102.7 hours in the third quarter; and zero to 61.7 hours in the fourth quarter. In that same year, hours worked by individual telescreen operators ranged from zero to 88.5 hours for the first quarter; zero to 115.3 hours in the second quarter; zero to 172.7 hours in the third quarter; and zero to 109.9 hours in the fourth quarter.

Presently there are two separate bargaining units of employees at the Kingdome. Each unit has its own collective bargaining agreement. One collective bargaining agreement is between the county and the Joint Crafts Council, the District Council of Carpenters, Plumbers Local 32, Teamsters Local 882, Operating Engineers Local 302, and Painters Local 5. That agreement covers stadium construction crafts: carpenters, electricians, plumbers, painters, operating engineers, stadium security guards, stadium utility workers, stadium supply clerks, stadium maintenance helpers, head stadium grounds keepers, and stadium grounds/specialists. A separate collective bargaining agreement between King County and the Teamsters Local 882 covers employees who work only when events are scheduled at the Kingdome, including: head ushers, head ticket takers, usher captains, gate captains, wardrobe attendants, sweepers, parking lot captains, parking supervisors, ushers, arena directors, ticket takers, ticket sellers, PBX operators, elevator operators, dome attendants, press box attendants, money counters, and field convention workers. The employer pays wages and pays into the industrial insurance fund for those employees, but they receive no other benefits. The first collective bargaining agreements covering those units were negotiated in 1976. Sound reinforcement operators and telescreen operators are not included in either of those bargaining units.

POSITION OF THE PARTIES:

The union asserts that both telescreen and sound reinforcement operators have a "continuing interest in the wages, hours, and working conditions of the bargaining unit". Thus, even though both types of employees are employed on an on-call basis, the union argues they are entitled to the right to organize. To support this position, the union claims there is stability in the employment roster, formality in the interview process, detailed job descriptions, specific payroll numbers and common supervision from event to event. Additionally, the union points out that the employer admitted these employees are the only employees that do all available audio-visual work when it settled a grievance protesting assignment of unpaid college interns to do telescreen operator work. Finally the union points to other collective bargaining agreements covering on-call personnel employed at the Kingdome only during events.

The county's position is that both sound reinforcement operators and telescreen operators are casual employees. It avers that these employees have no continuing expectation of employment and no right to organize. To support its position, the employer argues that employees have the option of accepting or rejecting offers of work and that the employees are on-call with little or no notice. The employer also points to the small number of hours each employee works, the informality of the interview process, the fact these employees derive a substantial portion of their income from work elsewhere, that these employees receive no county benefits and the fact that these employees are not a part of the county's career services program.

DISCUSSION:

The issue presented for decision is whether the sound reinforcement operators and telescreen operators employed at the Kingdome are regular part-time employees. If they are, they would be eligible to organize under Chapter 41.56 RCW for the purposes of collective bargaining. On the other hand, if deemed to be "casual" employees having only a sporadic employment relationship and little or no reasonable expectancy of continued employment, they would be excluded from a bargaining unit.

Neither party claims that the petitioned-for employees belong in some other unit, or that the proposed unit is fragmentary. As a general proposition, it appears that a separate unit consisting of sound reinforcement and telescreen operators would be an appropriate unit for the purposes of collective bargaining under RCW 41.56.060. The sound reinforcement and telescreen operators are the only employees who operate the Kingdome's audio-visual equipment. The county has developed detailed job descriptions for each position. The employees in these classes share similar duties, skills and working conditions. Limited lists are maintained from which employees are called in for these tasks, and there is thus an identifiable group of employees who perform the audio-visual work at the Kingdome. The employer's past actions with respect to the Kingdome support the conclusion that an appropriate bargaining unit may exist. The work schedule for the petitioned-for "events" employees is predicated on the same schedule of Kingdome events as is used for scheduling the classes of employees in the bargaining unit of part-time employees represented by Teamsters Local 882. The existence of a collective bargaining relationship covering a bargaining unit comprised exclusively of part-time personnel is thus not unprecedented for this employer. Further, when an assignment of work to persons outside of the identifiable group was called into question, the county terminated the assignment of interns and therein inherently recognized the existence of a group of employees having claim to the work involved.

The employer is not persuasive with its argument based on the fact that these employees can reject work opportunities without endangering future employment. The ability to reject work opportunities is an indicator of "casual" employment, but is not a conclusive or universal bar to the exercise of collective bargaining rights. Persons employed without benefit of a fixed work schedule have been included in bargaining units where there has been a showing of repeated work assignments within a specified period of time and the employees have a reasonable expectancy of continued employment on a similar basis. Tacoma School District, Decision 655 (EDUC, 1979); Columbia School District, et. al., Decision 1189-A (EDUC, 1982); Sedro Woolley School District, Decision 1351-C (PECB, 1982). Just as having a workforce of substitute teachers or substitute school bus drivers is a functional necessity to the continued operation of a school district, everything points to a reasonable expectancy that the Kingdome will continue to need employees with the skills possessed by the employees petitioned-for in this case.

Turning from the existence of a bargaining unit as a general proposition to the specifics of voter eligibility, it is noted that the parties have cast themselves in "all or nothing" positions which provide little guidance when establishing criteria for voter eligibility. It is clear on the one hand that there is an identifiable group of employees having some expectancy of continued employment. It is clear on the other hand that the lists provided by the employer contain the names of some who have not worked at all during the year preceding the hearing as well as some who have moved from the area and are no longer available for work. As in Everett School District, Decision 268 (EDUC, 1977) and Tacoma School District, supra, the proper threshold lies somewhere in between.

The decision of the National Labor Relations Board in Glynn Campbell d/b/a Piggly-Wiggly Company El Dorado, 154 NLRB 445 (1965) has oft been cited in decisions of this agency in support of the proposition that not all employees, no matter how little time worked, can be included in a bargaining unit. In numerous other cases, including Scoa, Inc., 140 NLRB 1379 (1963), Motor Transport Labor Relations Inc., 139 NLRB 70 (1962) and Manncraft Exhibitors Services, Inc., 212 NLRB 923 (1974), the NLRB has applied a standard including in bargaining units those part-time employees who have worked at least fifteen (15) days in the calendar quarter used for computation. A similar test was adopted at the urging of the petitioner (without suggestion by the employer of an alternative other than complete exclusion) in City of Seattle, Decision 1142 (PECB, 1981), but did not thereby become a rule of general application. The tests for on-call employees applied in Tacoma, Columbia and Sedro Woolley, supra, have all focused on a minimum of 30 days worked out of a school year. Adoption of a uniform rule is precluded by the distinctly different industrial settings in which cases arise. The schools normally operate only 180 days in a calendar

year and never on Saturdays, Sundays or holidays, while the Kingdome, retail establishments (Scoa), common carriers (Motor Transport) and providers of convention services (Manncraft) operate, or at least have the potential to operate, 365 days per year. Further, a "shift" or "workday" may vary considerably from situation to situation, according to local custom.

The fashioning of a test requires that the employment relationship, and the expectancy of continued employment, be looked at with a view sufficiently global to include the perspective of the employer seeking to establish and maintain a workforce as well as the perspective of an individual seeking to make a living or supplement other income. The NLRB's reasoning in Motor Transport led to a test which would include in the bargaining unit individuals working approximately one quarter of a full-time work schedule. The test endorsed by the Public Employment Relations Commission in Columbia included in the bargaining unit persons working approximately one-sixth of full-time in the period measured. A similar "one-sixth" measure was applied in Sedro Woolley. There is no evident reason to anticipate that the Commission would support a threshold in public employment outside of school districts different from the "one-sixth" used in the schools. Applying PERC's "one-sixth" test to the NLRB's math yields a test including in the bargaining unit those who have worked 11 or more days in the measuring calendar quarter, or 44 or more days in a one year period.

The Kingdome event employees do not work a traditional eight hour day. In Sedro Woolley a similar problem arose concerning the definition of a work day. At issue in that case was a group of substitute school bus drivers. In computing a "day" for the purposes of the test, it was recognized that some positions did not have a traditional eight-hour work day. The focus of attention was placed on the work shift specified by the employer, rather than the number of hours worked. The same approach is to be followed in this case. Employees who have worked an average of 11 or more event shifts per quarter during the four quarters preceding the date of this decision, and who continue to be available for such assignments, will be considered regular part-time employees eligible to vote in the representation election.

#### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(1) and employs telescreen operators and sound reinforcement operators at the Kingdome.
2. The International Brotherhood of Electrical Workers, Local 46, AFL-CIO, is an employee organization within the meaning of RCW 41.56.030(3).

3. Sound reinforcement operators perform all the work required to maintain the stadium television and scoreboard systems at the Kingdome during events. No other employees perform this work.
4. Telescreen operators perform all the work required to supply the program content for audio-visual presentation of events at the Kingdome. No other employees perform this work.
5. Telescreen operators and sound reinforcement operators only work as King County employees during events at the Kingdome. They are scheduled from a limited list of persons maintained for that purpose by the employer, and share similar duties, skills, working conditions and supervision as employees of King County.
6. Some such employees have been employed only sporadically, but others and the group as a whole has a reasonable expectancy of continued employment on a similar basis.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of this matter under Chapter 41.56.060 RCW.
2. Telescreen operators and sound reinforcement operators who have worked an average of 11 or more event shifts per quarter during quarters so employed in the year preceding the date of this decision are regular part-time of King County and are public employees within the meaning of RCW 41.56.030(2).
3. A unit consisting of:

All full-time and regular part-time employees engaged in the operation of video and audio equipment during events at the Kingdome, excluding confidential employees, supervisors and all other employees of the employer.

is an appropriate bargaining unit within the meaning of RCW 41.56.060.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission among employees of King County in the bargaining unit described as:

All full-time and regular part-time employees engaged in the operation of video and audio equipment during events at the Kingdome, excluding confidential employees, supervisors and all other employees of the employer

to determine whether a majority of said employees desire to be represented for purposes of collective bargaining by the International Brotherhood of Electrical Workers Local 46, AFL-CIO.

DATED at Olympia, Washington, this 15th day of July, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director