STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
AUBURN SCHOOL DISTRICT NO. 408 WAREHOUSE/LAUNDRY GROUP	CASE NO. 6625-E-86-1163
	DECISION 2710-A - PECB
For investigation of a question concerning representation for certain employees of:	DECISION OF COMMISSION
AUBURN SCHOOL DISTRICT NO. 408	

Kye Hillig, Secretary-Treasurer, appeared on behalf of the petitioner at hearing; Clarence Larson, President, filed the petition for review.

Charles Booth, Deputy Superintendent, appeared on behalf of the employer.

Edward A. Hemphill, Attorney at Law, appeared on behalf of the intervenor, Public School Employees of Washington; Eric T. Nordlof, Attorney at Law, filed the intervenor's brief on review.

On October 27, 1986, the Auburn School District No. 408 Warehouse/Laundry Group (petitioner) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission (PERC), seeking severance of a group of six warehouse and laundry employees of the employer from a larger bargaining unit represented by the intervenor, Public School Employees. A hearing, limited in scope to the unit determination issue, was held by Hearing Officer Martha M. Nicoloff in January, 1987. In an Order of

Dismissal dated June 22, 1987, Executive Director Marvin L. Schurke concluded that the petitioned-for bargaining unit was inappropriate. The petitioner has sought review of that decision by the Commission.

For the reasons set forth below, we concur in the conclusion that the petitioned-for unit is inappropriate and, accordingly, affirm the dismissal of the petition.

Rather than reiterate the background facts in this decision, thus making it longer but not necessarily better, we choose to adopt and incorporate by reference that portion of the Order of Dismissal. We deal herein only with the new arguments and positions raised by the parties in connection with the petition for review.

POSITIONS OF THE PARTIES

The employer has not taken a position on the matter.

The position of the petitioner on review is set forth in a letter dated July 8, 1987.

The Warehouse/Laundry Group challenges paragraph 7 of the Findings of Fact, which was that granting the severance would contribute to fragmentation of the work force and collective bargaining process. Apparently, the basis of this challenge is the contention that the auto shop employees are not represented by the International Association of Machinists (as stated in the Executive Director's decision), but by their own independent, unaffiliated bargaining representative. The petitioner points to this example of existing fragmentation, in support of its contention that there is no cause for concern.

The petitioner argues that severance would fit within the criteria of Mallinckrodt Chemical Works, 162 NLRB 387 (1966), and that the severance would improve labor relations.

Petitioner also argues that there is a history of separate representation, noting that a letter written by the Executive Director in an earlier case (Case No. 6440-E-86-1134)[1] omitted any reference to the warehouse employees when describing the existing bargaining unit. Petitioner stresses that the acronym for the unit (CMFSA) shows that the warehouse/laundry employees are not "full partners" as bargaining unit members.

The appeal letter concluded with an apparent request for further "investigation" to provide an accurate background for factual findings on which to base the decision.

Public School Employees of Washington objected in its Brief on Appeal to the apparent request to reopen the hearing. Responding to the petitioner's point regarding the auto shop, PSE argues that a motion to reopen should be denied when, even if newly-discovered evidence were true and provable, it would not change the final outcome. PSE argues that the separate unit at the auto shop constitutes fragmentation, and that the petitioned-for severance would only aggravate that fragmentation.

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1 Those proceedings were initiated by a representation petition filed on June 12, 1986, seeking to sever a unit of approximately 21 maintenance and craft employees from the "CMFSA" unit. The letter to which reference is made in fact points out that the unit covered by the collective bargaining agreement included both warehouse and laundry employees. The petition was withdrawn and that case was closed on September 17, 1986. Auburn School District, Decision 2528 (PECB, 1986).

The intervenor puts forth a dual response to the petitioner's argument regarding history of separate representation. First, PSE notes that the Executive Director's mention of the lack of separate bargaining history is contained only in discussion, and is not a Finding of Fact. Second, PSE contends that such a statement is supported by substantial evidence contained in the record.

Finally, PSE seeks an award of attorney fees on review, contending that a petitioner's appeal is frivolous.

DISCUSSION

The Commission's leading precedent on the question of severance is Yelm School District, Decision 704-A (PECB, 1980. We therein adopted the criteria set forth in Mallinckrodt Chemical Works, 162 NLRB 387 (1966). As can be seen from the Amended Findings of Fact, below, we have reviewed the factual background contained in the entire record of this case and conclude that the petitioner does not satisfy the Mallinckrodt-Yelm School District rule.

The remainder of this decision deals with the arguments of the parties on the petition for review of the Executive Director's Order of Dismissal.

The auto shop employees, five in number, are separately represented. We find it inconsequential that the Executive Director may have mis-named the exclusive bargaining representative.[2] The point is that the vehicle maintenance employees

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[2] The Executive Director's comment was prefaced by "the docket records of the Public Employment Relations Commission reflect, that . . .". The Auburn

are in a separate unit. Since the background facts are consistent with the record developed by the parties, and since the different evidence would be immaterial and would not change the result, the Commission declines the apparent invitation to further investigation or reopening the hearing. See, Seattle Public Health Hospital, Decision 1911-B (PECB, 1984). The fact that there is significant fragmentation already in the Auburn School District's work force is hardly a compelling argument for further fragmentation. The employer is entitled to simplicity in its collective bargaining. The employer already deals with four groups of non-supervisory employees in collective bargaining.

We do not find that petitioner's claim of a separate history of representation is supported by the record. Examined more closely, the arguments in the appeal letter (third paragraph) rely upon descriptions of the bargaining unit in a prior PERC case, in the Order of Dismissal and in Exhibit 1 herein. The ultimate fact question, of course, is whether the warehouse/laundry employees have historically been included in the larger bargaining unit, or whether they at any time enjoyed separate representation. The uncontroverted evidence in the record conclusively shows that PSE has represented these employees since 1973-74, and that they have never had a separate bargaining representative.

Stripped to its essentials, the petitioner's argument really is that the employees in the group believe that PSE has not given them adequate representation. While we do not imply that such

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Association of Automotive Machinists was certified as exclusive bargaining representative in Auburn School District, Decision 480 (PECB, 1978). Automotive Machinists Lodge No. 289, International Association of Machinists and Aerospace Workers, AFL-CIO, was a party to the proceedings.

is the case here, we sympathize with any group of employees who feel abandoned by their duly recognized or certified exclusive bargaining representative. The quality of representation is, however, not one of the criteria for making a unit determination. We concur with the Executive Director's comments in the Order of Dismissal that: (1) The record does not show that the union has aligned itself in interest against these employees (which could constitute a violation of Chapter 41.56 RCW); (2) The employees retain their statutory rights to participate in union activities; and (3) The employees could still seek other representation for the existing unit, by filing a representation petition with a sufficient showing of interest.

Finally, we deal with PSE's request for attorney's fees incurred in responding to this petition for review. RCW 41.56.160 authorizes us to award attorneys fees when necessary to make an order effective and when a defense is frivolous. Lewis County v. Public Employment Relations Commission, 31 Wn. App. 853 (Division II, 1982). Arguably, this authority applies only to the award of fees in unfair labor practice cases. The test also appears to be in the conjunctive. Assuming that the Lewis County rule applies here, we do not find an award of fees necessary to effectuate our order. We see no danger of recurrence, which was a factor that the Court stressed in Lewis County.

Although the contention of petitioner on review are found devoid of merit, we do not find them patently frivolous, partly because the petitioner was not represented by counsel or other labor professional familiar with PERC precedent in the somewhat esoteric province of severance criteria. For these reasons, we find the extraordinary remedy of awarding attorneys fees to be unnecessary and unfair.

We enter the following:

AMENDED FINDINGS OF FACT

1. Auburn School district provides educational services to local residents and is a "public employer" within the meaning of RCW 41.56.030(1). The school district has collective bargaining relationships with several employee organizations.

2. Public School Employees of Washington, a "bargaining representative" within the meaning of RCW 41.56.030(3), represents classified employees of the Auburn School District in several bargaining units, including a unit of custodial, maintenance, food service, aide, grounds, warehouse and laundry employees, known as the "CMFSA" unit, which has existed since approximately 1974.

3. Auburn School District No. 408 Warehouse/Laundry Group, a "bargaining representative" within the meaning of RCW 41.56.030(3), timely filed a petition seeking investigation of a question concerning representation involving certain warehouse and laundry employees of the Auburn School District.

4. The employees in the petitioned-for bargaining unit are currently part of the "CMFSA" unit represented by PSE.

5. The proposed unit does not consist of a distinct or homogeneous group of skilled journeyman craftsmen or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists. A group containing warehouse and laundry employees is not sufficiently

homogeneous to justify a severance. There is no tradition of separate representation. The "department" would not be functionally distinct from the balance of the employer's support operations.

6. The history of collective bargaining shows relative stability in the labor relations between the employer and PSE. That stability might be disrupted by the fragmentation caused by granting the petition for severance.

7. The employees in the proposed unit have not established or maintained their separate identity while included in the larger unit. While the warehouse and laundry workers share a common supervisor, that supervisor reports to a manager with authority over other bargaining unit employees and himself acts as back-up supervisor over other bargaining unit employees. The employer's operations are integrated, and these warehouse and laundry workers enjoy significant interchange with the other employees of the existing bargaining unit.

8. The history and pattern of collective bargaining in the "industry" involved--the classified employees in Washington common schools--has not been shown in this record to support the petition.

9. The employer's business is sufficiently integrated to justify continuation of the current bargaining unit.

10. Although the parties stipulated that the petitioner is a "bargaining representative", we find that the record does not show that the petitioner seeking certification has special qualifications or experience in representing

employees like those involved in the group proposed for severance.

CONCLUSIONS OF LAW

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

2. The petitioned-for bargaining unit is not appropriate for purposes of collective bargaining under RCW 41.56.060, and no question concerning representation currently exists in an appropriate bargaining unit.

ORDER

The Executive Director's Order of Dismissal is hereby AFFIRMED.

DATED at Olympia, Washington this 28th day of October, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner