STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RENTON EDUCATION ASSOCIATION, Complainant, vs. RENTON SCHOOL DISTIRCT NO. 403, Respondent.	CASE NO. 843-U-77-99 DECISION NO. 706-B - EDUC DECISION OF COMMISSION ON RECONSIDERATION

Symone B. Scales, Attorney at Law, Washington Education Association, appeared on behalf of the complainant.

Montgomery, Purdue, Blankenship & Austin, by George W. Akers and Christopher L. Hirst, Attorneys at Law, appeared on behalf of the respondent.

This matter is before the Commission for the second time. In the proceedings below, Examiner Alan R. Krebs dismissed four separate unfair labor practice charges filed by the Renton Education Association against the Renton School District.[1/] The Association petitioned the Commission for review only as to the Examiner's finding that the employer lawfully refused to bargain concerning "substitute" teachers. The Commission reversed the Examiner on that count, concluding that the employer had a duty to bargain with the Association concerning substitute teachers, and that the employer had violated RCW 41.59.140(1)(a) and (e) by its refusal to bargain.[2/] The employer filed a petition for judicial review in the Superior Court for King County (Cause No. 80-2-3642-4). Without reaching the merits, those proceedings resulted in a judgment entered August 3, 1981 remanding the matter for reconsideration by the Commission in accordance with applicable law including all applicable PERC customary procedures, and "specifically that PERC comply with RCW 34.04.110". The Commission invited the parties to file additional briefs, and the employer did so. The record has been read and considered by the members of the Commission in accordance with RCW 34.04.110 and the usual practices of the Commission under WAC 391-45-390.

1/ Decision 706 - EDUC, September 28, 1979.
2/ Decision 706-A - EDUC, February 8, 1980.

POSITIONS OF THE PARTIES:

Relying on decisions of the Executive Director in Everett School District, Decision 268 (EDUC, 1977) and Tacoma School District, Decision 655 (EDUC, 1979), the Association contends that its bargaining unit includes any individuals determined by the Commission to be employed regularly enough to have the status of employee, that at least some of the district's substitute teachers are employees, and that the employer has a duty to bargain concerning wages of those substitutes. It follows, according to the Association, that the Examiner erred in finding that the employer had a reasonable good faith doubt as to the bargaining unit status of all substitutes.

The brief filed by the employer on reconsideration appears to state the entire position of the employer in this matter. Under a heading of "Statement of Facts", the employer reviews the bargaining history of the parties, the practices of the Renton School District concerning assignment and compensation of substitute teachers and the differences in its practices between substitutes and its contracted teachers. Continuing under the same heading, the employer argues that the District's record-keeping burdens would be increased to "unrealistic" levels if it were required to tabulate the work records and representation fees of substitute teachers, and then concludes: "(T)he District does not nor is there a pattern of refusing to allow daily substitutes to accrue enough days to become long term substitutes and thereby fall within the REA bargaining unit. Rather, the District uses daily substitutes as needed and as dictated by its regularly employed certificated staff". Interpreting Everett and Tacoma, supra, the employer contends that the Commission "concedes that daily substitutes are casual employees, not within the REA unit", that past practices in the Renton School District dictate the inclusion of only substitutes working 45 or more consecutive days, and that discussion in the earlier Commission decision concerning a duty to bargain the "minimum terms of employment" is neither supported by the facts of the case nor by the law.

DISCUSSION:

Unit and Employment Status of Substitute Teachers

As indicated, from previous rulings of the Executive Director has evolved a rule that includes substitutes in the bargaining unit after 20 consecutive days or 30 non-consecutive days employment in a calendar year. Our first direct review of those cases occurred in Columbia School District No. 400, et al, Decision 1189-A (EDUC, 1982) which was a consolidated case involving six school districts from the tri-cities area of this state. We affirmed the 20/30 day rule, noting initially that it is not really the product of a unit determination. The unit determination was made by the legislature in RCW

41.59.080(1), which states that all non-supervisory educational employees must be placed in the same bargaining unit. Rather, the 20/30 day rule is the Commission's determination of who is or is not an "employee" within the meaning of Chapter 41.59 RCW.

In the tri-cities cases we stated:

> "The fundamental test for being an 'employee', as we said, is the parties' expectancy of a continuing employment relationship, with the consequential mutual interest in wages, hours and conditions. The 20/30 day rule reflects our belief that if a substitute has been called back by a school district for 20 consecutive days or for 30 days in a one-year period, it is because he or she has demonstrated some desireable employee characteristic. The substitute is justified in recognizing this and in inferring therefrom that he or she will continue to be called in as needed. Similarly, the employer develops an expectancy that the person who has been available for the 20 consecutive or 30 nonconsecutive day period will continue to be available as a substitute. This expectancy of a continuing relationship is not affected by the number of days of service required for higher daily pay, nor are bargaining histories or variations in substitutes' duties relevant when determining who is or is not an 'employee'."

Accordingly, the factual variations between this case (e.g., Renton pays substitutes a higher daily rate after 45 consecutive days of service, as opposed to 10, 20 or 30 in other school districts reviewed) do not affect the result. We can see no logical reason for a variation among school districts in the definition of "employee", as applied to substitute teachers, when the mutual expectancy of an ongoing employment relationship really depends only upon the frequency of prior employment. The 20/30 day rule, although somewhat arbitrary, is convenient, balanced, and as a minimum, easily supported by NLRB and other state cases. Columbia School District No. 400, supra.

The Duty To Bargain On Substitutes

From the foregoing, we conclude that the non-supervisory educational employee bargaining unit represented by the Renton Education Association would be statutorily inappropriate unless it included at least some of the substitute teachers (i.e., those who are "employees") as to which the employer refused to bargain. RCW 41.59.020(4) imposes on an employer the duty to bargain collectively concerning the wages, hours and terms and conditions of employment of all bargaining unit employees, but unit determination is not a mandatory subject of collective bargaining. City of Richland, Decision 279-A (PECB, 1978), aff'd: 29 Wa. App. 599, (Division III, 1981), cert. den., 96 Wa.2d 1004 (1981). Carried to its logical extreme, the position taken by the employer in this case would have us allowing suspension of bargaining on mandatory subjects affecting bargaining unit employees because of a unit determination dispute concerning other

employees. Such a situation is intolerable, and would invite labor unrest as to matters the Legislature has taken out of the hands of the parties by substitution of the administrative procedures of this agency. The procedures for clarification of the existing bargaining unit were available to the employer under WAC 391-30-300, et. seq., in 1976 and remain available to parties in 1982 under Chapter 391-35 WAC. As compared to an unfair labor practice proceeding, unit clarification is clearly the preferable method for resolution of disputes of this type. When this employer embarked on its refusal to bargain strategy, it could not be certain what result this Commission would reach on "substitutes" years later. With the exception of this case, our decisions on substitute teachers have come in unit clarification proceedings, and none of those employers have been found guilty of an unfair labor practice in the process of getting their unit determination. Renton School District adopted its "refusal to bargain" posture at its peril, and we reverse the Examiner's conclusion that it was excused by a good faith doubt concerning the bargaining unit status of substitutes.

Other Matters Raised in Respondent's Brief

The employer suggests that there is some inordinate burden on it to keep records on its substitutes. We find the argument lacking in credibility. The employer must maintain personnel records for payroll and audit purposes. The increase in bookkeeping obligations imposed on the employer will be negligible in comparison to the burden on substitute teachers qualifying as employees within the meaning of RCW 41.59 if they were to be denied their statutory collective bargaining rights.

The employer contends that it has not manipulated the acquisisiton of "long term" substitute status. We find no allegation in the complaint or in the position of the Association that the employer engaged in any "discrimination" unfair labor practice. On the contrary, the record indicates that the employer has consistently employed some substitute teachers on a repetitive basis. We conclude that those persons acquired "employee" status and bargaining unit status.

We do not address the arguments on bargaining of minimum conditions, as we do not deem that line of discussion necessary to our conclusion that the employer had a duty to bargain concerning the wages of some of the substitute teachers, and violated RCW 41.59 by refusing to bargain as to them.

AMENDED FINDINGS OF FACT

1. Renton School District No. 403 is an employer within the meaning of RCW 41.59.020(5).

2. Renton Education Association is an employee organization within the meaning of RCW 41.59.020(1), and is the recognized exclusive bargaining

representative of non-supervisory certificated employees of the district other than vocationally certified employees working at Renton Vocational-Technical Institute.[3/]

3. The classroom visitation policy instituted by the district, without bargaining to impasse with the association, is not directly related to the wages, hours, and terms and conditions of employment of the employees in the bargaining unit represented by the association.

4. Following the receipt of actual notice that the district was contemplating the transfer of three certificated librarians represented by the association from high schools to elementary schools, and their functional replacement by non-certificated audio-visual aides not eligible for inclusion in the association's bargaining unit under RCW 41.59, the Renton Education Association never requested that the district engage in collective bargaining concerning the matter.

5. The district employs persons holding certification as educators under the laws of the State of Washington as "substitute" teachers for the purpose of replacing contracted full time and part time non-supervisory certificated employees of the district during their absences from work on leave and otherwise.

6. Within the class of "substitute" teachers described in paragraph 5 of these findings of fact are some persons who work sporadically and have no reasonable expectancy of continued employment.

7. Substitute teachers who work more than 20 consecutive days in the same assignment or more than 30 days within a period of one year have a reasonable expectancy of continued employment and a continuing interest in the wages, hours and terms and conditions of employment with the Renton School District.

8. During collective bargaining negotiations in 1976, the Association made demands concerning the wages to be paid to substitute teachers. Renton School District refused to bargain concerning any substitute teachers, including those falling within the class described in paragraph 7 of these findings of fact.

9. Following oral agreement between the District and the Association on contract terms for 1977-79, the District insisted on inclusion of a provision in the written collective bargaining agreement excluding employees of the Renton Vocational-Technical Institute (R.V.T.I.) from the coverage of theagreement "pending resolution of representation issues before Public Employment Relations Commission." Although said provision reflected the understanding of the parties recorded previously in a separate written

---

3/ The status of a separate unit of vocational teachers created pursuant to RCW 41.59.080(b) was the subject of a separate decision, (Decisions 379, 379-A, 379-B, (EDUC, 1979), and remains in litigation in the Courts.

statement, the Association had not previously agreed to the inclusion of the provision in the collective bargaining agreement.

10. At the time of the events described in paragraph 9 of these findings of fact, there was an outstanding real question concerning representation involving R.V.T.I. employees which had been initiated by a rival employee organization, and that organization had objected to any bargaining between the District and the REA concerning R.V.T.I. employees while that question concerning representation was pending. Further, the parties had an understanding that they were not bargaining with regard to R.V.T.I. employees during negotiations regarding the remainder of the district's certificated staff.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.

2. By the events described in findings of fact 3, 4, 9 and 10, the District did not commit unfair labor practices violative of RCW 41.59.150(1)(a) or (e).

3. A recognition agreement purporting to exclude from a bargaining unit of non-supervisory certificated employees persons employed as "substitute" teacher under the circumstances described in paragraph 7 of the foregoing findings of fact would result in a bargaining unit which is inappropriate within the meaning of RCW 41.59.080(1) and is statutorily impermissible and void.

4. By refusing to bargain collectively with Renton Education Association as the exclusive bargaining representative of substitute teachers employed on a regular and continuing basis as described in paragraph 7 of the foregoing findings of fact, Renton School District No. 403 committed unfair labor practices in violation of RCW 41.59.140(1)(a) and (e).

AMENDED ORDER

Renton School District No. 403, its officer and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively with Renton Education Association as the exclusive bargaining representative of all full time and regular part time non-supervisory certificated employees of the District, including substitute teachers employed on a regular basis, but excluding vocationally certified employees working at Renton

Vocational-Technical Institute,[4] with respect to the wages, hours and terms and conditions of employment of all bargaining unit employees, including substitutes employed on a regular basis.

2. Take the following affirmative action which the Commission finds will effectuate the policies of RCW 41.59:

(a) Upon request, bargain in good faith with Renton Education Association as the exclusive bargaining representative of all full time and regular part time non-supervisory certificated employees of the district, including substitute teachers employed on a regular basis, but excluding vocationally certified employees working at Renton Vocational-Technical Institute.[5]

(b) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of Renton School District No. 403, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Renton School District No. 403 to ensure that said notices are not removed, altered, defaced or covered by other material.

(c) Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this Order as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED this 25th day of February, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson
JANE R. WILKINSON, Chairman

Robert J. Williams
R. J. WILLIAMS, Commissioner

Mark C. Endresen
MARK C. ENDRESEN, Commissioner

4/ Ibid, footnote 5.
5/ Ibid, footnote 5.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to bargain collectively with the Renton Education Association as the exclusive bargaining representative of all full-time and regular part-time non-supervisory certificated employees of the district, including substitutes employed on a regular basis (more than 20 consecutive days in the same assignment or more than 30 days within a period of one year), but excluding vocationally certified employees working at Renton Vocational-Technical Institute, with respect to wages, hours and terms and conditions of employment of all bargaining unit employees.

DATED: _____

RENTON SCHOOL DISTRICT NO. 403

By: _____
AUTHORIZED REPRESENTATIVE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.