

record and having considered the matter and and being satisfied
that the petition should be dismissed;

NOW, THEREFORE, IT IS

ORDERED

That the appeal filed in the above-entitled matter by the
Public School Employees be, and the same is hereby, denied.

DATED at Olympia, Washington, this 12th day of November, 1976.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


ROBERT B. ARKELL, Commissioner


MICHAEL H. BECK, Commissioner

MEMORANDUM ACCOMPANYING DECISION ON APPEAL

Background

In January of 1975, the Battleground School District No. 119, Yacolt School District No. 104, and Hockinson School District No. 98 formed a Cooperative for the purposes of transporting pupils to and from school (Inter-District Cooperative for Pupil Transportation), and for other necessary incidental purposes. Subsequently, the Battleground and Yacolt School Districts merged to form a new school district, designated as Battleground School District No. 139. The reconstituted Battleground School District and the Hockinson School District encompass a 300-square-mile area with approximately 6,200 students. The Cooperative School District then entered into a contract with Associated School Bus Services (Associated Bus Services, Clark County Cooperative Division; hereinafter referred to as "Associated") which commenced on July 1, 1975. Associated is a California corporation, wholly-owned by ARA Services, Inc., a Delaware corporation. ARA, Inc., on a nation-wide basis, provides food services, school bus transportation and other supportive services to institutions, governmental agencies and the like.

The Public School Employees (Cooperative No. One)^{1.} was the exclusive bargaining representative of classified employees, including bus drivers of the Cooperative School District. In July of 1975, an unfair labor practice charge was filed pursuant to Chapter 41.56 RCW, alleging that the Cooperative School District (hereinafter referred to as the "Cooperative") refused to bargain with Public School Employees (hereinafter referred to as "PSE"), regarding the subcontracting of the

1. Affiliated with the Public School Employees of Washington

Cooperative's bus operation. The Director of the Department of Labor & Industries, affirming the Local Office, dismissed the charges on the basis of a distinction between the facts presented and those found in Fiberboard Paper Products v. NLRB, 397 U.S. 203 (1964).^{2.}

PSE then filed a petition under Section 9(c) of the National Labor Relations Act.^{3.} The National Labor Relations Board held a hearing, the transcript of which has been provided to the Commission. The Acting Regional Director, in an admittedly difficult determination, concluded that it "...would not effectuate the purposes of the Act to assert jurisdiction."^{4.} He reasoned that because the Cooperative is exempt from the provisions of the National Labor Relations Act pursuant to Section 2(2), and because the Cooperative exercises control over the labor relations and daily operations of Associated, the employer lacked sufficient autonomy over working conditions to enable effective bargaining to take place. PSE chose not to seek a review of this decision by the National Labor Relations Board.

PSE, in November of 1975, petitioned the Department of Labor & Industries for certification, arguing that if the involved employees are not covered by the National Labor Relations Act, they must be covered by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. PSE also filed a petition involving the employees of Associated under a contract between Associated and Everett School District No. 2 for school bus

2. Public School Employees v. Battle Ground School District No. 119; and Hockinson School District No. 98, Cases No. 0-1910 and 0-1911 (Director's Decision, Department of Labor & Industries, 1975). This case is cited for background purposes and the Commission has not considered the merits of that decision.

3. 29 U.S.C. 159(c)(1970).

4. Associated School Bus Service, Case No. 19-RC-7674 (National Labor Relations Board, Region 19, October 22, 1975).

transportation. The Regional Director of the National Labor Relations Board had dismissed an unfair labor practice charge filed by an employee at the Everett District on grounds similar to that in the Cooperative No. 1 representation case. This determination was affirmed by the Office of General Counsel.^{5.} The Local Office, in December of 1975, dismissed the representation petitions, reasoning that Associated was not a "public employer" within the definition of RCW 41.56.030(1). This determination is the subject of the present appeal.^{6.}

Early in 1976, Associated recognized PSE as exclusive representative of its employees in both the Cooperative and Everett units. This recognition was to have continued through August 31, 1976. In response to an October 1, 1976 request from the Executive Director of the Commission, counsel for Associated provided copies of current collective bargaining agreements between PSE and Associated at both the Cooperative and Everett locations.^{7.} In both agreements, PSE is recognized as the exclusive representative of the bus drivers. The agreement for employees at Everett continues through August 31 of 1977, while the agreement for employees at the Cooperative District extends through July 31 of 1978.

Position of PSE

PSE, in its brief on appeal, assigns error to the determination that the employer is not a "public employer" pursuant to RCW 41.56.030(1). It further argues that persons represented by PSE are "public employees" under the provisions of RCW 41.56.030(2).

-
5. Letter, dated November 16, 1975, signed by Robert E. Allen, Director, Office of Appeals, Office of the General Counsel, National Labor Relations Board.
 6. No hearing was held regarding the petitions. However, the Commission has been provided a copy of the record in the National Labor Relations Board proceeding.
 7. Counsel for PSE was provided copies of all communications between the Executive Director and counsel for Associated.

It is argued that Associated is acting on behalf of the Everett School District No. 2 and the Cooperative, and thereby Associated must be classified as a "public employer" under RCW 41.56.030(1). Further, PSE argues that Associated and the school districts function as joint employers, indicating that the employees in question are under the school districts' control, thereby requiring the conclusion that they are employees of the districts. PSE's final argument is that the language of Chapter 41.56 RCW suggests that the Legislature intended to include, "contracting situations" similar to the one here presented, within the scope of the Public Employees' Collective Bargaining Act.

Position of Associated

Associated advances the position that the petitions must be dismissed because the proceedings fall within the exclusive jurisdiction of the National Labor Relations Board, and the Commission is therefore pre-empted from acting in this matter pursuant to the Supremacy Clause of Article VI of the United States Constitution. Associated further argues that it is not a "public employer" within the meaning of RCW 41.56.030(1).

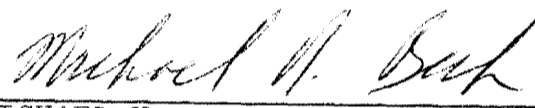
Absence of Representation Question

This proceeding was initiated by a petition filed by PSE seeking to represent certain employees of Associated. However, subsequent events have demonstrated that no representation question presently exists, since Associated has recognized PSE as the exclusive bargaining representative of its employees at Everett and at the Cooperative district. In both instances, collective bargaining agreements have been negotiated, and each agreement contains an exclusive recognition clause. In view of these developments, the Commission finds that no question concerning representation presently exists. Any action which might interfere with the established, and apparently successful,

collective bargaining relationship between the parties would be counterproductive, and the Commission concludes that these petitions should be dismissed. Dismissal of these petitions does not constitute a ruling by the Commission as to the applicability of Chapter 41.56 RCW or the jurisdiction of the Commission in this matter.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


ROBERT B. ARKELL, Commissioner


MICHAEL H. BECK, Commissioner