

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of)	
AUTOMOTIVE MACHINIST LODGE NO. 289)	CASE NO. 8-0-1957
and)	DECISION ON APPEAL
KENT SCHOOL DISTRICT NO. 415)	AND ORDER
_____)	DECISION NO. 127 PECB

DECISION ON APPEAL

Automotive Machinist Lodge No. 289, having, on July 1, 1975, filed a petition with the Washington Department of Labor & Industries seeking certification as exclusive bargaining representative for mechanics of the Kent School District No. 415; and a hearing having been held before a representative of the Department of Labor & Industries on September 15, 1975; and the authorized agent of the Department having granted the petition in a written opinion dated October 6, 1975; and the Kent School District No. 415 having timely filed a notice of appeal with the Director of the Department of Labor & Industries; and the authority for administration of Chapter 41.56 RCW having been transferred, effective January 1, 1976, to the Public Employment Relations Commission; and the record in this proceeding having been provided to the Public Employment Relations Commission; and the Commission having reviewed the entire record and having considered the matter and being satisfied that the decision of the authorized agent should be reversed and that the petition should be dismissed.

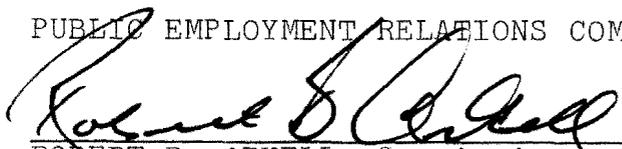
NOW THEREFORE, IT IS

ORDERED

That the petition filed in the above-entitled matter be, and the same hereby is, dismissed.

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

This appeal has its roots in a 1971 determination by the Department of Labor and Industries.¹ In that determination, the Department found two units to be appropriate. One unit was composed of all custodians and maintenance employees in the Maintenance and Operations Department of Kent School District No. 415 (hereinafter referred to as the "District"). A second unit consisted of all mechanics in the District's Transportation Department. The Public School Employees of Kent (hereinafter referred to as "PSE")² was certified as the exclusive bargaining representative in each unit. PSE and the District bargained separately for the units in 1971. However, beginning in 1972, the parties bargained simultaneously for both units, and executed a single collective bargaining agreement covering the two units. This agreement³ extended from 1972 through June 30, 1975.

On July 1, 1975 Automotive Machinists Lodge No. 289 (hereinafter referred to as "Lodge 289"),⁴ petitioned the Department of Labor & Industries for designation as the exclusive bargaining representative of all mechanics and maintenance personnel working within the District's bus garage.⁵ The authorized agent determined that the petitioned-for unit constituted an appropriate unit pursuant to Chapter 41.56 RCW, reasoning that the petition by Local 289 did not raise a severance question, since "the employees in the petitioned-for unit, due to a disclaimer by PSE, are not now

-
1. See, In the Matter of Kent School District No. 415, Case No. 0-748 (Director's Decision, Department of Labor & Industries, 1971).
 2. The Public School Employees of Kent is an affiliate of the Public School Employees of Washington.
 3. The agreement indicates that only a single unit existed, including both of the previously certified units, and the Schedule A to the agreement list varying rates of pay for the several employee classifications in the single unit.
 4. Lodge 289 is an affiliate of the International Association of Machinists and Aerospace Workers, AFL, CIO.
 5. The petition was supported by signed authorization cards from all of the affected employees.

members of, or represented by any other labor organization."⁶

Position of the Parties on Appeal

The District assigns error to the determination that the employees in the petitioned-for unit are not represented by another labor organization and to the resulting conclusion that the petition does not raise a severance question. The District argues that the employees are in fact represented by another labor organization. Furthermore, the District argues that even assuming, arguendo, a severance question is not presented, the unit would not be appropriate under the criteria set forth in RCW 41.56.060. The District also assigns error to the determination that the two CETA employees are "public employees" under Chapter 41.56 RCW.

While the Commission does not have the benefit of a brief on appeal from Lodge 289, it is assumed that its position on appeal would not be appreciably different from that advanced during the course of the hearing, where it was asserted that the letter from PSE to Lodge 289 was a sufficient disclaimer of PSE's intention to further represent the mechanics in the District's Transportation Shop, and thus no severance question exists. Lodge 289 has contended that the petitioned-for unit is appropriate under the generalized criteria of RCW 41.56.060, and that the two CETA employees should be included within the unit.

Nature of This Case

In affirming the 1971 determination of the Local Office, the Director of Labor & Industries noted:

"While it is true that the Transportation Mechanics could have been included in the unit of Custodial and Maintenance personnel, there is no requirement

6. The "disclaimer" from PSE was contained in a letter from PSE to Lodge 289 dated June 11, 1975, which stated in material part: "It is apparent that the Kent Chapter of Public School Employees would waive jurisdiction over the bus mechanics of the Kent School District."

that this be done. Actually, as has been done in many cases, all noncertificated personnel of the School District could be an appropriate bargaining unit if all the requirements of the statute were met."

After a one year experience with the units so created, the parties there effectuated what amounted to a de facto merger of the two units into a single unit.

After three years under the de facto merger, PSE advised Lodge 289 that it "waived jurisdiction over the bus mechanics..."

A labor organization may disclaim its right to represent a unit of employees. Such a disclaimer should be clear, unequivocal and made in good faith, and the disclaiming labor organization ought not engage in actions inconsistent with such a disclaimer. Of course, the effect of such a disclaimer would be to remove the existence of a labor organization representing the employees and to require that any subsequent representation petition be considered as a new or original petition. However, the effect of permitting such a disclaimer to operate under the circumstances presented in this appeal would be to enable one party, by disclaiming its right to represent a portion of a presently operative single bargaining unit, to dictate to the Commission the characterization of a subsequent representation petition. That is, to give the alleged disclaimer operative effect in this instance would require the Commission to consider Lodge 289's petition as not involving a severance question. The Commission has a statutory duty and authority to determine the unit appropriate for purposes of collective bargaining, as specified in RCW 41.56.060. With the present situation so understood, the Commission is unwilling to give any weight to the alleged disclaimer, and it is treated as irrelevant for purposes of this appeal.

As a Severance Petition

The petition by Lodge 289 seeks to carve out a portion of an existing bargaining unit. In such instances, statutory guidance is provided by RCW 41.56.060, supplemented by WAC 391-20-145. The statute requires consideration of:

"The duties, skills and working conditions of the public employees; the history of collective bargaining of the public employees, and their bargaining representative; the extent of organization among the public employees; and the desires of the public employees."

The supplementing rule asks the additional questions:

- (1) whether the proposed unit consists of employees having a unique community of interest separate from employees in the existing unit;
- (2) whether the proposed unit consists of employees having a functionally distinct and separate identity from other employees in the existing unit;
- (3) whether a tradition of separate representation exists and, in addition,
- (4) whether severance would unduly disrupt the stability of labor relations with the employer."

A consideration of the duties, skills and working conditions of the mechanics in the District's Transportation Shop indicates that they share comparable wages, fringe benefits and working conditions with the other employees in the single unit. For instance, the Schedule A to the 1972-1975 collective bargaining agreement between the District and PSE demonstrates that the wage rate for mechanics is comparable to that of a painter, carpenter, or glazier. As to benefits and other conditions of employment, that agreement did not differentiate materially between mechanics and other craft-like groups. While the mechanics do not perform custodial work, except within their work areas, they are required to and do perform tasks other than those involving the repair of the buses. The record demonstrates that approximately twenty-five percent of the mechanics' time is occupied performing such diverse tasks as painting, repairing radios and other public address systems, changing tires, fueling buses, laying floor covering, and repairing glass. There appears to be no substantial dissimilarity in duties, skills and working conditions between the mechanics and the other craft-like groups within the single unit, and we conclude that the mechanics lack the unique community of interest and separate identity indicative of a functionally distinct group which WAC 391-20-145 requires in order to support a severance petition.

As to the history of collective bargaining, the record indicates that, with the exception of the one period during which PSE bargained separately for the then-separate unit of mechanics, the mechanics have always been part of some larger unit. Prior to 1971, the mechanics were represented by the Kent Transportation Employees Association, which represented a unit composed of bus drivers and mechanics. Considering the state-wide practice, the record suggests that in only about five of approximately 300 school districts are mechanics represented as a separate unit; a situation which does not suggest a discernable pattern of representation.

The statute requires a consideration of the extent of organization among the public employees and the desire of the petitioned-for employees. Clearly all of the mechanics have expressed a preference for Lodge 289 through signed authorization cards. However, there is nothing in the record to suggest that PSE has at any time unfairly or ineffectively represented the mechanics, and the record contains affirmative statements by PSE that they would continue to represent the mechanics should Lodge 289's petition be denied. While employee desire is a factor to be carefully weighed, it is not the controlling factor absent some showing that statutorily protected rights are being denied or infringed.

WAC 391-20-145 calls for consideration of the effect of severance upon the stability of labor relations within the District. The District already bargains with its employees in a number of separate bargaining units and, while one additional unit may appear to be insignificant, the Commission is cognizant of the potential impact that a severance of the mechanics may have upon the other craft-like groups within the present maintenance unit.

CETA Employees

The authorized agent determined that the two CETA employees in the District's bus garage were in fact "public employees" for purposes of Chapter 41.56 RCW. Since the petition should have been dismissed, the Commission does not consider the question concerning the status of these employees.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION


ROBERT B. ARKELL, Commissioner


MICHAEL H. BECK, Commissioner