

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
SPOKANE SCHOOL DISTRICT NO. 81)	CASE NO. 1455-C-78-64
For clarification of an existing)	DECISION NO. 874-EDUC
bargaining unit of employees)	
represented by:)	
SPOKANE EDUCATION ASSOCIATION)	ORDER CLARIFYING
_____)	BARGAINING UNIT

Robert W. Winston, Jr., attorney at law, appeared on behalf of the employer.

Symone B. Scales, attorney at law, appeared on behalf of the employee organization.

On April 14, 1978, Spokane School District No. 81 filed a petition with the Public Employment Relations Commission seeking to clarify an existing bargaining unit by exclusion of "casual" substitute teachers from the bargaining unit of non-supervisory certificated employees in which they had previously been included by voluntary recognition. The hearing set for June 18, 1979 by a "second amended notice of hearing" was cancelled based on assurances from the parties that they had resolved their differences. That settlement was not finalized, and the hearing was held on November 6, 1979, pursuant to a "fourth amended notice of hearing", before Rex L. Lacy, Hearing Officer. At that time a record consisting of 21 pages of transcribed proceedings and four exhibits was made. Both parties filed post-hearing briefs.

BACKGROUND

Spokane School District No. 81 has approximately 28,000 students in its K-12 educational program. In addition to its non-supervisory certificated employees employed under individual employment contracts for a school year at a time, the district has a number of certificated employees who work as "substitute" teachers. Prior to the onset of these proceedings, the District recognized the Association as the exclusive bargaining representative for certificated employees under the following recognition clause:

"The District hereby recognizes the Association as the exclusive bargaining representative for all certificated personnel, including substitutes and part time employees, employed or to be employed by the District," (Exhibit A to Petition For Clarification Of Existing Bargaining Unit, constituting an excerpt from the then-current collective bargaining agreement).

Although not expressly distinguished in that recognition clause, substitutes have traditionally been differentiated as "daily" or "long term" depending on the duration of their assignments and their level of compensation.

The hiring process for substitute teachers consists of registration by prospective substitutes of their Washington State teaching certificates and required health certificates with the district's personnel department. After the certificates are verified, the Director of Personnel recommends hiring of qualified applicants to the Board of Directors of the district. Upon approval by the Board, the applicant is placed on the substitute roster for assignment by the personnel department as needed to fill vacancies created by the temporary absences of contracted employees. This entire hiring process is considerably less formal than the process for hiring the individually contracted certificated employees who the substitutes replace.

When assigned as a substitute for a single work day or for a few work days at a time, substitute teachers are compensated at a fixed daily rate regardless of their training and experience. Local practice in Spokane provides that when a substitute teachers has worked for thirty (30) consecutive work days in the same assignment, they are regarded as "long term" and are compensated at the rate provided in the collective bargaining agreement for contracted employees with the same training and experience.

Except for the "thirty day" threshold for "long term" status, the duties and responsibilities of both the contracted certificated employees and the substitute teachers are stipulated to be similar to those described in Tacoma School District, Decision No. 655 (EDUC, 1979).

POSITIONS OF THE PARTIES

The District, modifying the position originally taken in its petition, concedes the Tacoma, supra, result as to "daily" substitutes, saying: "Regular part-time employees are those employees working more than 30 days within any 12-month period ending during the current or immediately preceding school year." However, the District goes on to contend that

a reduction of the 30 day test is appropriate "only when such a reduction has been historically recognized", and asserts that the "20 days continuous employment in one assignment" threshold established in Everett School District, Decision 268 (EDUC, 1977) and reiterated in Tacoma, supra, should not be enforced in light of the "thirty day" local practice in Spokane.

The Association contends that there is no valid distinction between the situation at hand and the situation in Tacoma, supra, which would justify a departure from the 20 day threshold applied in Tacoma to long term substitutes.

DISCUSSION

RCW 41.59.020(4) defines "employee" and "educational employee" to mean any certificated employee of a school district except the chief executive officer of the employer, the chief administrative officers of the employer, confidential employees, supervisors and principals. RCW 41.59.020(3) defines "non-supervisory" employees as meaning all educational employees other than principals, assistant principals and supervisors.

RCW 41.59.080 controls unit determination under the Act:

"41.59.080 - Determination of bargaining unit-- Standards. The Commission, upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070(3) and after hearing upon reasonable notice, shall determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including non-supervisory educational employees shall not be considered appropriate unless it included all such non-supervisory educational employees of the employer; ..."

The Legislature provided the Commission with the following guidance when the Educational Employment Relations Act was enacted:

"41.59.110 - Commission, Rules and Regulations of-- Federal Precedents as Standard. (1) The commission shall promulgate, revise or rescind, in the manner prescribed by the administrative procedure act, chapter 34.04 RCW, such rules and regulations as it may deem necessary and appropriate to administer

the provisions of this chapter, in conformity with the intent and purpose of this chapter, and consistent with the best standards of labor-management relations.

(2) The rules, precedents, and practices of the national labor relations board, provided they are consistent with this chapter, shall be considered by the commission in its interpretation of this chapter, and prior to adoption of any aforesaid commission rules and regulations." (Emphasis supplied).

The district relies heavily on the fact that the adoption of the 20-day threshold for "regular part-time" (and therefore bargaining unit) status in Everett was based on the historical practice in that district. It relies equally on the fact that local practice in Tacoma was a 20-day test for long term substitute status. It points to the undisputed testimony establishing a 20 year practice in Spokane of using a 30-day test for long term substitute status. In doing so, the district overlooks the last line of its own principal argument: "A reduction of the days required for inclusion is appropriate only when such a reduction has been historically recognized." The facts are here that the district has recognized the Association as the exclusive bargaining representative for all substitutes, and the "history" from which this inquiry must begin has all substitutes in the bargaining unit without regard to the differentiation between daily and long term substitutes.

While a literal application of the employer's principal argument would require dismissal of its petition, such a ruling would impose a test more stringent than the policies of the Commission. The determination of bargaining units is a function delegated by the Legislature to the Commission in RCW 41.59.080. Parties may agree on units, but such agreements do not guarantee that the unit is or will continue to be appropriate. See: City of Richland, Decision 279-A (PECB, 1978); Spokane School District, 718 (EDUC, 1979). It is undisputed that the district recognized the Association as the exclusive bargaining representative of all substitutes prior to the time the distinction between "regular" and "casual" substitutes was drawn in Everett, refined in Tacoma and approved in Renton School District, Decision 706-A (EDUC, 1980). It is equally clear that the inclusion of "all" substitutes without distinction is not consistent with current Commission unit determination policies. The district is entitled to a ruling excluding casual employees from the bargaining unit in which they have historically been included.

The purpose of establishing a threshold for inclusion of part-time employees within a bargaining unit is to ensure that persons included within the bargaining unit have a substantial and continuing interest in the wages, hours, terms and conditions of employment in that bargaining

unit. The pragmatic effects of exclusion from bargaining unit status were pointed out by the Commission in Renton, supra, as follows:

"As the Examiner observes, the Everett and Tacoma decisions held that substitute teachers who were employed for 30 or more total days during a twelve month period or for 20 consecutive days in the same assignment were regular part-time employees included in the non-supervisory certificated bargaining unit. Only those working less than the stated tests for "regular" employment were deemed to be "casual" employees and excluded as such. Such casual employees would not be voters in representation elections, they would not be obligated under union security provisions affecting the bargaining unit, and they would be outside the REA's duty of fair representation."

The question before the Commission in the instant case is "what is a proper threshold" for employees continuously employed in the same assignment. The local practice in Spokane is a factor to be considered, just as local practice was considered in Everett and Tacoma. Also to be considered is the Commission's indirect affirmation of Everett and Tacoma in Renton, and practice under the National Labor Relations Act (NLRA).

One of the most commonly used "30-day" tests in the parlance of labor relations is the test found in Section 8(a)(3) of the National Labor Relations Act. That provision permits union security agreements requiring union membership after 30 calendar days of employment. It is clear from the stipulations in this record that the "20-day" and "30-day" references in this case are to "working days" rather than calendar days. It is elementary that 20 work days of continuous employment on the 5 day per week schedule of the schools of this state is 28 calendar days, or nearly equal to the 30-day test contained in the NLRA. Twenty continuous days of employment in one assignment in a school teaching situation equals 11.11% of a normal work year, whereas 30 calendar days equals only 8.22% of a normal calendar year. No evidence was presented in this case which would justify departure from the policies set forth in the previous decisions of the Commission, and particularly no evidence which would justify establishment of an exclusionary test more than twice (30 = 16.67% of 180) that applied under the NLRA.

FINDINGS OF FACT

1. Spokane School District No. 81 has recognized Spokane Education Association as the exclusive bargaining representative of a unit of non-supervisory certificated employees of Spokane School District No. 81, including all substitute and part-time employees.

2. Spokane School District No. 81 and Spokane Education Association have stipulated in these proceedings that the facts in Spokane as they apply to the employment situation of daily substitute certificated employees are not sufficiently different to find a different application or that it would be appropriate for a different threshold determination as to the bargaining unit status of those daily substitute certificated employees than as set forth in Tacoma School District, Decision 655 (EDUC, 1979).

3. A dispute has arisen as to whether certificated non-supervisory employees employed as long term substitutes are to be included in the bargaining unit described in paragraph 1 of these findings of fact after completion of twenty (20) continuous days of employment in the same assignment or after thirty (30) continuous days of employment in the same assignment.

4. In addition to daily substitute certificated employees, the bargaining unit status of which is stipulated as indicated in paragraph 2 of these findings of fact, Spokane School District No. 81 employs long term substitute certificated employees having duties, skills and working conditions generally comparable to those of contracted full-time and part-time non-supervisory certificated employees of the district.

5. The local practice of according substitute certificated employees "long term" status after thirty (30) continuous work days in the same assignment is substantially in excess of the test required for status as a "regular part-time employee" under previous decisions of the Public Employment Relations Commission and is also substantially in excess of practices concerning continuous employment under the National Labor Relations Act.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists in the bargaining unit described in paragraph 1 of the foregoing findings of fact, and the Public Employment Relations Commission has jurisdiction to issue an order clarifying bargaining unit in these proceedings to resolve a dispute concerning the scope of that bargaining unit.

2. Employment as a substitute certificated non-supervisory employee in the same assignment for twenty (20) or more consecutive work days, exclusive of weekends and holidays, constitutes regular part-time employment.

3. Casual employees are to be excluded from bargaining units, but regular part-time employees, including those described in paragraphs 4 and 5 of the foregoing findings of fact and paragraph 2 of these conclusions of law, are to be included in bargaining units created under RCW 41.59.080.

ORDER

1. Substitute certificated employees employed by Spokane School District No. 81 specifically on call as needed and who have not worked at least 30 days during a period of 12 months ending during the current or immediately preceding school year are casual employees who are not included in the appropriate bargaining unit for which Spokane Education Association is recognized as the exclusive bargaining representative of employees of Spokane School District No. 81.

2. Substitute certificated employees employed by Spokane School District No. 81 for more than 30 days of work within any 12 month period ending during the current or immediately preceding school year and who continue to be available for employment as substitute teachers are regular part-time employees of Spokane School District No. 81 and are included in the appropriate bargaining unit for which Spokane Education Association is recognized as the exclusive bargaining representative.

3. Substitute certificated employees employed by Spokane School District No. 81 in positions where it is anticipated or comes to pass that a member of the bargaining unit will be absent from his or her regular assignment and will be replaced in such assignment for a period in excess of 20 consecutive work days are regular part-time employees of Spokane School District No. 81 and are included in the appropriate bargaining unit for which Spokane Education Association is recognized as the exclusive bargaining representative.

DATED at Olympia, Washington, this 2nd day of May, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director