

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
LAKE WASHINGTON VTI FEDERATION OF TEACHERS/WFT/AFT #3533)	CASE NO. 3867-C-81-182
)	DECISION NO. 1550 - EDUC
For clarification of an existing bargaining unit of employees of:)	
LAKE WASHINGTON SCHOOL DISTRICT NO. 414)	ORDER CLARIFYING BARGAINING UNIT

Barbara Otterson, assistant to the president of Washington Federation of Teachers, appeared on behalf of the petitioner.

Reid E. Stevens, administrator of contract management and negotiations, appeared on behalf of the employer.

On December 3, 1981, Lake Washington VTI Federation of Teachers/WFT/AFT #3533 (petitioner) filed a petition requesting the Public Employment Relations Commission to clarify an existing bargaining unit of employees of Lake Washington School District No. 414 (employer) with respect to "community service instructors". A pre-hearing conference was conducted on August 12, 1982 before Kenneth J. Latsch, Hearing Officer. A statement of results of pre-hearing conference was issued on September 9, 1982. The parties stipulated that the statement of results of pre-hearing conference should be considered as the factual record in the matter, and they waived formal hearing.

BACKGROUND

The parties to this clarification proceeding have a bargaining relationship dating to 1978. On May 11, 1977, Lake Washington VTI Federation of Teachers/WFT/AFT #3533 filed a petition seeking a unit of vocational instructors under RCW 41.59.080(6). Lake Washington Education Association (LWEA), an affiliate of the Washington Education Association, opposed the petition. The employer and the petitioner supported the petition, claiming that a separate unit was appropriate because of a lack of bargaining history. In Lake Washington School District No. 414, Decision no. 484 (EDUC, 1978), an election was ordered, the results of which favored petitioner. The AFT was certified as the representative of a bargaining unit then described as:

"All full time and regular part-time vocationally certified employees of Lake Washington VTI excluding the Superintendent, administration staff, confidentials, certificated employees in the K-12 program and non-certificated employees."

On May 27, 1980, the AFT filed a second petition, seeking certification as representative of certificated employees at the Lake Washington VTI working as "adult education" instructors. The Washington Education Association intervened, and the parties stipulated to conduct of an election among the employees. In Lake Washington School District No. 414, Decision No. 1020-A (EDUC, 1981), the stipulation was accepted and an election was directed. The "no representation" choice was excluded from the choices available to the employees upon a conclusion that RCW 41.59.080(1) required their placement in one of the two units then existing. Petitioner was ultimately certified to represent the adult education employees in a bargaining unit then and now described as:

"All full time and regular part-time certificated employees of Lake Washington School District employed in the Lake Washington VTI, including adult education.

Excluded: Superintendent of schools, administrative officers, confidential employees, certificated employees, in the K-12 program and non-certificated employees."

Community services instructor positions have existed since at least 1978. Considered to be certificated employees, community services instructors provide a variety of classes to residents of the Kirkland, Washington area. Employees holding the disputed positions work in Lake Washington School District facilities under the same administrative structure used in the employer's vocational programs.

The parties believed that community service instructors, like the adult education instructors, were ineligible to participate in the 1978 representation election because the unit description was then phrased in terms of "vocationally certificated employees". The parties agree that affected employees were eligible to vote in the 1980 election, but that none of the community service instructors actually voted in the 1980 election.

Community service instructors are paid \$11.00 per hour, a rate set by the Lake Washington School Board. The affected employees do not receive any other benefits. Funds for community service classes are raised from student tuition, and the amount of public support determines which classes are to be offered. Classes are of varying length, with a different course offering each year. The number of community service employees changes from year to year, based on the number of classes to be offered. There is further fluctuation in the number of community services instructors within

instructional years, based upon community response to classes which are offered.

POSITIONS OF THE PARTIES

Petitioner maintains that the existing bargaining unit description was always intended to include community service instructors, and these certificated employees should be part of the unit. Petitioner contends that a "source of funding" argument cannot justify employer's insistence that the affected employees are not part of the bargaining unit.

The employer maintains that the duties, skills and working conditions of community service employees indicate that they should not be included in the existing bargaining unit represented by petitioner. The employer would have the Commission rule that community service instructors do not belong in petitioner's bargaining unit, but also claims that the affected employees cannot be properly included in the bargaining unit of non-supervisory K-12 program educational employees represented by the Lake Washington Education Association. The employer further contends that community service employees were not given the opportunity to vote in earlier representation elections, and their sporadic employment pattern implies that the affected employees are "casual" and properly excluded from the existing bargaining unit.

DISCUSSION

At all times relevant to this dispute, employees holding community services positions were required by the employer to hold certification as educators under the school laws of the State of Washington and were considered by the employer to be certificated. The conclusion which flows from that fact is not changed by the employer's statements to the effect that community services instructors may not need to be certificated in the future. Speculative actions which may or may not be taken in the future cannot provide an adequate basis for a rational decision now, although it is recognized that lawful changes of practice may give rise to a unit clarification based on "changed circumstances" in the future.

The unique provisions of Chapter 41.59 RCW with respect to bargaining unit composition control this case. RCW 41.59.080 provides:

"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 nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of such employees indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts. 1975 1st ex.s. c 288 9. (emphasis added)

In essence, the employer would have the Commission "strand" community service employees without collective bargaining rights. The directive of the statute is clear. Fragmentation of certificated employee bargaining units is prohibited. As discussed in the earlier decisions involving these parties and this bargaining unit, the Lake Washington School District is one of the extremely few school districts in the state to which both RCW 41.59.080(1) and RCW 41.59.080(6) apply. Given the unique circumstance, some choice was made available in the 1980 proceedings which would not have been available in the vast majority of the state's school districts; but the employer's attempt to disfranchise the community service instructors in this proceeding must fail. The affected employees teach a variety of classes within the employer's vocational-technical administrative structure. It is immaterial that funds for the classes in question are derived from tuition payments. A "source of funding" argument does not affect unit determination or clarification matters under RCW 41.59. Similarly, the employer's

contention that community services instructors have a distinct community of interests is not persuasive given the restrictions of RCW 41.59.080.

The Lake Washington School District has had community service instructors since at least 1978. During that period, the affected employees worked within the vocational-technical institute's administrative structure, with no contact between community service instructors and certificated employees in the K-12 program. There is no evidence or argument that community service instructors belong in the bargaining unit comprised of certificated employees in the K-12 program. The petitioner's unit must be considered the only unit appropriate for the community service employees.

An additional issue arises as to which community service employees should be eligible for unit inclusion. A determination on that issue must be made in the context of the affected employees' relationship to the employer's educational operation. Community service instructors work varying periods of time, depending on the particular course to be offered. It would be inappropriate to include all community service employees in petitioner's bargaining unit because certain employees work such a sporadic schedule that they do not have an expectation of continuing employment. Any test for bargaining unit inclusion is arbitrary to some degree, but such a determination is necessary to reflect the employment relationship between an employer and a bargaining unit of employees who have a reasonable expectation of future employment. Through a series of decisions, the Commission has established a threshold for including certificated substitute employees in existing bargaining units. See: Columbia School District, et al., Decision No. 1189-A (EDUC, 1981). Specifically, a substitute employee is included in a bargaining unit if that employee works more than 20 consecutive days in the same teaching assignment or more than 30 days during any twelve month period ending during the current or immediate school year. Application of the same 20 day/30 day test would create a meaningful threshold for unit inclusion and would effectively exclude those community service instructors who work sporadically throughout the course of the year. The standard recognizes the part-time nature of work performed by the affected employees, while affording those having a substantial and ongoing employment relationship the opportunity to participate in bargaining as members of the bargaining unit represented by petitioner.

FINDINGS OF FACT

1. Lake Washington School District No. 414 operates a variety of educational facilities including the Lake Washington Vocational-Technical Institute, and is an "employer" within the meaning of RCW 41.59.020(5).
2. Lake Washington VTI Federation of Teachers/WFT/AFT #3533 is a "bargaining representative" within the meaning of RCW 41.59.020(6).

3. The union has been certified by the Public Employment Relations Commission as the bargaining representative of a bargaining unit of certain certificated employees working in the vocational-technical institute described as:

"All full time and regular part-time certificated employees of Lake Washington School District employed in its Lake Washington VTI, including adult education.

Excluded: Superintendent of schools, administrative officers, confidential employees, certificated employees in the K-12 program and non-certificated employees."

4. A dispute has arisen between the employer and the union as to whether certificated non-supervisory educational employees working as community service instructors should be included in or excluded from the bargaining unit described in Finding of Fact 3.
5. The employer has heretofore required that all of its community service instructors be certificated. The community service employees work for varying lengths of time teaching a variety of courses at a number of locations throughout the district, working within the Lake Washington VTI administrative structure. Community service course offerings are funded from student tuition; the number of students determine the number of courses to be offered; and teacher salaries are set by the Lake Washington School District Board of Directors. Apart from salary, the disputed employees do not receive any other benefits.
6. Certain of the community service instructors are employed sporadically and lack a substantial and continuing interest in the wages, hours and working conditions of non-supervisory certificated employees in the bargaining unit described in Finding of Fact 3 above.
7. Community service instructors associated with the Lake Washington VTI for more than thirty (30) days of work within any twelve (12) month period have a reasonable expectancy of continued employment with the district during the remainder of that school year and during the succeeding school year, except where the employment relationship has been expressly terminated.
8. Community service instructors who work in the same teaching assignment for a period in excess of twenty (20) consecutive work days have a reasonable expectancy of continued employment with the Lake Washington School District.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction to resolve the scope of the bargaining unit described in Finding of Fact 3, pursuant to Chapter 41.59 RCW.
2. Casual employees are to be excluded from the bargaining unit, but regular part-time employees, including those described in Findings of Fact 7 and 8 above, are to be included in the existing bargaining unit represented by Lake Washington VTI Federation of Teachers/WFT/AFT #3533.

ORDER

1. Community service instructors employed sporadically 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 bargaining unit identified in Finding of Fact 3.
2. Community service instructors employed 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 community service instructors, are regular part-time employees and are included in the bargaining unit described in Finding of Fact 3.
3. Community service instructors who work in excess of 20 consecutive days in the same teaching assignment are regular part-time employees and are included in the bargaining unit described in Finding of Fact 3.

Dated at Olympia, Washington, this 10th day of December, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director