

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of
KENNEWICK TECHNICIANS (DEE TURLEY)
Involving certain employees of
KENNEWICK SCHOOL DISTRICT NO. 17

CASE NO. 4574-E-83-843

In the matter of the petition of
CLASSIFIED PUBLIC EMPLOYEES
ASSOCIATION/WASHINGTON
EDUCATION ASSOCIATION
Involving certain employees of
KENNEWICK SCHOOL DISTRICT NO. 17

CASE NO. 4956-E-83-907

In the matter of the petition of
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 280, AFL-CIO
For clarification of an existing
bargaining unit of employees of
KENNEWICK SCHOOL DISTRICT NO. 17

CASE NO. 5074-C-84-256

DECISION NO. 1950 - PECB

DIRECTION OF ELECTION

Dee Turley appeared on behalf of Kennewick Technicians.

Faith Hanna, Staff Attorney, appeared on behalf of
Classified Public Employees Association/WEA.

Donald H. Bushey, Business Manager, and Larry G.
Johnston, International Representative, appeared on
behalf of International Union of Operating Engineers,
Local 280.

Donald N. Anderson, Superintendent of Schools, appeared
on behalf of Kennewick School District No. 17.

Gail S. Fujita, Attorney at Law, appeared on behalf of
intervenor, Public School Employees of Washington.

PROCEDURAL BACKGROUND

On August 8, 1967, the Washington State Department of Labor and Industries
(which then administered Chapter 41.56 RCW) certified International Union of

Operating Engineers, Local 280 (hereinafter, Local 280) as the exclusive bargaining representative of "custodians, maintenance staff and the mechanics of the transportation department" employed by Kennewick School District. (Case No. SK-536). Local 280 and the employer signed a series of collective bargaining agreements, but never incorporated either an electronics technician or an office equipment technician in the bargaining unit. In 1982, the employer created a HVAC (heating, ventilation and air conditioning) technician position, and a dispute arose concerning the inclusion of the three "technician" positions in the existing bargaining unit.

Local 280 filed a petition with the Public Employment Relations Commission on November 29, 1982, seeking a ruling concerning the three "technician" positions. The case was filed as a unit clarification proceeding under Chapter 391-35 WAC, and was docketed as Case No. 4351-C-82-212. A hearing was held on that matter on April 4, 1983.

On April 6, 1983, one of the employees disputed in Case No. 4351-C-82-212 filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking to raise a question concerning representation in a separate bargaining unit limited to the three disputed "technician" positions. That is Case No. 4574-E-83-843. Local 280 moved for intervention in those proceedings, based on its previously asserted claim that the three technicians in the proposed unit were properly included in its existing unit. The proceedings on Case No. 4351-C-82-212 were temporarily held in abeyance. At a pre-hearing conference held in Case No. 4574-E-83-843 on June 15, 1983, the parties agreed to have the unit determination issues existing in that case decided based on the proceedings and record made in Case No. 4351-C-82-212, and the processing of the latter case was thereupon re-activated. Contested issues were framed as to whether the petitioner in Case No. 4574-E-83-843 was a labor organization within the meaning of Chapter 41.56 RCW.

On November 7, 1983, the Classified Public Employees Association/WEA (CPEA) filed a petition with the Public Employment Relations Commission, raising a question concerning representation under Chapter 391-25 WAC in a bargaining unit of "custodians, mechanics and maintenance employees" of the Kennewick School District. That is Case No. 4956-E-83-907. A pre-hearing conference was held on January 26, 1984, at which time a number of contested issues were identified. A representative of Public School Employees of Washington (PSE) appeared at the pre-hearing conference and indicated a desire to intervene in the proceedings. The motion for intervention was subsequently formalized and supported by the required showing of interest.

On January 30, 1984, Local 280 filed a petition with the Public Employment Relations Commission, seeking a ruling under Chapter 391-35 WAC concerning

the status of "substitute" employees in relation to the custodial/maintenance/mechanic bargaining unit at the Kennewick School District. This is Case No. 5074-C-84-256.

Notices were issued setting all three cases for hearing at the same time and place. All three matters came on for hearing before Jack T. Cowan, Hearing Officer, on March 22, 1984 at 10:00 AM. In his opening statement, the Hearing Officer made reference to all three cases. In her opening statement, the attorney for the CPEA made reference to the "substitutes" issue. In his opening statement, the representative of Local 280 objected that the unit clarification issue (on the substitutes) should be heard and determined prior to the consideration of other issues, and the Hearing Officer noted that objection for the record. In her opening statement, the attorney for PSE also took a position on the "substitutes" issue. During the course of the hearing, evidence was adduced concerning the "substitute" employees, including testimony in response to questions propounded by the representative of Local 280 (Transcript, pages 31, 35, 36, 37, 53, 55, 56). At the close of the hearing, the representative of Local 280 indicated a belief that issues concerning the propriety of the bargaining unit and the technicians had been insufficiently covered, and the parties engaged in some colloquy, setting forth their positions on those matters. The representative of Local 280 made a passing reference to the "substitutes" issue, but did not specify what, if anything, he believed to be omitted from the record made up to that time.

Following the close of the hearing, Local 280 submitted a letter to the Executive Director asserting that it had been precluded from setting forth its position concerning the issues in the unit clarification case (the "substitutes" issue), and asking that the hearing be reopened. The CPEA thereafter filed a letter objecting to reopening of the hearing. Local 280 addressed the "substitutes" issue in its post-hearing brief.

CONTRACT BAR ISSUE

Local 280 and the employer had a collective bargaining agreement due to expire on August 31, 1983, and they opened negotiations in June, 1983 on a successor agreement. They reached a tentative agreement on October 21, 1983, subject to ratification by both parties. The ratification procedure had not been completed by November 7, 1983, when the CPEA filed its petition with the Commission. The tentative agreement was ratified by Local 280 on November 9, 1983. The employer's Board of Directors took action on November 22, 1983, purporting to ratify the agreement.

Local 280 contends that the tentative agreement signed on October 21, 1983 bars processing of the representation petition filed on November 7, 1983. Both CPEA and PSE contend that the tentative agreement made subject to ratification did not bar the petition.

The decision in City of Port Orchard, Decision 483 (PECB, 1978), is squarely in point and is controlling. In the absence of completion of all ratification procedures reserved by the parties, a tentative agreement reached at the bargaining table does not bar the processing of a representation petition. If anything, the facts in Port Orchard were stronger than in the case at hand, since one of the parties in Port Orchard (the union) had completed its ratification procedure prior to the filing of the petition. Here, neither party had completed its ratification procedure. Their subsequent actions could be subject to some criticism under Yelm School District, Decision 704-A (PECB, 1980). It is clear that their actions subsequent to the timely filing of the CPEA petition could not retroactively impose a contract bar. Once the proceedings were initiated by a timely and properly supported petition filed under Chapter 391-25 WAC, nothing precluded PSE from obtaining intervention based on its timely and properly supported motion for intervention.

THE SCOPE OF THE BARGAINING UNIT ISSUES

The Technicians

The proceedings in Case No. 4351-C-82-212 concluded with a ruling that the recently-created HVAC technician was properly accreted to the existing custodial/maintenance/mechanic bargaining unit. Accretion of the two remaining "technician" positions was found, in light of the history, to give rise to a question concerning representation, so as to be procedurally improper in a unit clarification case. None of the parties filed a petition for Commission review of that determination, and it is now binding on the parties involved.

Although present at the consolidated hearing held in the captioned matters, Mr. Turley did not take an active role in the presentation of evidence or argument. Accordingly, there is a dearth of evidence on the contested issue identified as to whether "Kennewick Technicians" was a labor organization qualified for certification as exclusive bargaining representative of a separate unit of technicians. Beyond that, however, creation of such a separate bargaining unit is found to be inappropriate. The result in Case No. 4351-C-82-212 was based on procedural, rather than substantive, considerations. It was noted therein that the procedural defect (approach to the problem through unit clarification proceedings rather than through

representation proceedings) would be cured by filing and processing of a timely representation petition. In fact, by the time the decision was issued in that case, CPEA had already provided the vehicle for elimination of the fragmentation resulting from historical accidents. As was noted in Decision 1858:

The certification and the collective bargaining agreement both use the terms "maintenance" and "mechanics" to describe the bargaining unit. These are traditional terms used to describe job functions. The disputed positions are described by the use of the term "technician", which may be considered by some to be more contemporary than "maintenance man" or "mechanic". Nevertheless, the definitions of technician and mechanic are analagous. The technician's work is in support of the overall discharge by the school district of its primary educational function. Were this a representation case, the technicians could easily be placed in the same bargaining unit with the custodial, maintenance and mechanical employees. Were this an effort to sever the technicians from a "maintenance" unit in which they had historically been included, Yelm School District, Decision 704-A (PECB, 1980) strongly suggests that severance would be denied.

The petition in Case No. 4574-E-83-843 raises a "severance" question as to the HVAC technician. There is no evidence or argument which justifies the creation of an additional bargaining unit among the classified employees of the school district.

The Substitutes

While claiming that it already represents the "substitute" employees, Local 280 has repeatedly urged that a determination should be made on the bargaining unit status of "substitute" employees prior to consideration of other issues in these cases. To that end, it filed the petition for unit clarification. Its position is without merit. WAC 391-35-010 limits the processing of unit clarification petitions to situations where no question concerning representation exists. Local 280 had no reason to demand or expect that its unit clarification petition would be processed ahead of other issues. All issues concerning the scope of the bargaining unit and the eligibility of employees for inclusion in that unit are before the Commission in a representation case processed under Chapter 391-25 WAC. The processing of Case No. 4351-C-82-212 was temporarily suspended until stipulations were made in Case No. 4574-E-83-843 to clear the way for a decision based on the record already made in the unit clarification case. Absent such a stipulation, the suspension of the unit clarification proceeding would have remained in effect while the same issues were re-litigated in the representation case with the additional party. With respect to the post-hearing claim made by Local 280, close examination of the transcript reveals

that there is no basis for reopening of the hearing. The hearing was opened with reference to all three case numbers. Evidence was taken on the "substitutes" issue. When offered, just prior to the close of the hearing, the opportunity to raise any additional issues, the representatives of Local 280 did not come forth with anything specific concerning a desire to adduce additional evidence concerning the substitutes.

It is well-established Commission policy that "casual" employees will be excluded from bargaining units on the basis that they lack a reasonable expectancy of a continuing interest in the affairs of the bargaining unit. Columbia School District, et. al., Decision 1189-A (PECB, 1981). On the other hand, regular part-time employees will be included in bargaining units along with full-time employees performing similar duties, unless there is some specific and reasonable agreement of the parties to establish a threshold for unit status.^{1/} In the case at hand, the parties do not agree on the appropriate threshold. Local 280 would appear to claim "all" substitutes as unit members. CPEA relies on a "one-sixth of full-time" test used outside of the schools context in King County, Decision 1675 (PECB, 1983). PSE relies on a "30 days in a one year period" test applied by the Commission in the schools context in Sedro Woolley School District, Decision 1351-C (PECB, 1982). The evidence clearly establishes that there are some "substitute" employees, and that the use of substitutes has been and will continue to be a part of the employer's schema for providing custodial, maintenance and mechanical services in support of its educational program. In the absence of a contrary agreement from the parties, it is concluded that consistency should be maintained among school districts, as nearly as possible, so that the "30 days" test used in Columbia, supra, and in Sedro Woolley, supra, should also be used here. See: Spokane School District, Decision 874 (EDUC, 1980), and Columbia, supra, where rules of state-wide application were endorsed over varying local practices.

FINDINGS OF FACT

1. Kennewick School District No. 17 is a school district of the State of Washington, organized and operated pursuant to Title 28A RCW, and is a public employer within the meaning of Chapter 41.56 RCW.

^{1/} The ability of the parties to set a threshold by agreement is not unlimited. In City of Seattle, Decision 781 (PECB, 1979), it was concluded that an agreement of the parties to all together exclude a class of "intermittent" employees from a bargaining unit was not supportable under the unit determination criteria of RCW 41.56.060.

2. International Union of Operating Engineers, Local 280, AFL-CIO, a bargaining representative within the meaning of Chapter 41.56 RCW, is the certified exclusive bargaining representative of a unit of custodial, maintenance and mechanical employees of Kennewick School District No. 17.
3. Dee Turley, a technician employed by Kennewick School District No. 17, filed a petition with the Public Employment Relations Commission seeking a separate bargaining unit of technicians. During the course of representation proceedings conducted pursuant to Chapter 391-25 WAC, contested issues were framed as to whether the unit sought was an appropriate unit for the purposes of collective bargaining and as to whether Mr. Turley represented a labor organization qualified for certification under Chapter 41.56 RCW as the exclusive bargaining representative of public employees. The evidence of record is insufficient to support a finding that "Kennewick Technicians" is a labor organization within the meaning of the Act.
4. Classified Public Employees Association/Washington Education Association, a bargaining representative within the meaning of Chapter 41.56 RCW, has filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation of custodial, maintenance and mechanical employees of Kennewick School District No. 17.
5. Kennewick School District No. 17 and International Union of Operating Engineers, Local 280, reached a tentative agreement on October 17, 1983 in collective bargaining on a successor agreement to an agreement which expired on August 31, 1983. Such tentative agreement was subject to ratification by both parties. Neither party had completed its ratification procedures prior to the filing, on November 7, 1983, of the petition referred to in paragraph 4 of these findings of fact.
6. Public School Employees of Washington, a bargaining representative within the meaning of Chapter 41.56 RCW, has filed a motion for intervention in the proceedings initiated by the petition referred to in paragraph 4 of these findings of fact.
7. The proceedings and decision in Kennewick School District, Decision 1858 (PECB, 1984) disclose the positions within the workforce of the Kennewick School District under titles of electronics technician and office equipment technician have historically been excluded, on a basis not indicated, from the custodial, maintenance and mechanical bargaining unit.

8. The electronics technician and the office equipment technician perform maintenance tasks in support of the educational program of the Kennewick School District. The record does not establish a basis for a separate identity for those employees.
9. Kennewick School District No. 17 regularly uses "substitute" employees to supplement its full-time work force of custodial, maintenance and mechanic employees. Some such substitutes have a substantial history of employment with the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. A separate bargaining unit of technician employees of Kennewick School District No. 17 would unduly fragment the workforce of persons employed by the employer in support of its educational program and would not be an appropriate bargaining unit within the meaning of RCW 41.56.060.
3. A bargaining unit consisting of all full-time and regular part-time custodial, maintenance, technical and mechanical employees of Kennewick School District, excluding supervisors and confidential employees, is an appropriate unit for the purposes of collective bargaining, within the meaning of RCW 41.56.060, and a question concerning representation currently exists in such unit.
4. Casual employees are to be excluded from bargaining units, but employees employed as substitutes for more than thirty (30) days of work within a twelve (12) month period, and who continue to be available for such employment have a reasonable expectancy of continued employment and are regular part-time employees of the employer within the meaning of RCW 41.56.030(2).

ORDERS OF DISMISSAL

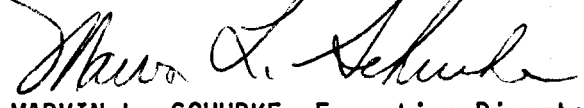
1. The petition for investigation of a question concerning representation filed in Case No. 4574-E-83-843 is dismissed on the basis that the unit sought is inappropriate.
2. The petition for clarification of an existing bargaining unit filed in Case No. 5074-C-84-256 is dismissed on the basis that a question concerning representation exists in the bargaining unit involved, and on the basis that the issues raised are determined in the representation proceedings in Case No. 4956-E-83-907.

DIRECTION OF ELECTION

An election by secret ballot shall be held under the direction of the Public Employment Relations Commission in Case No. 4956-E-83-907, to determine whether a majority of the employees in the bargaining unit consisting of all full-time and regular part-time custodial, maintenance, technical and mechanical employees of Kennewick School District No. 17, excluding supervisors and confidential employees, desire to be represented for the purposes of collective bargaining by International Union of Operating Engineers, Local 280, AFL-CIO, or by Classified Public Employees Association/Washington Education Association, or by Public School Employees of Washington or by no representative.

DATED at Olympia, Washington, this 25th day of May, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.