STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
GREEN RIVER COMMUNITY COLLEGE	)	
(COMMUNITY COLLEGE DISTRICT 10)	)	CASE 8905-C-90-508
	)	
For clarification of a bargaining unit of employees represented by:	)	DECISION 4491 - CCOL
	)	
GREEN RIVER UNITED FACULTY COALITION	)	ORDER CLARIFYING BARGAINING UNIT
	)	
	)	

Ken Eikenberry, Attorney General, by Edwin J. McCullough, Jr., appeared for the employer.

Evelyn F. Rieder, Executive Director, Washington Federation of Teachers, AFL-CIO, appeared for the Green River United Faculty Coalition.

On November 15, 1990, Green River Community College filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, seeking a ruling as to the scope of a bargaining unit of its academic employees represented under Chapter 28B.52 RCW by the Green River United Faculty Coalition. A hearing was conducted at Kirkland, Washington, on October 8, 1991, before Hearing Officer Rex L. Lacy, and at Auburn, Washington, on November 12, 1991, before Hearing Officer Mark S. Downing. The parties filed post-hearing briefs.

On February 11, 1992, the parties were invited to submit additional briefs, in light of Lower Columbia College, Decision 3987 (CCOL, 1992), issued after the parties' initial briefs were filed. The parties then filed supplemental briefs in March of 1992. This case was then held in abeyance for a time, while the Commission considered an appeal in the Lower Columbia matter.

BACKGROUND

Community College District 10 (employer) is a state institution of higher education, governed by a board of trustees appointed by the Governor and confirmed by the Senate. Richard Rutkowski is the president of the college. The employer's main campus, known as Green River Community College, is located near Auburn, Washington.

The Green River United Faculty Coalition (UFC) has been the exclusive bargaining representative of "academic employees" of Green River Community College since 1977.[1] The UFC has ties to both the Washington Education Association/NEA (WEA) and the Washington Federation of Teachers, AFT, AFL-CIO (AFT).

The focus of the parties' bargaining relationship and contracts since 1977 has been on the full-time and part-time faculty at the main campus, where courses are offered for academic credits that are transferrable to four-year institutions of higher education. A separate appendix to the parties' contract sets forth limited rights and employment terms regarding "academic employees assigned to [community service] programs".

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[1] The organization was certified by the Commission following a representation election. Green River Community College, Decision 273 (CCOL, 1977). The bargaining unit was described in the certification as follows:

> All full time and part-time faculty members employed by Green River Community College District No. 10, including the following:
> 1. Instruction faculty members,
> 2. Counseling faculty members,
> 3. Instructional Resources and Services faculty members (Job titles in this category include, but are not limited to, "Librarians", "Media Specialists", and "Director of Minority Affairs",
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> and excluding classified, administrative, and supervisory personnel as excluded by the law (28B.52), and instructors of community service classes.

Since 1986, the employer has operated the "Education & Training Center" (ETC). The mission of the ETC is to develop and deliver result-oriented educational and consulting services which are job-relevant and tailored to the specific needs of organizations and individuals. The ETC is located in Kent, Washington, within the geographic boundaries of Community College District 10 and approximately seven miles from the employer's main campus. A majority of the classes operated by the ETC are held outside the geographic boundaries of Community College District 10.

The ETC staff includes an "executive director", an "administrative assistant", a "training director", a "computer technician", two "physical technicians", four "office assistants", nine other classified staff, and approximately 41 "instructor/consultants". Janet Brown is the current executive director of the ETC.

The salaries and benefits of the ETC executive director and one secretary are funded by the college. The salaries and benefits of other ETC employees are the responsibility of the ETC, through contracts with private business firms and governmental organizations that purchase services on a "bid" basis or otherwise. Overall financial responsibility for the ETC lies with the board of trustees of Community College District 10, however, and any "profit" from the ETC operation becomes part of the employer's funds.

The "instructor/consultant" employees who teach at the ETC are required to possess most of the minimum educational qualifications that are required of the instructors in the academic portion of the employer's program at the main campus. The ETC employees and main campus employees receive similar insurance benefits, and are enrolled in the same pension program. General working conditions for both groups are established by the employer's board of trustees.

There are significant differences between the two groups, however. While faculty members at the main campus are granted "tenure" rights under RCW 28B.50.850, the ETC employees have no formal "reduction-in-force" procedures, and their continued employment is dependent upon the success of the ETC in bidding for contracts. The employer has not accorded the ETC employees access to the formal dismissal procedure used for main campus employees.[2] The instructor/consultants at the ETC do not work the same academic calendar as is used on the main campus. The ETC employees have different job descriptions and a different job selection process than used on the main campus. Also different from the main campus faculty, the ETC employees have no "summer school" teaching assignments, have no workload requirements, have no office hours, and have no "independent study" or "counseling" assignments. The employer has not "passed through" salary increases granted by the Legislature to the instructor/consultants at the ETC.

This dispute arose while the parties were involved in negotiations for a successor contract to replace a collective bargaining agreement which expired on May 15, 1990. The ETC employees had not been explicitly covered by the expiring contract. The UFC filed a complaint charging unfair labor practices with the Commission on October 29, 1990,[3] alleging that the employer had committed a violation under RCW 28B.52.073, by either its unilateral removal ("skimming") of work from the UFC bargaining unit to non-represented ETC employees, or its refusal to recognize the UFC as exclusive

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[2] In reciting these facts, the Executive Director neither makes nor implies any opinion as to whether the arrangements described here contravene employee "tenure" rights under a statute not administered by the Commission, i.e., Chapter 28B.50 RCW.

[3] A number of employees were absent from work, and classes were canceled, on October 26, 29 and 30, 1990. Unfair labor practice allegations filed by the union regarding the employer's response to a perceived work stoppage were recently dismissed by an Examiner in Green River Community College, Decision 4008-A (CCOL, 1993).

bargaining representative of the instructor/consultant employees working at the ETC.[4] The employer countered with the instant unit clarification petition, on November 15, 1990.[5]

As described in the contract subsequently signed by the parties,[6] the bargaining unit represented by the UFC includes:

1. Instructional Faculty
2. Division Chairpersons
3. Counseling Faculty
4. Instructional Resources and Services Faculty (job titles in this category will include, but not be limited to, "Librarians," "Media Specialists,")

The same contract also contains the following language among its "recognition" provisions:

> SECTION C RECOGNITION OF RIGHT TO BARGAIN
>
> An excluded category or group having a common community of interest shall have the right as a unit to petition for an election for recognition and to bargain a contract.

The dispute concerning the ETC employees was not resolved by the parties' negotiations and contract, and the "Section C" language apparently refers to the instructor/consultants at the ETC.

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[4] Case 8887-U-90-1946. A preliminary ruling issued under WAC 391-45-110 concluded that, assuming all of the facts alleged to be true and provable, an unfair labor practice violation could be found.

[5] The parties were advised that the unfair labor practice case would be held in abeyance until the instant proceeding determined whether a "skimming of unit work" or a "refusal to recognize" theory would be properly pursued in the related unfair labor practice case.

[6] That contract was signed on March 14, 1991, and was effective from that date through June 30, 1992.

POSITION OF THE PARTIES

The employer's petition describes the employees working at the ETC as "academic employees", but contends that they should be regarded as an appropriate separate bargaining unit. It urges that the ETC employees agree with the employer's position, and that they were excluded from the coverage of the collective bargaining agreement which expired prior to the filing of the petition. The employer invokes provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and the Educational Employment Relations Act, Chapter 41.59 RCW, as a basis for its contention that the Commission has, and should exercise, authority to determine an appropriate bargaining unit in cases such as this. The employer then shifted to the facts in its initial brief, contending that the employees of the ETC have a "community of interest" separate and distinct from the main campus faculty. The employer's supplemental brief advances that the ETC employees are outside of the existing bargaining unit because: (1) The majority of the ETC classes are held outside the geographical boundaries of the community college district; (2) references to "appropriate bargaining unit" added to Chapter 28B.52 RCW in 1987 permit or require the Commission to impose the unit determination criteria found in Chapters 41.56 and 41.59 RCW; and (3) the creation of a separate bargaining unit is supported by an independent right of the ETC employees to represent themselves in their employment relations with the employer.

The Green River United Faculty Coalition contends that Chapter 28B.52 RCW has historically required, and continues to require, that all academic employees of a community college district be included in one bargaining unit. It argues that the statutory definition of "academic employee" covers the employees affected by this case. It notes that the headquarters of the ETC are within the geographic boundaries of the community college district, and urges that the academic personnel employed at ETC should be included in the existing bargaining unit.

DISCUSSION

Status as "Academic Employees"

In creating this state's system of community colleges, the Legislature set forth multiple purposes:

> RCW 28B.50.020 Purpose. The purpose of this chapter is to provide for the dramatically increasing number of students requiring high standards of education either as a part of the continuing higher education program or for occupational training, by creating a new, independent system of community colleges which will:
> ...
> (2) Ensure that each community college district **shall offer thoroughly comprehensive educational, training and service programs** to meet the needs of both the communities and students served by combining **with equal emphasis**, high standards of excellence in **academic transfer courses**; realistic and practical courses in **occupational education**, both graded and ungraded; **community services of an educational, cultural, and recreational nature**; and adult education; ...
>
> [Emphasis by **bold** supplied]

The Commission administers Chapter 28B.52 RCW, within which RCW 28B.52.020(2) broadly defines the "academic employees" of community college districts to include:

> ... **any teacher**, counselor, librarian, or department head, who is **employed by any college district, whether full or part time**, with the exception of the chief administrative officer of, and any administrator in, each college district.
>
> [Emphasis by **bold** supplied.]

The evidence indicates that the instructor/consultants at the ETC do, indeed, act in the role of "teacher". The employer does not

contend that its ETC personnel are exempt from collective bargaining rights under Chapter 28B.52 RCW, and such an argument would surely fail.[7]

General Unit Determination Principles

The employer urges that its "academic employees" working at the ETC should be excluded from the bargaining unit of academic employees working at its main campus, based on application of "community of interest" principles. This invites a review of some history and basic legal principles.

The National Labor Relations Act (NLRA) is founded on the principle of majority rule within groups of employees. Thus, an employer is obligated to bargain with the organization selected by the majority of its employees in an **"appropriate bargaining unit"**. Distinct from the "union", the "unit" is the ongoing listing of classifications or types of employees which are grouped together for the purpose of collective bargaining. The employees involved in this case are exempt from the coverage of the NLRA, however.

Where they exist, the collective bargaining rights of state and local government employees are the product of lobbyists and

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[7] In Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), the Supreme Court rejected a categorical exclusion of "supervisors" from collective bargaining rights, in the absence of express statutory language excluding them from the coverage of Chapter 41.56 RCW. In Columbia School District, et al., Decision 1189-A (EDUC, 1981), the Commission rejected a categorical exclusion of "substitute teachers" from collective bargaining rights, in the absence of express statutory language in Chapter 41.59 RCW. Applying the same principles in Lower Columbia College, Decision 3987-A (CCOL, 1992), the Commission rejected a categorical exclusion of persons who teach community education classes from collective bargaining rights, in the absence of express statutory language in Chapter 28B.52 RCW.

legislators in the various states. Many public sector collective bargaining statutes are patterned, to some degree, after the NLRA. The Supreme Court of the State of Washington has endorsed reliance upon NLRA precedent in interpretation of our state's collective bargaining laws, **where they are consistent with the NLRA.**[8]

Agency-determined Bargaining Units -

Under Section 9 of the NLRA, Congress delegated authority to the National Labor Relations Board (NLRB) to determine "appropriate bargaining units", subject to the following criteria:

> **SEC. 9.** ...
> (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, **the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:** PROVIDED, That the Board shall not
> (1) decide that any unit is appropriate for such purposes if such unit includes both **professional employees** and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or
> (2) decide that any **craft unit** is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or
> (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a **guard** to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or

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[8] Nucleonics Alliance v. PERC, 101 Wn.2d 24 (1984).

> indirectly with an organization which admits to membership, employees other than guards.
>
> (c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board -
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> ...
>
> (5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the **extent to which the employees have organized shall not be controlling.**

[Emphasis by **bold** supplied.]

In making such unit determinations, the NLRB seeks to discern a "community of interest" among the affected employees, and to structure bargaining units accordingly.[9]

Some public sector collective bargaining statutes follow the pattern of the NLRA in the unit determination area, delegating authority to an administrative agency, to determine the unit(s) appropriate for collective bargaining under criteria outlined in the statute. Washington adopted the NLRA model in the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. That statute authorizes the Public Employment Relations Commission to exercise unit determination authority, as follows:

> RCW 41.56.060 DETERMINATION OF BARGAINING UNIT--BARGAINING REPRESENTATIVE. **The commission**, after hearing upon reasonable notice, **shall decide** in each application for certification as an exclusive bargaining representative, **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 public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.** ...

[Emphasis by **bold** supplied.]

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[9] See, Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

Under the NLRA tradition, the task of the agency is to ascertain whether the unit sought by a petitioning organization is "an appropriate unit", without necessity of a finding that it is the "most appropriate unit". Apart from units encompassing all of the employees of the employer, "vertical" bargaining units (i.e., all employees in a separate facility or branch of the employer's table of organization), and "horizontal" bargaining units (i.e., cutting across departmental lines to include all employees of a generic occupational type) are found appropriate.

Statutorily-defined Bargaining Units -

Some public sector collective bargaining statutes deviate from the NLRA tradition: Rather than authorizing an agency to act within statutory guidelines, some state legislatures have specified the bargaining unit structure within the statute itself. For example, when the Wisconsin legislature expanded the collective bargaining rights of "state" employees in that jurisdiction in 1972, it set forth the following bargaining unit structure:

> Sec. 111.81 WIS.STATS Definitions. In this subchapter:
> ...
> (3) "Collective bargaining unit" means a unit established under this subsection.
> (a) It is the express legislative intent that in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a statewide basis with one unit for each of the following occupational groups:
> 1. Clerical and related.
> 2. Blue collar and nonbuilding trades.
> 3. Building trades crafts.
> 4. Security and public safety.
> 5. Technical.
> 6. Professional:
> a. Fiscal and staff services.
> b. Research, statistics and analysis.
> c. Legal.
> d. Patient treatment.
> e. Patient care.

f. Social Services.
g. Education.
h. Engineering.
i. Science.

Thus, the only discretion left to the administrative agency was to allocate each of the state's employees to one of those 14 statutory bargaining units. There was no authority for the administrative agency to create additional bargaining units at that time, even if an evidentiary hearing had disclosed facts supporting the existence of one or more additional groups that would have met the "community of interest" principles developed under the NLRA.

There is no overriding requirement that a particular legislature be consistent in adopting two or more statutes concerning public sector bargaining within its jurisdiction. Thus, the limitation of agency authority under the Wisconsin "state employees" bargaining law contrasts sharply with the broad unit determination authority (i.e., in the NLRA tradition) conferred upon the Wisconsin Employment Relations Commission a year earlier, in 1971, under that state's Municipal Employment Relations Act, Section 111.70 WIS.STATS., covering "local government" employees.

Categorization of Washington Statutes

The task before the Commission in this case is to determine whether Chapter 28B.52 RCW is of the "agency-determined units" type, or of the "statutorily-defined units" type. The determination of that question is affected by analysis of several collective bargaining statutes adopted by the Washington Legislature.

Statutes Affecting School Districts -
Contrary to the arguments advanced by the employer in this case, our Educational Employment Relations Act, Chapter 41.59 RCW, is an example of the "statutorily-defined bargaining units" type of statute. The "unit determination" provision of that statute does

begin with what appears to be a broad grant of authority in the NLRA tradition:

> RCW 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 ...**
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> [Emphasis by **bold** supplied.]

That section continues, however, with a set of limitations that virtually eliminate all agency discretion on unit determination:

> ... 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
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> (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
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> (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; ...**
>
> [Emphasis by **bold** supplied.][10]

Thus, the appearance of broad unit determination authority was overruled, and a "one unit per district" standard was imposed for all practical purposes. The only discretion left to the Public Employment Relations Commission under RCW 41.59.080 is to make "history of bargaining" determinations regarding the limited class of employees affected by RCW 41.59.080(6).[11] In particular, there is no authority for the Commission to sub-divide the "all non-supervisory" group, even if an evidentiary hearing were to disclose facts supporting the potential for two or more separate groups under "community of interest" principles.

A series of case decisions has enforced the "one unit per district" policy with regard to "substitutes" under Chapter 41.59 RCW:

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[10] The "vocational-technical institutes" referred to in RCW 41.59.080(6) were transferred to the state system of community and technical colleges under Chapter 28B.50 RCW, by 1991 c 238. Collective bargaining rights of the "academic faculty" employees (i.e., those who formerly were "certificated" employees under Chapter 41.59 RCW) were thereupon transferred to Chapter 28B.52 RCW.

[11] Any units of "supervisors" or "principals", as well as "merged" units including those groups, are actually controlled under RCW 41.59.080(2) through (5) by the votes of the employees. There is no room for exercise of discretion, precedent or expertise by the agency.

The Everett School District and a WEA affiliate took extreme positions concerning the status of "substitute" teachers in a case filed with the Commission in 1976.[12] The union contended that all substitute teachers should be included in its non-supervisory certificated bargaining unit, because they held teaching certificates. The employer argued for exclusion of the substitutes from the non-supervisory unit, as a class, because they lacked continuing contracts and a "community of interest". Rejecting the "all-or-nothing" approaches of both parties, it was concluded that RCW 41.59.080(1) did not permit a categorical exclusion of substitutes. Those who had been placed on the salary schedule after 20 consecutive days of work were included in the unit as "regular part-time" employees under NLRB precedent. Everett School District, Decision 268 (EDUC, 1977).

Those principles were further refined in Tacoma School District, Decision 655 (EDUC, 1979), where it was concluded that persons who had worked for the same school district for 30 or more days in a one-year period (i.e., one-sixth or more of the 180 day school year) and who continued to be available for work of the same type were also "regular part-time" employees eligible for inclusion in the bargaining unit.

The case law on "substitutes" came to full fruition in Columbia School District, et al., Decision 1189-A (EDUC, 1981), where the Commission interpreted RCW 41.59.080(1), as follows:

> Any substitute who is determined to be an "employee" within the meaning of the statute must, according to RCW 41.59.080(1), be placed in the same bargaining unit with all other non-supervisory educational employees, i.e., with contracted full-time teachers.

The Commission then went on to consider the appropriate threshold for "employee" status. Relying on NLRB precedent and the decisions

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[12] Notice is taken of the docket records of the Commission for Case 262-C-76-9, filed April 28, 1976.

of other state agencies, the Commission eventually affirmed the test announced in Tacoma, supra, saying:

> The 20/30 day rule reflects our belief that if a substitute has been called back by a school district for 20 consecutive days or for 30 days in a one-year period, it is because he or she has demonstrated some desireable employee characteristic. Similarly, the employer develops an expectancy that the person who has been available for the 20 consecutive or 30 nonconsecutive day period will continue to be available as a substitute. This expectancy of a continuing relationship is not affected by the number of days of service required for higher daily pay, **nor are bargaining histories or variations in substitutes' duties relevant when determining who is or is not an "employee".** Thus, unlike unit determinations where significant variations of fact make a "per se" rule inappropriate ... these same **fact variations become much less significant when determining who is or is not an employee.**

Decision 1189-A [emphasis by **bold** supplied].

The Commission thus endorsed the 20/30 day rule as a definition of "employee" status with state-wide applicability.

Other case decisions under Chapter 41.59 RCW have rejected the possibility of a group being stranded outside any bargaining unit:

When the Lake Washington School District operated a "vocational-technical institute",[13] it bargained with an AFT local representing teachers at the vocational-technical institute under RCW 41.59.080(6),[14] at the same time it was bargaining with a WEA affiliate representing its K-12 teachers under RCW 41.59.080(1). When an unrepresented group of "adult education" teachers was later

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[13] The institute was transferred to the community college system in 1991, as described above.

[14] Lake Washington School District, Decision 484-A (EDUC, 1978).

discovered within the employer's workforce, the parties' stipulation for an unusual election procedure was accepted with the following comments:

> RCW 41.59.080(1) effectively prohibits the creation of a separate bargaining unit for the employees involved in this case.
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> ...
>
> Close analysis of the statute indicates that the adult education employees cannot stand alone as a separate bargaining unit. They are non-supervisory employees and must be included in one of the existing units. ... In that the present situation is inappropriate and cannot be continued, there will be no choice on the ballot for a "status quo" or "no representation" possibility ...

Lake Washington School District, Decision 1020 (EDUC, 1980).

The employees' choices on representation were thus limited to voting on joining one of the two existing bargaining units.

A year later, the Lake Washington School District and the AFT were again before the Commission with a dispute about "community service instructors" who received a flat hourly rate and no other benefits for providing a variety of classes. The employer advanced "community of interest" and "source of funds" arguments in opposing the inclusion of the disputed employees in either of the bargaining units already in existence within that school district. In responding to those arguments, RCW 41.59.080(1) and (6) were set forth with emphasis, and the employer's arguments were rejected:

> 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.

Lake Washington School District, Decision 1550 (EDUC, 1982).

While the exclusion of an entire class of "instructors" was rejected, a threshold was established to distinguish between "regular part-time" and "casual" employees, as endorsed by the Commission in Columbia, supra.

The historical antecedent of the Educational Employment Relations Act was Chapter 28.72 RCW (later, Chapter 28A.72 RCW), adopted in 1965. That statute clearly differed from the NLRA model in a number of respects.[15] The authorization, creation and implementation of relationships were all specified in a single section of that statute, as follows:

> 28A.72.030 Negotiation by representatives of employee organization--Authorized--Subject matter. Representatives of **an employee organization**, which organization shall by secret ballot have won a majority in an election **to represent the certificated employees within its school district**, shall have the right, after using established administrative channels, to meet, confer and negotiate with the board of directors of the school district or a committee thereof to communicate the considered professional judgment of the certificated staff prior to the final adoption by the board of proposed school district policies ...
>
> [Emphasis by **bold** supplied]

The references to **"an employee organization"** and **"to represent the ... employees within its ... district"** were taken to preclude multiple units broken out by schools, departments, divisions, grade levels, etc. No situation has been cited, or is known to have existed, where there were two or more "professional negotiations"

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[15] No administrative agency was authorized to make "unit determinations" or conduct "representation elections"; there was no delineation of "unfair labor practices" or provisions for administrative remedies for process problems; there was provision for the Superintendent of Public Instruction to respond to bargaining impasses, but there was no endorsement of "mediation".

relationships within a particular school district under that law. Rather, it is concluded that Chapter 28A.72 RCW, was also a statute of the "statutorily-defined units" type, imposing a "one unit per district" standard.

From 1965 to at least 1967, Chapter 28A.72 RCW was applicable to any operations that were transferred from school districts to a new system of state institutions, under authority of the Community College Act of 1967.[16]

Emergence of Chapter 28B.52 RCW -

Chapter 28B.52 RCW was enacted in 1971, to regulate collective negotiations involving the "academic faculty" employees of the state community college districts. The original provisions of Chapter 28B.52 RCW closely paralleled those of Chapter 28A.72 RCW, except that: (1) The State Board for Community College Education was substituted for the Superintendent of Public Instruction as the agency designated to respond to bargaining impasses; and (2) the boards of trustees were authorized to request assistance from the Department of Labor and Industries for conducting elections.[17] There was a reference to "bargaining unit" in a definition of "administrator", but there were no explicit criteria or delegation of authority for making unit determinations. Instead, the language of RCW 28A.72.030 was repeated, in all substantive respects, in RCW 28B.52.030, as follows:

> Representatives of **an employee organization,** which organization shall by secret ballot have won a majority in an election **to represent the academic employees within its community col-**

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[16] Codified in Chapter 28B.50 RCW. In addition to creating the community college system, that statute created what was then called the State Board for Community College Education. RCW 28B.52.300.

[17] The Department of Labor and Industries then administered "representation" procedures under Chapter 41.56 RCW.

> **lege district**, shall have the right, after using established administrative channels, to meet, confer and negotiate with the board of trustees of the community college district or its delegated representative(s) to communicate the considered professional judgment of the academic staff prior to the final adoption by the board of proposed community college district policies ...
>
> [Emphasis by **bold** supplied.]

No situation has been cited, or is known to have existed, where two or more negotiations relationships existed concurrently within a particular community college district.[18]

Early Commission Administration of Chapter 28B.52 RCW -
The Public Employment Relations Commission was created in 1975, under a statement of legislative intent to provide for the "more uniform and impartial ... efficient and expert" administration of public sector labor relations, by transfer of jurisdiction from other boards and commissions. RCW 41.58.010. The Commission took over the collective bargaining functions of the Department of Labor and Industries, as well as replacing the State Board for Community College Education in Chapter 28B.52 RCW.[19]

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[18] This is notwithstanding the fact that several community college districts had multiple campuses: District 5 then operated both Everett Community College and Edmonds Community College; District 6 operates North Seattle Community College, Seattle Central Community College and South Seattle Community College; District 12 then operated both Centralia College and Olympia Vocational-Technical Institute; and District 17 operates both Spokane Community College and Spokane Falls Community College.

[19] In 1977, the Commission adopted Chapter 391-50 WAC as procedural rules for resolving labor-management disputes in the community college system. The representation case procedures in those rules were generally similar to those now contained in Chapter 391-25 WAC.

In a series of early cases, the Commission continued to enforce the "one unit per district" standard which pre-dated the Commission's administration of Chapter 28B.52 RCW:

In 1976, the Commission conducted a representation election for a district-wide bargaining unit in Community College District 12, one of the multi-campus districts.[20] Organizations affiliated with the AFT and the WEA were on the ballot. The Centralia College/OVTI Association for Higher Education (WEA) was certified as representative of "all full-time and regular part-time academic employees" of the district, excluding only "administrators". Community College District 12, Decision 72 (CCOL, 1976).

In 1977, an affiliate of the WEA filed a representation petition, seeking to replace an AFT local as the representative of the "academic employees" of Yakima Valley College (Community College District 16).[21] The Commission's first contested case rulings under Chapter 28B.52 RCW were made that dispute, when an AFT objection to the Commission's assertion of jurisdiction was overruled with citation to Chapter 28B.52 RCW and Chapter 391-50 WAC, and rulings were made on a "contract bar" issue.[22] An election was conducted at polling places as wide-spread as Ellensburg, Yakima, Sunnyside, and Goldendale, resulting in the certification of the AFT local for a district-wide unit. Yakima Valley College, Decision 280-B (CCOL, 1978).[23]

Later in 1977, affiliates of the WEA and AFT banded together to create the UFC and to file the representation petition which led to the creation of the relationship between the parties to this

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[20] Notice is taken of the docket records of the Commission for Case 270-E-76-48, filed on May 1, 1976.

[21] Notice is taken of the docket records of the Commission for Case 811-E-77-149, filed on March 7, 1977.

[22] See, Yakima Valley College, Decision 280 (CCOL, 1977).

[23] Eligibility rulings were made concerning a number of claimed "administrators" in Yakima Valley College, Decision 280-A (PECB, 1978).

case.[24] An election was conducted, and the resulting certification named a single entity, the "Green River United Faculty Coalition" as representative of "all full and part-time faculty members ...". Green River Community College, Decision 273 (CCOL, 1977).

In 1978, the Commission conducted a representation election for a district-wide bargaining unit in Community College District 5, which then operated multiple institutions.[25] Organizations affiliated with the AFT and the WEA were on the ballot. The Snohomish County Community College Federation of Teachers, AFT, was certified as representative of the district-wide unit. Community College District 5, Decision 448-A (CCOL, 1978).

In 1985, an AFT affiliate filed a representation petition seeking certification for the district-wide unit at Community College District 12.[26] The AFT sought a narrow eligibility list including only those who were active as full-time or part-time employees, or were on authorized leave, as of the date the petition was filed. The WEA sought a broad eligibility list, including anybody who had taught a course in the previous three years. Citing RCW 28B.52.030, the decision in that case stated:

> The references to the employees covered by Chapter 28B.52 RCW as a single group in each district, and the singular reference to "district" are interpreted as requiring a single, district-wide bargaining unit of academic employees in each district. It follows that there is no room in the scheme of this statute for a separate unit of part-time employees.

Community College District 12, Decision 2374 (CCOL, 1986).

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[24] Notice is taken of the docket records of the Commission for Case 939-E-77-186, filed on June 7, 1977.

[25] Notice is taken of the docket records of the Commission for Case 1374-E-78-273, filed on January 30, 1978.

[26] Notice is taken of the docket records of the Commission for Case 5804-E-85-1037, filed on May 1, 1985. The unit had been represented by the WEA since the representation proceedings conducted by the Commission in 1976.

The analysis thereupon turned to formulating a test to differentiate between "regular part-time" employees (who were to be included in the bargaining unit) and "casual" employees (who were to be excluded from the bargaining unit as described in Columbia School District, supra).

It is concluded that Chapter 28B.52 RCW was a statute within the "statutorily-defined bargaining unit" category, at least from the time of its enactment through 1986. A "one unit per district" standard which emerged from the statute itself controlled the structure of the relationships. Employers and unions practicing under that statute should have been well-aware of the "one unit per district" standard.

The "Collective Bargaining" Amendments to Chapter 28B.52 RCW - In 1987, the Legislature passed Senate Bill 5225 (AN ACT Relating to community college negotiations by academic personnel). In drafting that legislation, the proponents of expanded collective bargaining rights for community college "academic faculty" employees appear to have taken their cue from a bill that had been filed in the Legislature in 1985, at the request of the State Board for Community College Education.[27] In written testimony submitted to the Senate Ways and Means Committee, WEA lobbyist Bob Fisher

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[27] Close examination of 1985 House Bill 283 reveals that the "management" side had proposed a series of amendments to Chapter 28B.52 RCW which picked up **SOME** terms and trappings of the NLRA and its public sector progeny:

The term "collective bargaining" was used, along with "good faith" and the wages/hours/conditions scope of bargaining found in the NLRA;

Section 2 of the measure retained the first portion of RCW 28B.52.030 as a lead-in to the collective bargaining relationship. There were no other "unit determination" provisions in that bill.

Section 4 of the bill endorsed grievance arbitration, using the same language found in the federal law;

Sections 8 and 9 of the bill empowered the Commission to prevent "unfair labor practices" which paralleled Sections 8(a) and (b) of the NLRA.

described Substitute Senate Bill 5225 as "an agreed bill" worked out by representatives of the WEA, the AFT and the community college managements.[28] Senate Bill 5225 was structured as a series of amendments to Chapter 28B.52 RCW:

Definitions of "collective bargaining" and "union security" were added, consistent with usage of those terms under the NLRA;[29]

The collective bargaining rights of "academic employees" were secured in terms familiar under Section 7 of the NLRA;[30]

The bill endorsed "arbitration" of grievance disputes, using the same language found in Section 203(d) of the federal law;[31]

The Commission was authorized to prevent "unfair labor practices", similar to Sections 8(a) and (b) of the NLRA.[32]

There were no "unit determination" provisions in SB 5225. Instead, the bill retained portions of the historical language of RCW 28B.52.030, as a lead-in to collective bargaining relationships:

> Representatives of **an employee organization,** which organization shall by secret ballot have won a majority in an election **to represent the academic employees within its community college district,** shall have the right [balance of section deleted] to bargain as defined in RCW 28B.52.020(8).
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> [Emphasis by **bold** supplied]

RCW 28B.52.030 was eventually amended in the manner originally proposed in SB 5225.

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[28] HB 283 from the 1985 session was specifically mentioned as the historical antecedent of those "agreements".

[29] See, Section 2 of the NLRA, RCW 41.56.030 and RCW 41.59.020.

[30] See, also, RCW 41.56.040 and RCW 41.59.040.

[31] See, also, RCW 41.58.020(4).

[32] See, also, RCW 41.56.140 through .150 and RCW 41.59.140.

In Lower Columbia College, Decision 3987-A (CCOL, 1992), the Commission ruled that the "one unit per district" standard continues in effect under Chapter 28B.52 RCW. In that case, the statutorily-defined bargaining unit structure was found to preclude a categorical exclusion of "community service" instructors from the academic faculty bargaining unit at that institution.

References to "Appropriate Bargaining Unit"

It can be presumed that the Legislature was aware of the consistent administrative application of the "one unit per district" standard under Chapter 28B.52 RCW when it adopted major amendments to that statute in 1987.[33] If the Legislature had wanted to delegate unit determination authority and specify unit determination criteria, the models for doing so were certainly readily available in the NLRA and Chapter 41.56 RCW. It is clear, however, that the Legislature did not make any changes in 1987 which explicitly authorized the Commission to determine bargaining units, or which

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[33] See, Green River Community College et al. v. Higher Education Personnel Board, 95 Wn.2d 108 (1980), where an "interest arbitration" procedure adopted by the Higher Education Personnel Board under Chapter 28B.16 RCW was subjected to attack as being beyond the authority of that agency. In affirming the validity of the agency rule, the Supreme Court stated:

> ... [A]n administrative construction nearly contemporaneous with the passage of the statute, especially when the legislature fails to repudiate the contemporaneous construction, is entitled to great weight. [citation omitted] Finally, a contemporaneous construction by the department charged with administering an ambiguous statute is even more persuasive if the legislature not only fails to repudiate the construction, but also amends the statute in some other particular without disturbing the administrative interpretation.

Apart from the amendments adopted close on the heels of Community College District 12, Decision 2374 (CCOL, 1986), it is noted that Chapter 28B.52 RCW has also been amended by at least 1991 c. 238 and 1990 c. 29, without disturbing the "one unit per district" standard.

explicitly set forth any unit determination criteria in the "community of interest" tradition.

The employer nevertheless cites use of the term "appropriate bargaining unit" among the amendments to Chapter 28B.52 RCW adopted in 1987, as a basis for its assertion that the Commission should implement "community of interest" criteria in this case. It cites **NO** provision within Chapter 28B.52 RCW which expressly authorizes the Commission to make unit determinations, or which sets forth criteria for bargaining unit determinations on a "community of interest" basis. Rather, in both its briefs and in the testimony of its witnesses,[34] the employer has gone outside of Chapter 28B.52 RCW to embrace the discretionary authority and criteria for agency-determined bargaining units found in other statutes. The employer's approach is fatally flawed.

The term "appropriate bargaining unit" does not equate to either agency-determination of bargaining units, or to the use of the "community of interest" principles. A legislature is certainly capable of prescribing the only acceptable bargaining units in a statute authorizing collective bargaining, rather than delegating unit determination authority to an administrative agency. A statutorily-defined bargaining unit will be no less an "appropriate bargaining unit" than one which has been determined by an agency under statutory criteria. The employer finds itself on a slippery slope in its reliance on a term that is, at best, ambiguous in this usage.

As noted above, our Legislature has in fact used the "statutorily-defined unit" approach in some Washington laws. The employer

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[34] Questions of statutory interpretation are for the Commission, subject to review by the courts. The purpose of a hearing is to elicit testimony of witnesses as to issues of fact. The Hearing Officers could properly have excluded testimony in which employer witnesses stated their opinions about interpretation of the statute.

appears to concede, or at least does not seriously contest, that the "one unit per district" standard existed under Chapter 28B.52 RCW prior to 1987, making it an example in the "statutorily-defined units" category. Chapter 41.59 RCW actually falls into that category as well, because the exception stated in RCW 41.59.080(1) swallows up virtually the entire scope of discretion suggested in the opening sentences of that section.

The fact that Chapter 41.56 RCW calls for the Commission to determine bargaining units in the NLRA tradition is of no help to the employer here, because the fact that the Commission administers both Chapters 28B.52 and 41.56 RCW is not a basis for a blending of those statutes.[35] The Legislature did not adopt a "consolidated law" in connection with its creation of the Commission. While RCW 41.58.005(1) states that the Commission is to provide "more uniform and impartial ... efficient and expert" administration of public sector collective bargaining laws, RCW 41.58.005(3) explicitly provides:

> (3) **Nothing** in this 1975 amendatory act shall be **construed to alter any power or authority** regarding the scope of collective bargaining in the employment areas affected by this 1975 amendatory act, but **this amendatory act shall be construed as transferring existing jurisdiction and authority** to the public employment relations commission.

[Emphasis by **bold** supplied.]

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[35] When the legislature intended a blending of Chapters 41.56 and 53.18 RCW, it did so explicitly in RCW 53.18-.015. The Supreme Court ruled that rights accruing under RCW 54.04.170 and 54.14.180 are to be blended with Chapter 41.56 RCW, on the basis that public utility districts are municipal corporations or political subdivisions within the meaning of RCW 41.56.020. PUD of Clark County v. PERC, 110 Wn.2d 114 (1988). State institutions of higher education are not "municipal corporations", however, so that a specific provision, RCW 41.56.022, was needed to bring the University of Washington under Chapter 41.56 RCW for its printing employees.

To this day, the Commission continues to administer a hodge-podge of separate laws providing similar, but marginally distinct, collective bargaining processes for some, but not all, types of public employees in the state.

The employer's reliance upon rules or policies of the former Higher Education Personnel Board under repealed Chapter 28B.16 RCW is also totally without merit. The cited statute was a "civil service" law which has since been merged into the civil service law covering the employees of state general government agencies. There is a clear and long-standing distinction between the "bargaining" approach represented by Chapters 28A.72 and 28B.52 RCW for community college academic faculty employees and the "civil service" approach used for community college "classified" employees.[36] The bargaining rights of classified employees within the civil service law are limited to matters left to the discretion of the employing agency or institution. Moreover, the Legislature occupied the unit determination field under Chapter 28B.16 RCW, at least to the extent of limiting bargaining units to agencies or institutions. There is no reason for the Commission to reach out to an entirely separate statute establishing a foreign process administered by another agency.[37]

The conclusion reached from the foregoing is that the Legislature left the "old law" in place when it adopted amendments to Chapter

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[36] For further discussion of the significant differences between "collective bargaining" and "civil service", see: City of Yakima v. IAFF, Local 469, 117 Wn.2d 655 (1991). The Supreme Court noted there that civil service systems fell into disfavor with employees, when they came to be regarded as an arm of management.

[37] Under 1993 c. 379 (HB 1509) bargaining units of higher education "classified" employees now have the option of "full scope" collective bargaining under Chapter 41.56 RCW, in place of "civil service" coverage. If that option is exercised, they will come under the jurisdiction of the Public Employment Relations Commission.

28B.52 RCW in 1987. The employer has not offered any valid basis within that statute for its arguments that "community of interest" principles ought be applied in this case. In view of the history of Chapter 28B.52 RCW as a law within the "statutorily-defined units" category, the "existing ... authority" language of RCW 41.58.005(3), the continuation of the "an election to represent the academic employees within its ... district" language in RCW 28B.52.030, and the absence of any other unit determination criteria within Chapter 28B.52 RCW, it would be folly to use fleeting references to "an appropriate unit" as the springboard for a leap into the unit determination authority and criteria of some other statute. The "one unit per district" standard remains absolute.

Employment Outside of the College District

To the extent that the employer argues that the ETC employees should be differentiated from the main campus faculty because they do not have regularly assigned work stations at the ETC, or because much of their work is performed away from the ETC facility, those arguments must be rejected. The cited circumstances would only be apt in a "community of interest" analysis.

The employer cites the decision issued in Edmonds Community College, Decision 3698 (CCOL, 1991), as support for a simplistic formula that would exclude the ETC employees from the main campus bargaining unit because many of the ETC classes are held outside of the geographical boundaries of the employer's defined "district". Apart from the fact that the Executive Director is not bound by the principle of stare decisis to follow a decision issued by a subordinate, the cases are clearly distinguishable. In Edmonds, the employees involved were full-time residents on foreign soil, teaching at a so-called "branch campus" which apparently offered courses of instruction to students in that foreign country (Japan). From the record made here, it is concluded that the ETC employees

are recruited, hired, trained, assigned and supervised through the ETC headquarters in Kent, Washington. They report to, and are directly responsible to, the ETC director, who is based at the ETC headquarters. In turn, that official is directly responsible to the college president and board of trustees in neighboring Auburn.

The practice of holding many ETC classes at the client's location is undoubtedly consistent with the ETC's mission of providing quality education in a manner that is cost-effective for its clients. There is nothing mysterious about the concept of sending professional employees to a work client's location, instead of requiring larger numbers of client personnel to travel to the office of the person performing the service. Among State of Washington agencies that operate in that fashion: The Office of Attorney General sends its assistant attorneys general to court-rooms and hearing rooms throughout the state, to represent the interests of agencies and institutions; the Office of State Auditor sends its employees to municipality and agency offices to perform audits; the Department of Revenue sends its employees to taxpayer offices to audit their compliance with state tax laws; the Public Employment Relations Commission generally sends its staff members to the location of the labor dispute, to provide dispute resolution services.[38] The key inquiry is not their physical location when performing work, but the locus of their employment. In this case, the benefits offered to the ETC employees are through the same State of Washington group insurance plans that are offered to the main campus faculty and other state employees working within the state. This and the facts concerning their supervision lead to a conclusion that the ETC employees have the base of their employ-ment, for purposes of laws governing the employment relationship, at Kent, Washington. As with the other cited groups who are

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[38] Chapter 49.08 RCW explicitly directs the Commission to "visit the location of such differences" as part of its task in mediating or arbitrating labor-management disputes arising in the private sector.

required by their employer to travel to work locations away from their official work stations, travel by the ETC employees is no more than a job requirement and working condition.

The Desires of the ETC Employees

During the course of the hearing, several individuals asserted that the desires of the ETC employees should be implemented, with regard to their inclusion in any bargaining unit. The employer thus cites the "desires of the employees" as justification for leaving the ETC employees outside of the existing bargaining unit. The "desires of the public employees" is, indeed, one of the criteria set forth in RCW 41.56.060 to be considered in making unit determination decisions on a "community of interest" basis. The employer's argument is seriously flawed, however.

The first problem is procedural: Long-standing Commission policy precludes the use of employee testimony to establish the "desires of employees":

> The Hearing Officer was correct in refusing to take testimony on the "desires of employees". It is highly undesirable that employees should be placed on the witness stand, under oath, and compelled to testify concerning their bargaining unit preferences. Their preferences in regard to bargaining unit will too often be tied to or identifiable with their preferences as to choice of bargaining representative, and as to the latter, they are entitled to the secrecy of the ballot box ...
>
> Our rules preclude disclosure of the contents of a "showing of interest" and provide, in WAC 391-25-530(1) for unit determination elections. Clark County, Decision 290-A (PECB, 1977) establishes that the desires of employees may be properly determined by a self-determination election ("Globe" election in NLRB terminology, based on 3 NLRB 294 (1937)), ...

City of Seattle, Decision 1229-A, (PECB, 1982)

The second problem is substantive: To the extent that the employer argues that the ETC employees should be differentiated from the main campus faculty because they desire such a separation, that argument must be rejected. There is no room for considering the "desires of the employees" or any of the other traditional "community of interest" criteria under a statute which defines the only acceptable unit structure.

The third problem is again procedural: There is no petition before the Commission for a separate bargaining unit of academic employees at the ETC, and thus no vehicle for making a ruling that such a unit was "an appropriate unit". Long-standing Commission precedent holds that a unit determination election will be conducted only if all of the unit choices being made available to the employees are "appropriate" units. Clark County, Decision 290-A (PECB, 1977), citing Globe Machine & Stamping Co., 3 NLRB 294 (1937);[39] Bremerton School District, Decision 527 (PECB, 1978); City of Seattle, Decision 1229-A (PECB, 1982); Tumwater School District, Decision 2043 (PECB, 1985); City of Mukilteo, Decision 2202-A (PECB, 1986); South Kitsap School District, Decision 1541 (PECB, 1983), also citing Glass Workers v. NLRB (Libby-Owens-Ford), 80 NLRB 2882 (1948).

The fourth problem returns to the substantive: Commission precedent also precludes adoption of the employer's concern for the separate bargaining rights of the ETC employees:

> "Unit" is not a plural term. The whole notion of grouping employees into bargaining units, and the principles of exclusive representation and majority rule, run counter to any procedure which would exclude individuals from representation in a bargaining unit ... merely based on individual views at odds with those of the majority. Simply put, "members only"

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[39] Accord, NLRB v. Underwood Mach. Co., 179 F.2d 118 (1st Circuit, 1949).

> is not a criteria for unit determination under Chapter 41.56 RCW. Established NLRB and PERC precedent guides against permitting the employees in a portion of an appropriate bargaining unit to vote separately on a question concerning representation. Campbell Soup Co., 111 NLRB 234 (1955); City of Seattle, Decision 1229-A (PECB, 1982).

North Thurston School District, Decision 2085 (PECB, 1985).

The employer would apparently have the ETC employees vote separately on a question concerning representation.

A fifth problem, while hypothetical in view of the foregoing, would also be substantive. Generalizations are difficult, because unit determinations are made on a case-by-case basis,[40] but certain observations are worthy of note. The Commission's unit determination decisions have expressed concern that unnecessary fragmentation of bargaining units should be avoided.[41] Accretions of newly-created operations to existing bargaining units have been ordered.[42] On a similar note, both the Commission and the NLRB have discouraged fragmentation, by making it difficult to obtain a "severance" from an existing bargaining unit.[43] Thus, it is not at all certain that a separate unit would be found appropriate for the instructor/consultant employees at the ETC, even if the statute contained a clear grant of unit determination authority to the Commission and contained unit determination criteria which expressly or arguably embraced the "community of interest" principles relied upon so heavily by the employer in this case.

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[40] Kalamazoo Paper Box Corp., supra.

[41] See, e.g., Tacoma School District, Decision 1908 (PECB, 1984); North Thurston School District, supra.

[42] Oak Harbor School District, Decision 1319 (PECB, 1981).

[43] Mallinckrodt Chemical Works, 162 NLRB 387, 64 LRRM 1011 (1966), cited with approval in Yelm School District, Decision 704-A (PECB, 1980).

Threshold for "Regular Part-Time" Status

The analysis now turns to whether the instructor/consultants at the ETC are "casual" employees.[44] The record indicates that at least some of the ETC have ongoing employment relationships with this employer, which would distinguish them from "casual" employees. The "one-sixth of full-time" test has been adapted for use in a variety of employment settings, and there is no evident reason to apply a different standard to the ETC staff members at issue in this case. It will be so ordered.

FINDINGS OF FACT

1. Community College District 10 is a state institution of higher education, operated under Chapter 28B.50 RCW. The employer offers academic transfer courses, occupational education and community services of an educational, cultural and recreational nature through its main campus, known as Green River Community College, located at Auburn, Washington. Since 1986, the employer has also operated the "Education and Training Center" located at Kent, Washington, which offers development and delivery of result-oriented educational and consulting services tailored to meet the specific needs of contracting organizations and individuals.

2. The Green River United Faculty Coalition, an "employee organization" within the meaning of RCW 28B.52.020, has been the representative of academic employees of Community College District 10 since 1977, when it was certified as such through representation proceedings conducted by the Commission.

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[44] As noted above in relation to "substitute" teachers, it has long been the policy of the Commission to include "regular part-time" employees in the same bargaining units with "full-time" employees performing similar work.

3. Since 1977, the employer and union have been parties to a series of collective bargaining agreements. A dispute has arisen as to whether the instructor/consultants working at the Education & Training Center should be included in the bargaining unit covered by the parties' contract.

4. The headquarters of the Education & Training Center are within the geographic boundaries of Community College District 10, approximately seven miles from the main campus. The board of trustees of Community College District 10 is the governing body for the Education & Training Center. The salaries, vacation pay, leave benefits, and insurance benefits of the executive director of the Education & Training Center and her secretary are paid from the employer's general fund. Any "profit" derived from the operation of the Education & Training Center becomes the property of Community College District 10. The executive director of the Education & Training Center serves on the president's management team, and attends all department head meetings.

5. The employer hires both full-time and regular part-time employees to teach in its educational programs, both at its main campus and at the Education & Training Center. The instructor/consultants employed at the Education & Training center must possess minimum educational qualifications similar to those required of their counterparts at the main campus. The instructor/consultants employed at the Education & Training center have insurance and retirement benefits similar to those enjoyed by the academic employees at the main campus.

6. The instructor/consultants at the Education & Training Center are recruited, hired, assigned and supervised from the headquarters of that operation, so as to have their locus of employment at the employer's facility in Kent, Washington,

even when they perform services outside of the geographic boundaries of Community College District 10.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 28B.52 RCW.

2. The instructor/consultant personnel employed by Community College District 10 in connection with operation of its Education & Training Center are "academic employees" within the meaning of RCW 28B.52.020(2), and have collective bargaining rights under Chapter 28B.52 RCW if they have a sufficient continuity of employment to be regarded as full time or regular part-time employees under Commission precedent.

3. Under RCW 28B.52.030 and Commission precedent, no more than one bargaining unit of "academic employees" may exist within a community college district.

4. In view of the pendency of this proceeding and unfair labor practice charges relating to the subject matter of this case, the collective bargaining agreement signed by Community College District 10 and the Green River United Faculty Coalition on or about March 14, 1991 for the period through June 30, 1992, does not constitute a waiver of the union's claim of a right to represent the instructor/consultants at the Education & Training Center as part of the existing bargaining unit described in paragraph 2 of the foregoing findings of fact.

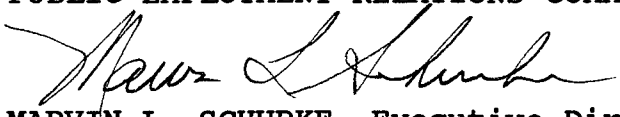
5. No question concerning representation presently exists as to the bargaining unit described in paragraph 2 of the foregoing findings of fact.

ORDER

The full-time and regular part-time instructor/consultants employed by Community College District 10 at and through its Education & Training Center are included in the bargaining unit of academic employees for which the Green River United Faculty Coalition is the exclusive bargaining representative.

Issued at Olympia, Washington, the 9th day of September, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.