STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: UNITED CLASSIFIED WORKERS UNION OF WASHINGTON Involving certain employees of: KENT SCHOOL DISTRICT NO. 415 and/or EDUCATIONAL SERVICE DISTRICT NO. 121	CASE NO. 4441-E-83-717 DECISION NO. 2215 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

John W. Peterson, Agent, appeared on behalf of the petitioner.

Gary E. Patrick, Assistant Superintendent, appeared on behalf of Kent School District; with Perkins, Coie, Stone, Olsen and Williams, by Bruce M. Cross, Attorney at Law, appearing on the brief.

Kenneth L. Eikenberry, Attorney General, by Jerald R. Anderson, Assistant Attorney General, appeared on behalf of Educational Service District No. 121.

On February 28, 1984, the United Classified Workers Union of Washington (union) filed a petition with the Public Employment Relations Commission (PERC), seeking to represent certain employees of the Head Start program of Kent School District No. 415. A pre-hearing conference was held on March 27, 1984. The parties stipulated that PERC has jurisdiction of controversy under RCW 41.56, that the union is qualiifed to act as a bargaining representative, and that the petitioned-for bargaining unit is appropriate. The parties disagreed on the identity of the employer, with the school district asserting that Educational Service District No. 121 was the actual employer. Because it initially appeared that the facts were not at issue, the union and the school district agreed to have the identity of the employer determined based on a stipulated record and briefs filed on April 30, 1984.

Before the determination as to the identity of the employer could be completed in this case, the union filed another petition, on May 3, 1984, seeking to represent a bargaining unit consisting of all employees in the Head Start program administered by Educational Service District No. 121 (ESD 121). That petition was docketed as Case No. 5232-E-84-944, and it covered, in part, the same employees of the Kent School District affected by the petition in the instant case. Consequently, the separate processing of the instant case was suspended and the two petitions were consolidated. Another pre-hearing conference was held on June 25, 1984, with representatives of ESD 121 and representatives of various school districts and other organizations affected by the consolidated petitions all in attendance. The interested parties were unable to stipulate the identity of the employer. The matter was set to be heard on July 30, 1984. The hearing was continued at the request of parties to October 24, 1984. The petitioner failed to appear at the October 24th hearing and, on November 12, 1984, withdrew the petition in Case No. 5232-E-84-944.

A hearing was held on the instant petition on January 17, 1985, before William A. Lang, Hearing Officer. ESD 121 was joined as a party, as a potential employer.

BACKGROUND

Head Start programs are funded under Title V of the federal government's Economic Opportunity Act of 1964, as amended. Regulations applicable to program administration and grant management have been promulgated by the Office of Human Development of the federal Department of Health and Human Services (DHHS). The regulations guide grant applicants in obtaining the necessary funding. Region X, DHHS administers the grant monies for the state of Washington.

ESD 121 is a municipal corporation of the state of Washington, headquartered in Seattle. It provides administrative services to school districts in an area which encompasses King and Pierce Counties and the Bainbridge Island School District in Kitsap County, including Kent School District No. 415.

DHHS Region X and ESD 121 determine the funding necessary for Head Start programs within ESD 121's service area, based on a cooperative assessment of Head Start needs. This dollar allocation is based on the expected pupil census and percent of low income families in the area served. The federal grant generally represents 80% of the total program costs. The federal assistance is supplemented by state planning and community affairs funds, handicapped program funds, U.S. Department of Agriculture food reimbursement funds and local funds.

ESD 121 disburses Head Start grant assistance funds to "constituent agencies", most of which are school districts that have consented to operate Head Start centers. There are no formal contracts between ESD 121 and the various constituent agencies operating the centers. ESD 121 allocates the Head Start resources by establishing a budget for each Head Start center based on prorated expenditures for pupil enrollment and the number of low income families served.

ESD 121 has established a Head Start policy council which consists of representatives of community organizations and parents of enrolled children.

Federal regulations emphasize parent involvement at all levels of the Head Start program. Parents are encouraged to perform volunteer work in the classroom, and they compose at least 49% of the policy bodies at the ESD and school district levels. Federal regulations require ESD 121 and the school districts to develop a plan to implement federal performance standards. The standards relate to curriculum and cultural needs, safe and healthy facilities, nutrition, health screening, mental health objectives and social services. DHHS regulations require a minimum of three home visits if parents consent. Parents have a role in determining the services needed, goals, location of centers, personnel policies including grievance procedures, and approve budget change requests and the hiring and firing of staff.

As a condition of receiving funding, ESD 121 and constituent organizations who operate Head Start centers must adhere to federal policies and performance standards. Region X requires periodic reports from the ESD and annual audits to determine whether its financial statements are accurate and whether the ESD is complying with the terms and conditions of the grant. The ESD may include constituent audits as part of their own or may direct separate independent audits. Region X provides technical assistance and advice as needed.

Under Subpart D, Section 1300.31 of the federal regulations, ESD 121 must establish personnel policies for the overall administration of the various Head Start programs at both the ESD 121 level and at the center level. At a minimum, these policies must govern staff qualifications, recruitment, job classification, salary, benefits, leave, holidays, overtime, career development, travel, performance evaluation and employee-management relations, including employee grievance and adverse actions. The policies are to be in writing and approved by the policy council. ESD 121 has, pursuant to the federal grant requirement, promulated general personnel policies in an employee handbook. These policies regulate hiring and firing and employee matters of the ESD 121 Head Start staff. Under the Head Start policy manual issued as part 1304 of Title 45 of the DHHS regulations, day-to-day personnel administration for center employees is delegated to the constituent agencies. Each constituent agency hires and fires its Head Start center staff and determines other personnel matters according to its own policy, subject to the general minimal guidelines of the employee handbook promulgated by the ESD.

Kent School District operates a Head Start center and is reimbursed by ESD 121 for its Head Start expenditures. Kent School District's Head Start center employees are hired through the Kent School District personnel office in accordance with Kent's own procedures and subject to minimal guidelines established by the ESD under federal requirements. For example, the ESD requires that job notices be published in community newspapers and that the center policy committee (which consists of parents and community representatives) review the applicants and submit the top three qualified applicants to the center director for hiring. If the district failed to follow these procedures, the ESD 121 would remind Kent School District of the federal requirements.

Employees in the Kent Head Start center are not paid from the Kent School District salary schedule, but rather from a general salary schedule prepared by a committee of Head Start center directors and ESD 121 staff. A center may prepare its own schedule which exceeds the recommended level, but would not receive reimbursement for the excess expenditures. Head Start center employees at Kent receive fringe benefits in accordance with Kent School District policy, but the district is reimbursed by the ESD in accordance with a flat dollar allocation. The work schedule for Kent's Head Start center employees is determined at the district level, in accord with the district's school calendar and within the number of days determined by federal and state regulation. A general calendar is developed by Head Start center directors and ESD 121 staff. Holidays and sick leave are paid in accordance with state statute and Kent School District policy.

Kent School District's accounting department gathers billing information from each division, such as food service, transportation and education, and compiles a report submitted each month to ESD 121 for reimbursement.

POSITIONS OF THE PARTIES

The petitioner argues that Kent School District is the employer of the Head Start employees at the Kent center, because the school district hires, fires, evaluates and controls them subject to minimum requirements set by the federal grant administered by the ESD. The petitioner contends ESD 121 lacks sufficient control of the center employees to qualify it as a joint employer.

Kent School District contends it does not have authority over significant aspects of employment of the Head Start employees working on its premises. The district argues that the necessary control is at the ESD 121 level, and that it would be futile for the school district to bargain with the employee's representative.

The ESD 121 views itself as a conduit of federal funds and as administrator of the terms of the federal grant. It contends that this control does not create any employment relationship.

DISCUSSION

For collective bargaining to have reasonable prospect for success, the employer must have real authority over the wages, hours and working conditions of the employees at issue. The issue to be decided here is whether Kent School District stands alone as the employer of the Head Start employees working in the Kent School District or stands together with ESD 121 as a joint employer of those employees.

The National Labor Relations Board (NLRB), with the approval of the U. S. Supreme Court, has held that nominally separate employers may be considered joint employers where they comprise an integrated enterprise. Local 1264 v. Broadcast Service of Mobile, 379 U.S. 812 (1965). The NLRB makes a finding of joint employer status where each of the entities involved shares a sufficient degree of control over the operations and labor relations of the enterprise.

The Public Employment Relations Commission has dealt with joint employer status in a number of cases. In City of Lacey, Decision 396 (PECB, 1978) a joint animal control operation established by various cities and Thurston County (with representation from each) was determined to be a joint employer with the City of Lacey. Although the city had an active role in day-to-day supervision, the joint commission had final authority over the size of the work force, layoffs, facilities and policy. In Kitsap Peninsula Skills Center, Decision 838-A (EDUC, 1981) and Sno-Isle Vocational Skills Center, Decision 841 (EDUC, 1980), occupational skills centers were considered to be joint enterprises among groups of school districts who financed and controlled their operations through governing councils on which each had representation. In each of those cases, the host district, which leased facilities and provided administrative support, was considered a joint employer as one of equal partners. In Thurston County Fire District No. 9, Decision 461 (PECB, 1978), a fire district which hired, trained and supervised student fire fighters at The Evergreen State College was found to be a joint employer with the college, because the college controlled the number of employees, the amounts paid to employees and also provided living space, equipment, tools and furnished meals or their cash equivalent.

On the record made here, the relationship between Kent School District and ESD 121 does not fit exactly any of the fact situations described in the cited decisions. Rather, the arrangement between the two entities is one of grantor and grantee. Such arrangements are commonplace in the public sector, where one level of government may achieve its desired purposes by becoming a source of funding (with strings attached) to lower levels of government. Federal revenue sharing and CETA programs are prime examples of such situations involving federal funding. Nevertheless, employees hired by local governments with "revenue sharing" funds and CETA employees have been routinely included in appropriate local government bargaining units. City of Kelso, Decision 501 (PECB, 1978). See also: King County, Decision 560 (PECB, 1978). The delivery of basic education by this state through local school districts appears to parallel the Head Start arrangement between the federal government, through DHHS and the ESD, and the Kent School District. The evidence shows a vertical relationship, under which grants are made to the local unit of government subject to agreement to provide Head Start services in accordance with guidelines developed by federal authority. The monies are apportioned to the various constituent agencies on the basis of the number of eligible pupils and low income families served. Federally imposed requirements and limitations, such as restrictions on nepotism and basic hiring procedures, are beyond even the control of the ESD because they are conditions precedent to the receipt of funds. Most of these restrictions are related to program standards and objectives. For the most part, they involve subjects such as job duties, program content, parental involvement and other managerial prerogatives. These regulations are not unlike those imposed on school districts by state statute, the Superintendent of Public Instruction and/or the State Board of Education, which control in detail such matters as teacher certification, non-renewal, termination, salary and benefit levels. The control exercised by ESD 121 is only over the program standards, and not over the employment relations of the constituent agencies. The evidence clearly demonstrates that ESD 121 is not interested in the day-to-day operation of the centers. Its interest is confined to insuring that program goals are met and that federal requirements are followed. The source of funding is not a basis for bargaining unit determination under RCW 41.56.060 Tumwater School District NO. 33, Decision 1414 (PECB, 1982).

Kent School District exercises control over the day-to-day operations of the Head Start center which is at issue in this proceeding. The center director is hired by the district. The director in turn hires staff recommended by the center's parent policy committee. The director supervises, evaluates and with, committee concurrence, may terminate employees. Although the ESD 121 employee handbook provides a grievance procedure which has final authority at the ESD 121 level, federal regulations indicate that centers have final authority over such personnel matters within minimums established by federal requirements. Testimony shows that the ESD has not exercised any authority over grievances or discipline.

The salary schedule established based on input of various center directors to the ESD 121 staff merely serves as a funding convenience from which the level of grant requests can be determined. Constituent agencies are permitted to pay higher salaries as long as they stay within the overall dollar allocations or fund increases from their own resources. Benefits are paid in accordance with school district practice. The district may already exceed the benefit amounts reimbursed by the grant. Hours of work are subject to minimums prescribed by federal requirements, but in reality the work schedule of Head Start center employees is based on the Kent School District's calendar.

While Kent School District exercises significant day-to-day control over the Head Start employees, ESD 121 does not, through the enforcement of minimal federal requirements, exercise sufficient control over wages, hours and working conditions to qualify as the sole employer or even as a joint employer of the Head Start employees. The relationship is found to be a vertical funding arrangement and not a joint venture.

FINDINGS OF FACT

1. Kent School District No. 415 is a school district organized and operated under Title 28A RCW and is a "public employer" within the meaning of RCW 41.56.030(1).

2. Educational Service District No. 121 is an educational service district organized and operated under Title 28A RCW and is a "public employer" within the meaning of RCW 41.56.030(1).

3. United Classified Workers Union of Washington is an employee organization within the meaning of RCW 41.56.030(3) which has filed a properly supported petition for investigation of a question concerning representation of Head Start employees in Kent School District.

4. Head Start programs are federally funded under Title V of the Economic Opportunity Act of 1964, as amended. Regulations applicable to program administration and grant management are promulgated by the Office of Human Development, Department of Health and Human Services.

5. ESD 121 is a grantee of federal funds for Head Start purposes. In administering and disbursing federal Head Start funds, ESD 121 promulgates and enforces certain minimum requirements called for by federal regulation and grant terms, but does not exercise direct control over employment relations at the Head Start center level.

6. Kent School District No. 415 operates a Head Start center as a constituent agency receiving funds through ESD 121. The school district has effective control over wages, hours and working conditions of the employees working in its Head Start center.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. ESD 121, in administering and disbursing federal Head Start grant funds under federal guidelines, does not exercise sufficient control over the local employment relations at the school district level to qualify as the employer or as a joint employer of Head Start center employees at the center operated by Kent School District No. 415.

3. Kent School District No. 415 has effective control of the wages, hours and working conditions of the employees working in its Head Start center and is the employer of such Head Start employees under RCW 41.56.030.

4. A bargaining unit which includes all classified employees working in the Head Start program operated by Kent School District No. 415, excluding supervisors, confidential employees and all other classified employees, is an appropriate unit for purposes of collective bargaining within the meaning of RCW 41.56.060.

5. A question concerning representation exists under RCW 41.56.050, et. seq., in the bargaining unit described in paragraph 4 of these conclusions of law.

NOW, THEREFORE, it is

<u>DIRECTED</u>

An election by secret ballot shall be held under the direction of Public Employment Relations Commission among all classified employees working in the Head Start program operated by Kent School District No. 415, excluding supervisors, confidential employees and all other classified employees, to determine whether such employees desire to be represented for the purposes of collective bargaining by United Classified Workers Union.

DATED at Olympia, Washington, this 30th day of May, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Marvin L. Schurke

MARVIN L. SCHURKE, Executive Director

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