

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CITY OF MONTESANO)	CASE NO. 5891-E-85-1060
Involving certain employees of:)	DECISION NO. 2295 - PECB
CITY OF MONTESANO)	ORDER OF DISMISSAL
)	

The petition for investigation of a question concerning representation was filed in the above-entitled matter on July 5, 1985. The petition names Teamsters Local 252 as the incumbent exclusive bargaining representative. The petition names the "Montesano Police Department Employees" as petitioner and names William Brookshire as the person to contact on behalf of the petitioner, but the petition was signed by the city attorney of the employer. The petition is supported by an affidavit of the city attorney. The case has been docketed as an employer-filed petition.

Notice is taken of the docket records and case file of the Commission in Case No. 4517-E-83-831, involving the same parties. That is now the fifth-oldest case pending before the Public Employment Relations Commission. The petition for investigation of a question concerning representation was filed in that matter by Montesano Police Department Employees on February 23, 1983. The petitioner there sought to replace Teamsters Local 252 as the exclusive bargaining representative of law enforcement officers and police department support personnel employed by the City of Montesano. Upon the filing of that case, a mediation case (Case No. 4420-M-83-1882) was held in abeyance pending the outcome of the question concerning representation. ¹

¹ That mediation case is still carried on the open case docket of the Commission and is now the third-oldest case pending before the agency.

The petitioner in Case No. 4517-E-83-831 sought merger of historically separate law enforcement officer and support units. Representation and unit determination elections were conducted by the Commission on May 13, 1983, at which time a challenged ballot cast by one Anthony Muma was sufficient to affect the outcome. Muma had been discharged, and was appealing his discharge under applicable civil service procedures. No unfair labor practice charges were filed concerning the Muma discharge, and the parties were notified that the challenged ballot would be disposed of in accordance with the results of the civil service proceedings. The decision of the civil service board affirming the discharge was appealed to and remains pending in the courts.

Upon the subsequent agreement of the parties, the unit determination question was stricken from Case No. 4517-E-83-831,² and the parties filed new election agreements and supplemental agreements calling for representation elections to be held among the current (as of January 29, 1985) employees in the two historically separate bargaining units. New elections were held on February 13, 1985. A conclusive result was obtained in the support unit, and a certification was issued for that unit.³ In the law enforcement officer unit, only two of the five persons named in the eligibility list and supplemental agreement exercised their right to cast ballots. A challenged ballot cast by Muma was again sufficient to affect the outcome of the election in the law enforcement officer bargaining unit. The proceedings in that case have again been held in abeyance pending the outcome of the employment determination to be made under the civil service statute.

In the affidavit filed in support of the present petition, the employer states that there has been a further turnover of employees in the unit in which Muma claims eligibility, such that Muma and Brookshire, the one other employee remaining from 1983, now constitute less than a majority of the

² Decision 2138 (PECB, January 21, 1985).

³ Decision 2203 (PECB, March 26, 1985).

employees who might claim eligibility in that bargaining unit. The employer claims that it has a good faith doubt concerning the representation of its employees.

In theory, the recently filed petition adds nothing to the legal posture of the parties. There has been a question concerning representation in existence among the employer's law enforcement employees for more than two years, since February of 1983, giving the employer basis for a good faith doubt as to which organization, if any, holds majority support among its employees. Regardless of the number of separate petitions which might be filed, all representation claims existing in a single bargaining unit at a point in time must be resolved through a single determination resulting in a single certification.

On the other hand, the recently filed petition (or, more specifically, the affidavit filed in support of that petition) injects new facts which need to be considered. As the administrator of Chapter 41.56 RCW, the Commission must be mindful of the statutory rights of the recently hired employees. It is a stated purpose of Chapter 41.56 RCW that public employees have a right to choose their own exclusive bargaining representative for the purposes of collective bargaining. It is in that setting that the two pending matters must be examined.

Accepting that there has been a substantial turnover of employees in the bargaining unit, it must nevertheless be remembered that the right of employees to vote on questions concerning representation is not without limit. Where employees have selected an exclusive bargaining representative and a collective bargaining agreement has been signed, the right of the employees to "decertify" their exclusive bargaining representative (or to choose a different exclusive bargaining representative) will be limited for a period of up to three years under the "contract bar" provision of the statute and rules. RCW 41.56.070; WAC 391-25-030. Even absent such a collective bargaining agreement, the same statute limits the right of employees in a particular bargaining unit to vote on a question concerning representation

by the provision which states: "No question concerning representation may be raised within one year of a certification or attempted certification". Under WAC 391-25-450, the one year bar period attaches once the notice of election has been posted. Thus, both under the statute and the Commission's procedures, persons who are new to the bargaining unit after a certain point in the representation case process will have to wait up to a year under the "certification bar" provision and up to three years under the "contract bar" provision before they would have an opportunity to cast a ballot on a question concerning representation. The situation of such persons is comparable to that of a person who moves into a jurisdiction or reaches voting age too late to vote in a civil election, and so is governed for a period of time thereafter by a public official he or she had no hand in electing.

Upon review of both of the indicated case files, it is clear that the employees in the bargaining unit at issue had an opportunity to vote on representation within the past year. The fact that some of the persons then eligible to vote disenfranchised themselves by failing to cast ballots is unfortunate, but is not a basis for ignoring or circumventing the command of the statute. The employer's recent petition is untimely.

The Public Employment Relations Commission has expertise in making determinations on the merits of disputed discharges. Had an unfair labor practice complaint been filed concerning Muma's discharge, there would have been no hesitation in holding a hearing and making a determination on such allegations, without regard to any rights Muma may have had under other statutes or procedures. In the absence of an unfair labor practice complaint, Muma's right to reinstatement appears to rest exclusively on rights secured to him under the civil service statute. The Public Employment Relations Commission has deferred, therefore, to the forum and procedure under which the employment rights arise. There is no evident reason to alter that posture at this time, and Case No. 4517-E-83-831 will remain open pending the outcome of Muma's appeal.

NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above-entitled matter is dismissed as being untimely filed.

DATED at Olympia, Washington, this 29th day of August, 1985.

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 391-25-390(2).