

City of Blaine, Decision 6619-A (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL ASSOCIATION OF) CASE 13932-E-98-2331
MACHINISTS AND AEROSPACE WORKERS,)
DISTRICT LODGE 160)
) DECISION 6619-A - PECB
Involving certain employees of:)
)
CITY OF BLAINE) DIRECTION OF CROSS-CHECK
)
)
_____)

Dennis P. London, Grand Lodge Special Representative,
appeared on behalf of the petitioner.

Summit Law Group, by Bruce L. Schroeder, Attorney at Law,
appeared on behalf of the employer.

On May 21, 1998, International Association of Machinists and Aerospace Workers, District Lodge 160 (IAM), filed two petitions for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of two separate bargaining units of employees of the City of Blaine (employer). One of those bargaining units was described as including "department heads"; the second bargaining unit was described as including "exempt employees". An investigation conference conducted on June 22, 1998, resulted in several stipulations by the parties, but issues were framed concerning whether certain individuals were "confidential employees". A hearing was held on July 16, 1998, before Hearing Officer Martha M. Nicoloff.

In a decision issued on March 1, 1999, all but one of the proposed "confidential" exclusions was rejected, but neither of the petitioned-for bargaining units was found to be appropriate. City of Blaine, Decision 6619 (PECB, 1999). The IAM was provided an opportunity to file and serve an amended petition or petitions seeking appropriate bargaining unit(s), or face dismissal of its original petitions.

On March 15, 1999, the IAM filed amended petitions. The petition in the above-captioned case was amended to request a bargaining unit limited to supervisory non-uniformed personnel.¹

On March 23, 1999, the Hearing Officer convened a pre-hearing conference to discuss the amended petitions. At that time, certain additional stipulations were made as to voter eligibility. With respect to this petition, the parties stipulated that a bargaining unit can properly be described as:

All full-time and regular part-time supervisory, professional, and technical employees, excluding elected officials, the city manager, confidential employees, uniformed personnel, non-supervisory employees, and all other employees of the employer.

The Executive Director is unaware of any facts contradicting that stipulation, and so accepts it as describing an appropriate unit.

Discussion between the parties during the course of the conference revealed the existence of issues regarding the bargaining unit

¹ On the same date, the IAM amended the petition in Case 13933-U-98-2332 to request a bargaining unit of supervisory uniformed employees. A separate order is being issued in that matter today.

placement of any one of three supervisory uniformed positions, in the event of it being stranded in an inappropriate one-person unit.² Issues were also identified as to a possible intrusion of this bargaining unit into a bargaining unit of non-supervisory personnel, with respect to a then-vacant special projects position. In a letter dated April 1, 1999, the issues affecting this were outlined, including the possible interest of Teamsters Union, Local 231 (based on its status as the exclusive bargaining representative of the employer's non-supervisory non-uniformed employees) or of IAFF Local 3867 (based on its status as the exclusive bargaining representative of the employer's non-supervisory fire fighters). The employer and all unions having potential interests were asked to submit statements of their positions on these issues.

The employer and Teamsters Local 231 each filed statements of position.

In a follow-up letter filed May 11, 1999, the employer stated that it had entered into a long-anticipated agreement to contract with an adjoining fire district for fire services, so that the City of Blaine would no longer be an "employer" of any uniformed fire fighter personnel.

² In Case 14060-E-98-2352, International Association of Firefighters, Local 3867, sought certification as exclusive bargaining representative of the employer's uniformed fire fighter personnel. An interim certification had been issued, but an eligibility issue concerning the supervisory status of a fire captain remained pending before the Commission. In the parallel case filed by the IAM, the potential for a "stranding" issue would arise if rulings rejecting exclusion of a police captain or a director of public safety as "confidential" were to be overturned on appeal.

DISCUSSIONExistence of Question Concerning Representation

The contract transferring the employer's fire fighting personnel and responsibilities to another employer effectively removes any interest which IAFF Local 2837 had in this proceeding.

While an issue still lurks in the background with respect to the potential for stranding a police supervisor if an appeal results in a ruling that one (but not both) of those positions is a "confidential employee", that matter is not ripe for determination at this time. Accordingly, there is no near-term potential for an issue as to whether a stranded "uniformed" employee should be included in this bargaining unit.

Three titles were identified for which no incumbents are currently in place: Judicial coordinator, special assistant to the public works director for special projects, and marketing/community relations coordinator. Teamsters Local 231 claimed that the proposed judicial coordinator position is merely a change of title for a position previously included in the bargaining unit it represents, and it requested clarification regarding the special projects position, but it did not submit the showing of interest necessary to have its name placed on the ballot in this case. While the employer and the IAM agree that these vacant positions are properly included in the bargaining unit at issue in this proceeding, the Executive Director concludes it is unnecessary to rule on these positions at this time. WAC 391-35-020(3) specifically allows the filing of a unit clarification petition any time there is a "[d]ispute concerning the allocation of employees or positions between two or more bargaining units ...". These issues

will only be ripe for determination at such time, if ever, as the employer fills them.

The following eight positions for which incumbents are in place appear to be eligible in this bargaining unit: Senior accountant, city clerk, public works director, senior public works accountant, deputy finance director, public works foreman, light general foreman, and public safety management assistant. While the employer has indicated that it may exercise its right to appeal the previous ruling that the city clerk is not excluded from collective bargaining rights as a "confidential employee", no such appeal will be timely until a tally is issued.

Method for Determination

RCW 41.56.060 sets forth the methods for determining questions concerning representation:

The Commission shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election specifically therefor.

The Commission's rules limit the availability of the "cross-check" procedure, as follows:

WAC 391-25-391 Special Provision - Public Employees. Where **only one organization is seeking certification** as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that the **organization has been authorized by in excess of seventy percent of the employees** to act as their representative for the purposes of collective bargaining, the

executive director may issue a direction of cross-check. The direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the Commission by objections under WAC 391-25-590 after the cross-check.

[Emphasis by **bold** supplied.]

A showing of interest in excess of 70% inherently indicates little likelihood of an election altering the result. If employees desire to withdraw their authorization cards, the procedure for doing so is detailed in WAC 391-25-410(2).

Examination of the case file indicates that the IAM has submitted the substantial showing of interest required by WAC 391-25-391, even under the amended petition. The determination of the question concerning representation has already been delayed by the complexity of the issues in these matters, and there is no evident reason to inject further delay by using an election.

DIRECTION OF CROSS-CHECK

1. The employer shall immediately supply the Commission with copies of documents from its employment records which bear the signatures of the employees in the positions identified for in the bargaining unit described herein.
2. A cross-check of records shall be made under the direction of the Public Employment Relations Commission in the appropriate bargaining unit described as:

All full-time and regular part-time supervisory, professional and technical employees, excluding

elected officials, the city manager, confidential employees, uniformed personnel, non-supervisory employees and all other employees of the employer.

to determine whether a majority of the employees in that bargaining unit have authorized the International Association of Machinists and Aerospace Workers, District Lodge 160, to represent them for purposes of collective bargaining.

Issued at Olympia, Washington, this 20th day of May, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", is written over the printed name below.

MARVIN L. SCHURKE, Executive Director

This order may be appealed to the Commission by filing objections under WAC 391-25-590.