

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
PIERCE COUNTY JUVENILE COURT GUILD) CASE 15060-E-00-2505
)
Involving certain employees of:) DECISION 7176 - PECB
)
PIERCE COUNTY) ORDER VACATING
) ELECTION RESULTS
)
_____)

On February 28, 2000, the Pierce County Juvenile Court Guild (PCJCG) filed a petition 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 certain employees of Pierce County (employer). The Washington State Council of County and City Employees, AFSCME, AFL-CIO (WSCCCE) was granted intervention in the proceedings, based upon its status as the incumbent exclusive bargaining representative of the petitioned-for employees.

An investigation conference was conducted on April 20, 2000, by telephone conference call. At that time, issues were framed as to:

- Whether the PCJCG was qualified for certification as an exclusive bargaining representative;¹
- Whether "extra hire" employees should be included in the bargaining unit;²

¹ The WSCCCE declined to stipulate that the PCJCG was a labor organization within the meaning of the statute.

² The proposed exclusion of all "extra hire" employees put up to 38 of about 115 potential voters at issue.

- Whether facilities management positions should be included in the bargaining unit;³ and
- Whether the "juvenile detention officer 3" and "medical service coordinator" classifications should be excluded from the bargaining unit as supervisors.⁴

Because of the large percentage of contested positions, a determination on the scope of the bargaining unit was deemed necessary before an election could be conducted. A hearing was convened on July 17, 2000, before Hearing Officer Frederick J. Rosenberry.

At the hearing, the parties stipulated to the inclusion of what the employer had called "extra hire" employees in the bargaining unit, if they met the "one-sixth" test used by the Commission in Pierce County, Decision 3321-A (PECB, 1990), to distinguish between included regular part-time employees and excluded casual employees. That stipulation reduced the number of disputed employees to 11. An administrative decision was then made to proceed with the conduct of an election, while reserving the remaining eligibility issues for post-election determination.⁵

³ The employer asserted that it had proposed exclusion of the facilities management classifications ("maintenance mechanic", "custodian 1", and "custodian 2") from the existing bargaining unit during contract negotiations and meetings with the WSCCCE dating back to 1996, based on a reorganization of its management structure, and it reiterated that position in this proceeding.

⁴ The employer proposed the exclusion of the "JDO3" classification which was encompassed in the petitioned-for unit but was not historically included in the bargaining unit, and it proposed the exclusion of the "medical services coordinator".

⁵ In City of Redmond, Decision 1367-A (PECB, 1981) the Commission directed its staff to get on with the prompt conduct of elections or cross-checks, where only a limited number of eligibility issues exist.

Another investigation conference was conducted on August 4, 2000, by telephone conference call. At that time, the issues framed by the parties were limited to:

- Whether facilities management positions should be included in the bargaining unit; and
- Whether the "juvenile detention officer 3" and "medical service coordinator" classifications should be excluded from the bargaining unit as supervisors.

Arrangements for an election by mail ballot were discussed, with some extra-hire employees to vote by challenged ballot subject to a later determination of their eligibility. A list of employees provided by the employer was used as the eligibility list,⁶ with an eligibility cut-off date of August 4, 2000.

Ballots were sent to 98 employees stipulated to be eligible voters, plus 17 employees challenged by the employer, for a total of 115 eligible voters. With two unions on the ballot, RCW 41.56.070 and WAC 391-25-531 required that one of the choices receive at least 58 votes to avoid a run-off election. The tally of ballots, issued on September 6, 2000, disclosed the following results:

Ballots cast for PCJCG.....	54
Ballots cast for WSCCCE.....	4
Ballots cast for "No Representation".....	0
Challenged ballots.....	7

⁶ Previously, the PCJCG had objected that the first list provided by the employer was both insufficient as to the employees named and incomplete as to employee addresses, and the employer had supplied corrections on March 23, 2000. The employer had then supplied an entirely new list on April 10, 2000.

Thus, it appeared that a run-off election would be necessary under WAC 391-25-570 (with only the PCJCG and WSCCCE on the ballot) unless the disposition of the reserved eligibility issues reduced the total number of eligible voters and/or increased the number of ballots cast for the PCJCG.

Discovery of Election Irregularities

At the tally on September 6, 2000, a question arose as to whether six or more employees named on the eligibility list used for the election were no longer employed in the petitioned-for bargaining unit. Elimination of as few as eight names from the "approximate number of eligible voters" would have obviated the need for a run-off election, and the Commission staff requested an updated list of employees from the employer on September 11, 2000.

The employer provided an updated list on September 12, 2000, and review of that list provides basis to question the integrity of the election process conducted in this case. It now appears that the list used to conduct the election was infected with numerous and substantial errors, including:

1. The list used to conduct the election contained 13 names that were not on the September 12 list. Among those:
 - a. As to 12 of those names, further investigation disclosed that the employment of those persons in the petitioned-for bargaining unit had been terminated on various dates as far back as January of 2000. The employment of at least 10 of those persons had been terminated prior to August 4, so they should never have been counted among the 115 eligible voters, and they should never have been provided ballots.

- b. The 13th name in this group was that of Eva Conklin. Further investigation disclosed that she was and remains an eligible voter, as a juvenile detention officer and/or a lead worker.
2. The list provided on September 12 contained 16 names of individuals who were not on the list used to conduct the election. Among those:
 - a. Further investigation disclosed that 13 of those individuals were "extra hire" employees who were arguably eligible voters, and were thus deprived of their right and opportunity to cast at least a challenged ballot in the election.
 - b. Further investigation disclosed that one employee in this group, Beverly Cross, had terminated her employment in this bargaining unit in May of 2000 and had not been re-hired until after the eligibility cut-off date, so that she would not have been an eligible voter.
 - c. Further investigation disclosed that another employee in this group, Tommy Stevenson, was not hired into this bargaining unit until after the eligibility cut-off date, so that he would not have been an eligible voter.
 - d. Further investigation disclosed that another employee in this group, Peter Thomas, went through a hiring process but did not actually commence work in this bargaining unit, so that he would not have been an eligible voter.

The employees listed under 2.a., above, constitute more than 11% of the employees who should have received ballots in this case. Such a group would have been enough to constitute the showing of interest for another intervenor, if they were so inclined, and

their rights would be prejudiced by going forward with an election process that improperly excluded them from eligibility to vote.

Potential Omission of Necessary Party

Review of the entire case file in connection with the election irregularities discussed above has disclosed another procedural problem. Discussion of the case among the Executive Director, the Representation Coordinator, and the Hearing Officer has disclosed that the employer's quest for removal of the facilities management employees from the bargaining unit at issue in this case is coupled with a desire to place those employees into an entirely separate bargaining unit of Pierce County employees represented by Teamsters Union, Local 599. The employer has not, however, taken steps to have Local 599 brought in as a party to this proceeding.

The certification of an exclusive bargaining representative under RCW 41.56.080 gives rise to a one-year "certification bar" period under RCW 41.56.070, during which the employer and the certified union are supposed to be immune from challenges to the existence of their bargaining relationship. Accordingly, Commission practice has always required that all pending unit determination issues relating to any of the employees in a bargaining unit be dealt with at the same time in a representation case under Chapter 391-25 WAC.⁷ Thus, references in the early correspondence and at the hearing to a contemplated "unit clarification" proceeding take on a different meaning with the realization that the employer is attempting to obtain a transfer of the disputed facilities

⁷ See, for example, WAC 391-35-110, which suspends the processing of any unit clarification proceeding pending under Chapter 391-35 WAC whenever a question concerning representation is raised, and requires that all pending unit issues be resolved in the proceedings under Chapter 391-25 WAC.

management employees to a different bargaining unit represented by another organization. That third organization was certainly entitled to notice of, and an opportunity to intervene in, this proceeding. That defect must be cured before the processing of this case can continue.


NOW, THEREFORE, it is

ORDERED

1. The results of the election conducted in the above-captioned matter, as reflected in the tally of ballots issued on September 6, 2000, are VACATED.
2. The matter is remanded to Hearing Officer Frederick J. Rosenberry for further proceedings consistent with this Order.

Issued at Olympia, Washington, on the 13th day of September, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE

THE ATTACHED DOCUMENT, IDENTIFIED AS: DECISION 7176 - PECB HAS BEEN SERVED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION BY DEPOSIT IN THE UNITED STATES MAIL, ON THE DATE ISSUED INDICATED BELOW, POSTAGE PREPAID, ADDRESSED TO THE PARTIES AND THEIR REPRESENTATIVES LISTED IN THE DOCKET RECORDS OF THE COMMISSION AS INDICATED BELOW:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ *Majel C. Boudia* MAJEL C. BOUDIA

CASE NUMBER: 15060-E-00-02505 FILED: 02/28/2000 ISSUED: 09/14/2000

FILED BY: PARTY 2 DISPUTE: QCR RAID DETAILS:

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