City of Sunnyside, Decision 7843 (PECB, 2002)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SUNNYSIDE POLICE OFFICERS GUILD	)	CASE 16406-E-02-2716
	)	
Involving certain employees of:	)	DECISION 7843 - PECB
	)	
CITY OF SUNNYSIDE	)	ORDER DENYING MOTION
	)	FOR DISMISSAL
	)	

Emmal, Skalbania & Vinnedge, by *Patrick Emmal*, Attorney at Law, for the petitioner.

Menke, Jackson, Beyer, Elofson, Ehlis & Harper, L.L.P., by *Anthony F. Menke*, Attorney at Law, for the employer.

Joseph Tanasse, Secretary-Treasurer, for the incumbent intervenor, Teamsters Union, Local 524.

This matter comes before the Executive Director for rulings on two issues raised by the employer, which are treated as motions for dismissal. The motions are both DENIED.

BACKGROUND:

On May 23, 2002, the Sunnyside Police Officers Guild (SPOG) 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 law enforcement officers employed by the City of Sunnyside (employer). Teamsters Union, Local 524, was granted intervention in the proceedings under WAC 391-25-170, based on its status as the incumbent exclusive bargaining representative of the employees involved.

An investigation conference was conducted on June 25, 2002. At that time, the employer declined to stipulate that the SPOG is an organization qualified for certification as an exclusive bargaining representative under Chapter 41.56 RCW, and it asserted that the petition was untimely because the petition was filed at a time when employer and Local 524 were already engaged in mediation under the interest arbitration procedure set forth in RCW 41.56.430 through 41.56.490. Local 524 joined in the employer's assertions, but did not offer any additional arguments. On July 16, 2002, the parties were given until July 31 to show cause why the arguments advanced by the employer should not be summarily denied.

The employer filed a letter on August 1, 2002, restating and expanding on the arguments it advanced during the investigation conference. On August 26, 2002, the SPOG filed a copy of the articles of incorporation it had filed in the office of the Secretary of State on August 13, 2002.

DISCUSSION:

Status as a Qualified Organization

The Executive Director is not persuaded by the employer's assertion (emphasis supplied) that, to be a bona fide labor organization, *by its nature, requires that it be a valid Washington corporation.*" While counsel for the employer has cited a statute that might form a basis for the Secretary of State or a court to impose sanctions upon a union that was holding itself out as being incorporated when in fact it was not, no authority is cited or found for the proposition that all unions must be incorporated.

This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and that statute provides basis for the Commission to act. The definition of "bargaining representative" set forth in RCW 41.56.030(3) clearly lacks any requirement for incorporation, instead encompassing "any lawful organization which has as one of its primary purposes the representation of employees . . .". Over the years, a number of unions that practice before the Commission have identified themselves as unincorporated associations.

Commission precedents have interpreted the RCW 41.56.030(5) definition broadly. *Southwest Washington Health District*, Decision 1304 (PECB, 1981) establishes that there is minimal need for any formality, let alone for formal incorporation.

Finally, the issue appears to be moot, given the filing by the SPOG of its articles of incorporation.

The "Contract Bar" Claim

The Executive Director also rejects the employer's assertion that the petition filed by the SPOG is untimely. Accepting that the previous collective bargaining agreement between the employer and Local 524 expired on December 31, 2001, and accepting that the employees involved are "uniformed personnel" within the meaning of RCW 41.56.030(7) so that the bargaining concerning them is subject to the interest arbitration provisions of the statute, and even accepting that the employer first stated its "contract bar due to being in mediation" theory at the investigation conference in this matter, none of that provides basis for dismissing the petition filed by the SPOG.

Under RCW 41.56.070 and WAC 391-25-030(1), employees have the right to exercise their right to choose and change their exclusive bargaining representative at any time, with two narrow exceptions:

First, when a collective bargaining agreement is in effect (except during the "window" period near the end of the contract term); and

Second, for one year following a certification or attempted certification, which protects the importance and solemnity of Commission proceedings as well as providing stability in the first year of a bargaining relationship.

Under circumstances where the collective bargaining agreement covering employees expired on the preceding December 31 and a successor contract had not been ratified by both parties, a petition filed on the following May 21 would be considered timely.

There is clear Commission precedent for imposing a "contract bar" on a bargaining unit once a dispute between the employer and incumbent union has been certified for interest arbitration under RCW 41.56.430 through 41.56.490. In such situations, the Legislature has taken away the right of the employer and union to prevent an agreement, and those parties can aptly be said to have a contract while merely lacking knowledge of its terms until they are imposed by an interest arbitration panel. The concerns for labor peace and stability that are recited in RCW 41.56.430 are effectuated by holding parties who have reached an impasse in collective bargaining to the dispute resolution procedure established by the statute.

No case is cited or found where the Commission has moved the "contract bar due to interest arbitration" concept forward to lock in an existing bargaining relationship merely because the employer

and incumbent union have requested or engaged in mediation. The general rule stated in WAC 391-25-140(4), codifying Commission precedent, is that the filing of a petition requires the employer to shut down negotiations with the incumbent exclusive bargaining representative. No exception is stated in that rule for units of "uniformed personnel" eligible for interest arbitration.

NOW, THEREFORE, it is

ORDERED

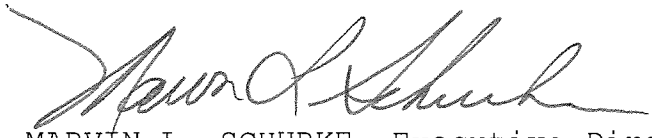
1. The motion for dismissal filed by the City of Sunnyside based on the status of the Sunnyside Police Officers Guild as a corporation is DENIED.

2. The motion for dismissal filed by the City of Sunnyside based on the employer having been in mediation with Teamsters Union, Local 524, is DENIED.

3. The case is remanded to the Representation Coordinator for conduct of a representation election.

Issued at Olympia, Washington, on the 16th day of September, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director