Anacortes School District, Decision 9461 (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
TEAMSTERS, LOCAL 231	)	CASE 20371-E-06-3151
	)	
Involving certain employees of:	)	DECISION 9461 - PECB
	)	
ANACORTES SCHOOL DISTRICT	)	ORDER DENYING MOTION
	)	FOR INTERVENTION
	)	

Reid, Peterson, McCarthy and Ballew, by *Russell J. Reid*, Attorney at Law, for the petitioner.

Jerry Gates, Labor Relations Consultant, for the employer.

Michael Gawley, Attorney at Law, for intervenor Washington Education Association.

On May 3, 2006, the Teamsters, Local 231 (Teamsters) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of office-clerical employees working in the central office of the Anacortes School District (employer). The Washington Education Association (WEA) was permitted to participate in an investigation conference held on July 7, 2006, based on a motion for intervention it filed on June 5, 2006. The resulting investigation statement framed issues as to the involvement of the WEA in the case, as well as to whether the bargaining unit sought by the Teamsters is appropriate and as to whether Sonja Brown, Lori Gold, and Jayne Branch are eligible voters. The matter was assigned to a Hearing Officer for further proceedings. As a result of a pre-hearing conference held on July 27, 2006, the hearing process was bifurcated to address the issues

concerning the status of the WEA at a first day of hearing, while reserving the unit and eligibility issues for a subsequent hearing. Hearing Officer Christy L. Yoshitomi held the first day of hearing on August 21, 2006.

ISSUES PRESENTED

The issues before the Executive Director at this time are limited to:

1. Is the WEA entitled to intervention as the incumbent exclusive bargaining representative of the petitioned-for positions?

2. Is the petition procedurally defective for lack of service on the WEA?

Based on the evidence and arguments submitted by the parties, the Executive Director rules that the WEA is not entitled to intervention as an incumbent exclusive bargaining representative under WAC 391-25-170. On the record made here, the WEA was not entitled to service of the petition.

ISSUE 1 - INCUMBENT STATUS

Applicable Legal Standards -

This case concerning classified employees of a school district arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. To be an exclusive bargaining representative under RCW 41.56.080, an organization must demonstrate majority support in an appropriate bargaining unit. The Legislature delegated the determination and modification of appropriate bargaining units to the Commission in RCW 41.56.060; the Legislature delegated the conduct of representation proceedings to the Commission in RCW 41.56.060 and .070.

The normal process for an organization to obtain status as an intervenor in a representation proceeding initiated by employees or another union is to submit the 10 percent showing of interest called for in RCW 41.56.070 and WAC 391-25-190. To obtain intervention under WAC 391-25-170, a union must show that ". . . it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings . . . during the year preceding the filing of the petition . . . ." WAC 391-25-170 thus implements the (rebuttable) presumption of continuing majority status which is extended generally to the incumbent exclusive bargaining representatives of bargaining units.

Analysis -

The WEA's bargaining relationship with this employer must be examined at the outset of this analysis. The evidence in this record does not show how or when that bargaining relationship came into existence.[1] The evidence does show that the WEA has represented "all personnel performing work as Administrative Assistants in the elementary and secondary schools . . ." in one or more collective bargaining agreements signed by the WEA and the employer prior to 2005.[2] One can only infer that the unit historically

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[1] Notice is taken of docket information transferred to the Commission by the Department of Labor and Industries (L&I) under RCW 41.58.801. In Case O-1145, filed in April 1972 and closed in May 1972, L&I rejected a WEA request for a separate unit (severance) of office-clerical employees of the Anacortes School District. The specific notation is: "Department will not split unit." The Commission's computerized case docketing records disclose no certification for such a unit since 1976.

[2] Additionally, notice is taken of the Commission's docket records, which indicate that mediation was provided to the WEA and the employer for an office-clerical unit in 1986 (Case 6569-M-86-2649), in 1987 (Case 7175-M-87-2855), in 1988 (Case 7581-M-88-2996), and again in 2002 (Case 16789-M-02-5770).

represented by the WEA came into existence by means of a voluntary recognition some time after 1972.[3]

During negotiations for a successor contract in 2005, the WEA and the employer discussed the propriety of including office-clerical employees working in the employer's central office in their existing bargaining relationship. The parties did not effect an accretion at that time, however. Instead, they completed negotiations over a successor contract covering only the "administrative assistants in the elementary and secondary schools" for the period from September 1, 2005, through August 31, 2008.

The WEA and the employer did sign a memorandum of understanding as a result of their negotiations in 2005, providing for:

- Establishment of a joint committee to review the job responsibilities for "currently non-represented secretarial positions . . . according to the standard of 51.55.030 [*sic*] for possible inclusion" in the bargaining unit; and
- Accretion of "[a]ny secretarial positions deemed appropriate for inclusion" into the bargaining unit by September 1, 2006.

Talking about accretion did not make it appropriate. The right to select or reject union representation belongs to the employees involved, not to the employer or union. RCW 41.56.040. While accretions are possible through unit clarification proceedings under Chapter 391-35 WAC, they are an exception to (almost an

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[3] The closest the bargaining unit ever got to a formal ruling was a unit clarification proceeding filed and withdrawn in 1994 (Case 11204-C-94-665). The fact that both the WEA and an organization representing an "aides" unit were parties to a "community of interest" dispute suggests the issues were unrelated to the case at hand.

aberration from) the general rule of employee free choice in the selection of their bargaining representatives. After pointing out that unit determination is not a subject for bargaining in the usual mandatory/permissive/illegal sense, and that parties' agreements on unit matters are not binding on the Commission, the Commission wrote:

> Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from a bargaining unit by agreement of the parties or by certification will not be disturbed.

City of Richland, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). Accordingly, accretions will only be ordered where changed circumstances lead to the presence of positions which logically belong in only one existing bargaining unit, and the positions can neither stand on their own as a separate bargaining unit or be logically accreted to any other existing unit. *See Kitsap Transit Authority*, Decision 3104 (PECB, 1989); *City of Auburn*, Decision 4880-A (PECB, 1994). Neither the WEA or the employer filed a unit clarification petition under Chapter 391-35 WAC in 2005.

Talking about accretion did not make it a fact in this case. Apart from any concerns about the propriety of the accretion process agreed upon by the employer and the WEA in 2005, none of the office-clerical employees working in the employer's central office were actually accreted into the historical bargaining unit in 2005. Through their memorandum of understanding, those parties merely agreed to a process which may or may not have led to appropriate accretion(s) during or after September 2006. The Teamsters filed the petition to initiate this representation case on May 3, 2006, which was three months before the WEA was to become the exclusive

bargaining representative of any office-clerical employees working in the employer's central office. The WEA has not established that it held the "exclusive bargaining representative" status that it would need to assert either a "contract bar" claim or a motion for intervention under WAC 391-25-170 in this case.[4]

The WEA's resistance to the separate unit of central office employees proposed by the Teamsters (as an inappropriate fragmentation of the employer's office-clerical workforce) puts it on a slippery slope. There is precedent for inclusion of all non-confidential office-clerical employees of a school district in a single bargaining unit,[5] as well as for declaring existing bargaining units inappropriate where they artificially fragment an employer's workforce.[6] The WEA's argument inherently calls into question the propriety of the bargaining unit it represents. To advance an "only appropriate unit is employer-wide" argument, the WEA must file and serve a cross-petition supported by a 30 percent showing of interest in the employer-wide unit.[7]

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[4] It is worth noting that an opposite conclusion on this issue would not necessarily be a basis to dismiss the petition. Even if the agreement made in 2005 were to be credited as an agreement to extend voluntary recognition, the Commission does not honor a "recognition bar" under WAC 391-25-030(2)and *City of Vancouver*, Decision 8032 (PECB, 2003).

[5] *See Wapato School District*, Decision 2227 (PECB, 1985); *Tukwila School District*, Decision 7287-A (PECB, 2001).

[6] *South Kitsap School District*, Decision 1543 (PECB, 1983).

[7] This does not preclude the employer from independently asserting and pursuing an "only appropriate unit is employer-wide" argument in response to the petition filed by the Teamsters. Although the WEA could then intervene to try to protect its existing unit, it would not thereby be entitled to a place on the ballot or to an accretion if the employer's argument was accepted.

ISSUE 2 - SUFFICIENCY OF SERVICE

Applicable Legal Principles

The Commission's rules require parties who file papers with the Commission to serve copies on other interested parties. WAC 391-08-120; 391-25-050.

Analysis

The parties stipulated on this record that the Teamsters did not serve WEA with a copy of the petition. That fact does not establish a violation of the rule, however.

Because the WEA is not the incumbent exclusive bargaining representative of the petitioned-for office-clerical employees working in the employer's central office, the Teamsters had no direct obligation to serve its petition on the WEA. The WEA would have needed to show that the Teamsters actually knew of its effort to obtain accretion of the petitioned-for employees to the historical unit, but such evidence is lacking here.

FINDINGS OF FACT

1. Anacortes School District is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters, Local 231, a labor organization and bargaining representative within the meaning of RCW 41.56.030(3), filed a petition for investigation of a question concerning representation with the Commission on May 3, 2006, seeking certification as exclusive bargaining representative of certain office-clerical employees working in the central office of the Anacortes School District.

3. The Washington Education Association, a labor organization and bargaining representative within the meaning of RCW 41.56.030(3), has historically represented "all personnel performing work as Administrative Assistants in the elementary and secondary schools" in the Anacortes School District. The office-clerical employees working in the employer's central office have historically been excluded from that unit.

4. On August 16, 2005, the employer and the WEA had entered into a memorandum of understanding providing for review of petitioned-for office-clerical positions in the employer's central office for possible inclusion into the bargaining unit historically represented by the WEA on or after September 1, 2006. No employees had actually been accreted to the historical unit prior to the filing of the petition on May 2, 2006.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. The WEA is not the exclusive bargaining representative of the petitioned-for positions at issue in this case, and is not entitled to intervention in this representation proceeding under WAC 391-25-170.

NOW, THEREFORE, it is

ORDERED

1. The motion of the Washington Education Association for intervention as an incumbent is DENIED.

2. The case is remanded to the Hearing Officer for further proceedings under Chapter 391-25 WAC.

Issued at Olympia, Washington, on the 20th day of October, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director